HIGH COURT BULLETIN

Produced by the Legal Research Officer,
High Court of Australia Library
[2023] HCAB 10 (18 December 2023)

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

2: Cases Handed Down

Case	Title
NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs	Constitutional Law
Real Estate Tool Box Pty Ltd v Campaigntrack Pty Ltd	Copyright
Potts v National Australia Bank Limited	Corporations Law
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3: Cases Reserved

Case	Title
AB (a pseudonym) & Anor v Independent Broad-based Anti-corruption Commission	Administrative Law
Chief Executive Officer, Aboriginal Areas Protection Authority v Director of National Parks (ABN 13 051 694 963) & Anor	Constitutional Law
Minister for Immigration, Citizenship and Multicultural Affairs v McQueen	Immigration

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MDP v The King	Evidence
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Automotive Invest Pty Limited v Commissioner of Taxation	Taxation

7: Cases Not Proceeding or Vacated

Case	Title
Rehmat & Mehar Pty Ltd & Anor v Hortle	Constitutional Law

2: Cases Handed Down

The following cases were handed down by the High Court of Australia during the December 2023 sittings.

Constitutional Law

NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor
S28/2023: [2023] HCA 37

Reasons delivered: 28 November 2023

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law (Cth) – Judicial power of Commonwealth – Immigration detention – Indefinite detention without judicial order – Where plaintiff stateless Rohingya Muslim having well-founded fear of persecution in Myanmar – Where plaintiff's bridging visa cancelled following criminal conviction – Where following release from criminal custody plaintiff taken into immigration detention under s 189 of *Migration Act 1958* (Cth) ("Act") – Where plaintiff's application for protection visa refused and finally determined – Where ss 198(1) and 198(6) of Act imposed duty upon officers of Department administering Act to remove plaintiff from Australia as soon as reasonably practicable – Where s 196(1) of Act required plaintiff to be kept in immigration detention until removed from Australia, deported, or granted visa – Where attempts by Department to remove plaintiff from Australia unsuccessful as at date of hearing – Where no real prospect of removal of plaintiff from Australia becoming practicable in reasonably foreseeable future – Where plaintiff sought writ of habeas corpus requiring release from detention forthwith – Whether application for leave to reopen constitutional holding in *Al-Kateb v Godwin* (2004) 219 CLR 562 should be granted – Whether constitutional holding in *Al-Kateb* should be overruled – Whether detention of plaintiff punitive contrary to Ch III of *Constitution* – Whether separation of plaintiff from Australian community pending removal constitutes legitimate and non-punitive purpose – Whether detention of plaintiff reasonably capable of being seen as necessary for legitimate and non-punitive purpose.

Immigration – Unlawful non-citizens – Detention pending removal from Australia – Where no real prospect of removal of plaintiff from Australia becoming practicable in reasonably foreseeable future – Whether detention of plaintiff authorised by ss 189(1) and 196(1) of

Act – Whether application for leave to reopen statutory construction holding in *Al-Kateb* should be granted.

Words and phrases – "alien", "conservative cautionary principle", "deportation", "deprivation of liberty", "executive detention", "habeas corpus", "indefinite detention", "judicial function", "judicial power of the Commonwealth", "legitimate and non-punitive purpose", "*Lim* principle", "penal", "power to exclude", "practicable", "punishment", "punitive", "real prospect", "reasonably capable of being seen as necessary", "reasonably foreseeable future", "removal from Australia", "separation from the Australian community", "unlawful non-citizen".

Constitution, s 51(xix), Ch III.
Migration Act 1958 (Cth), ss 3A, 189, 196, 198.

Special case referred to the Full Court on 6 June 2023.

Orders made on 8 November 2023 answering questions.

Held: Special case answered with costs.

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Corporations Law

Potts v National Australia Bank Limited (ABN 12 004 044 937)
S47/2023; S48/2023: [2023] HCA 41

Judgment delivered: 6 December 2023

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

Catchwords:

Corporations law – Proportionate liability – Where appellant Chief Financial Officer and director of Dick Smith Holdings Ltd ("DSH") – Where National Australia Bank Ltd ("NAB") became DSH's financier after entering into Syndicated Facility Agreement ("SFA") – Where SFA contained representation as to accuracy of information provided by DSH to NAB – Where NAB relied on three causes of action for misleading conduct and appellant raised proportionate liability defences under ss 87CB of *Competition and Consumer Act 2010* (Cth), 1041L of *Corporations Act 2001* (Cth), and 12GP of *Australian Securities and Investments Commission Act 2001* (Cth), claiming DSH concurrent wrongdoer – Whether DSH concurrent wrongdoer – Whether, when determining if corporation, having regard to matters within its knowledge, engaged in misleading conduct by making representations in document authorised by board, issue should be determined solely by reference to matters within knowledge of board,

rather than by reference to any knowledge attributable to corporation applying orthodox principles – Whether, when determining if corporation engaged in misleading conduct by making representations in document authorised by board, appropriate to exclude from consideration matters known to a particular member of board against whom allegations of misleading conduct been made, but not established.

High Court of Australia – Special leave to appeal – Where questions of legal principle not in issue at appeal hearing – Whether single ground of appeal concerning factual issues met criteria for special leave to appeal – Whether special leave to appeal should be revoked. Words and phrases – "question of law of public importance", "revocation of special leave", "special leave to appeal".

Judiciary Act 1903 (Cth), s 35A.

Appealed from NSWSC (CA): [2022] NSWCA 165; (2022) 371 FLR 349; (2022) 405 ALR 70; (2022) 163 ACSR 23

Held: Special leave revoked.

Orders made by consent on 10 October 2023 dismissing the appeal Potts & Anor v DSHE Holdings Ltd ACN 166 237 841 (receivers and managers appointed) (in liquidation) & Ors (S47/2023).

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Criminal Law

Bromley v The King
A40/2021: [2023] HCA 42

Judgment delivered: 13 December 2023

Coram: Gageler CJ, Edelman, Steward, Gleeson and Jagot JJ

Catchwords:

Criminal law – Appeal against conviction – Second or subsequent appeal – Where applicant convicted of murder in 1985 – Where applicant's conviction depended to considerable extent upon evidence of witness with schizophrenia or schizoaffective disorder – Where reliability of witness' evidence was relevant issue at trial – Where applicant applied for permission to appeal pursuant to s 353A(1) of *Criminal Law Consolidation Act 1935* (SA) ("CLCA") – Where s 353A(1) of CLCA relevantly provided "Full Court may hear a second or subsequent appeal against conviction ... if the Court is satisfied that there is fresh and compelling evidence that should, in the interests of justice, be considered on an appeal" – Where fresh

psychiatric and psychological evidence demonstrated developments since 1985 in field of cognitive and memory deficits in people with schizophrenia or schizoaffective disorder – Where new evidence required to be fresh and compelling – Where evidence compelling if reliable, substantial, and highly probative in context of issues in dispute at trial – Whether fresh psychiatric and psychological evidence compelling – Whether fresh psychiatric and psychological evidence highly probative of relevant issue at trial – Whether in interests of justice to consider fresh evidence on appeal – Whether substantial miscarriage of justice occurred.

High Court – Special leave to appeal – Where application for special leave did not purport to raise any question of legal principle – Where application for special leave argued on basis of interests of justice in particular case – Where Court required to reconsider evaluative conclusions of fact reached by Court below – Where exceptional procedural course taken – Where one aspect of application permitted to be subject of full argument on merits as if on appeal – Whether application for special leave ought to be granted.

Words and phrases – "cognitive and memory deficits or impairments", "compelling", "exceptional procedural course", "expert opinion", "fresh and compelling evidence", "inconsistencies and inaccuracies", "independent corroboration", "interests of justice", "jury direction", "psychiatric and psychological evidence", "reliability", "reliable, substantial, and highly probative", "second or subsequent appeal", "special leave to appeal", "substantial miscarriage of justice".

Judiciary Act 1903 (Cth), s 35A(b).
Criminal Law Consolidation Act 1935 (SA), s 353A(1).

Appealed from SASC (FC): [2018] SASCFC 41

Held: Application for special leave to appeal dismissed.

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Criminal Practice

Huxley v The Queen
B19/2023: [2023] HCA 40

Judgment delivered: 6 December 2023

Coram: Gageler CJ, Gordon, Steward, Gleeson and Jagot JJ

Catchwords:

Criminal practice – Trial – Directions to jury – Where appellant tried with two co-accused – Where appellant charged with murder, one co-accused charged with assault occasioning bodily harm and other co-accused charged with accessory after fact to murder or manslaughter – Where evidence from witness incriminated one co-accused but had potential to exculpate appellant – Where trial judge gave direction that witness' evidence should not be used unless jury satisfied beyond reasonable doubt that witness' evidence was truthful, reliable and accurate – Where direction expressed as "consistent with the directions" to be given in relation to case against one co-accused – Where appellant did not seek redirection – Whether direction would have misled jury in relation to defence case for appellant – Whether misleading in context of summing-up as a whole – Whether trial miscarried – Whether direction constituted error of law.

Words and phrases – "beyond reasonable doubt", "circumstantial evidence", "error of law", "failure to seek a redirection", "joint trial", "miscarriage of justice", "misdirection", "multiple accused", "murder", "obstacle to conviction", "reasonable possibility", "Robinson direction", "summing-up", "truth, reliability and accuracy", "wrong decision of any question of law".

Criminal Code (Qld), ss 632, 668E.

Appealed from QLDSC (CA): [2021] QCA 78

Held: Appeal dismissed.

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Trade Practices

Karpik v Carnival PLC ARBN 107 998 443 & Anor
S25/2023: [2023] HCA 39

Judgment delivered: 6 December 2023

Coram: Gageler CJ, Gordon, Edelman, Gleeson and Jagot JJ

Catchwords:

Trade practices – Consumer protection – Extraterritorial application of s 23 of *Australian Consumer Law* ("ACL") – Where company carrying on business in Australia selling and marketing cruises – Where contract of passage made outside Australia – Where contract was contract of adhesion incorporating set terms and conditions – Where terms and conditions included exclusive jurisdiction clause and class action waiver clause – Whether s 5(1)(g) of *Competition and Consumer Act 2010* (Cth) extended application of s 23 of ACL to contract – Whether any additional territorial connection required –

Whether class action waiver clause constituted unfair term under s 23 of ACL and void.

Representative actions – Whether class action waiver clause contrary to Pt IVA of *Federal Court of Australia Act 1976* (Cth) – Whether class action waiver clause unenforceable.

Private international law – Forum – Exclusive jurisdiction clause – Whether strong reasons not to grant stay of proceedings.

Words and phrases – "carrying on business", "consumer contract", "detriment", "engaging in conduct", "exclusive jurisdiction clause", "extraterritoriality", "inappropriate forum", "legitimate interests", "representative proceedings", "significant imbalance", "standard form contract", "stay of claim", "transparent", "unfair".

Competition and Consumer Act 2010 (Cth), s 5(1)(c) and (g).
Competition and Consumer Act 2010 (Cth), Sch 2 (Australian Consumer Law), s 23.
Federal Court of Australia Act 1976 (Cth), Pt IVA, ss 33J, 33X, 33Y.

Appealed from FCA (FC): [2022] FCAFC 149; (2022) 294 FCR 524; (2022) 404 ALR 386; (2022) 163 ACSR 119

Held: Appeal allowed with costs.

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Mitsubishi Motors Australia Ltd & Anor v Begovic
M17/2023: [2023] HCA 43

Judgment delivered: 13 December 2023

Coram: Gageler CJ, Gordon, Steward, Gleeson and Jagot JJ

Catchwords:

Trade practices – Consumer protection – Misleading or deceptive conduct – Where vehicle purchased with fuel consumption label applied in compliance with *Motor Vehicle Standards Act 1989* (Cth) and *Vehicle Standard (Australian Design Rule 81/02 – Fuel Consumption Labelling for Light Vehicles) 2008* (Cth) – Where specific contents of label prescribed by law – Where evidence of fuel consumption of vehicle substantially exceeding fuel consumption values on label – Where proceedings commenced claiming appellants engaged in misleading or deceptive conduct, contravening s 18 of *Australian Consumer Law* – Whether appellants engaged in misleading or deceptive conduct in circumstances where required by law to apply fuel consumption label.

Words and phrases – "apparent conflict", "apparent inconsistency", "compulsion", "conduct", "conduct in trade or commerce", "conduct required", "conflict", "contravention of s 18", "field of operation", "general prohibition", "general provision", "mandatory conduct", "misleading or deceptive", "national legislative scheme", "reconciliation of statutory provisions", "representations", "safety standard", "specific provision".

Competition and Consumer Act 2010 (Cth), Sch 2, ss 2, 18, 106.
Motor Vehicle Standards Act 1989 (Cth), ss 3, 5, 5A, 7, 9, 10, 10A, 10B, 13A, 14, 17, 18, 41.
Vehicle Standard (Australian Design Rule 81/02 – Fuel Consumption Labelling for Light Vehicles) 2008 (Cth), cll 1.1, 4.1, 4.5.1, 4.6.1, 5.1, 6.1, 6.1.1, Appendices A, B, C.
Australian Consumer Law and Fair Trading Act 2012 (Vic), ss 8, 224.

Appealed from VSC (CA): [2022] VSCA 155; (2022) 403 ALR 558; (2022) 101 MVR 95

Held: Appeal allowed; appellants pay the respondent's costs.

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Copyright

Real Estate Tool Box Pty Ltd & Ors v Campaigntrack Pty Ltd & Anor **S16/2023**: [2023] HCA 38

Judgment delivered: 6 December 2023

Coram: Gageler CJ, Gordon, Edelman, Steward and Jagot JJ

Catchwords:

Copyright – Infringement – Authorisation of infringement – Where s 36(1) of *Copyright Act 1968* (Cth) relevantly provides copyright is infringed by person who, not being owner of copyright, and without licence of owner of copyright, "authorizes the doing in Australia" of any act comprised in copyright – Where first respondent owner of copyright in cloud-based real estate marketing system "DreamDesk" – Where fifth appellant ("Mr Stoner") director of second appellant ("Biggin & Scott") – Where Mr Stoner instructed second respondent ("Mr Semmens") to build web to print delivery system software that does not breach other companies' copyright – Where Mr Semmens and others developed "Real Estate Tool Box" software ("Toolbox") – Where Mr Stoner and sixth appellant ("Ms Bartels") established first appellant ("Real Estate Tool Box Pty Ltd") – Where Mr Semmens reproduced "DreamDesk Source Code Works", "DreamDesk Database and Table Works" and "DreamDesk PDF Works" in creating Toolbox – Where use of Toolbox involved reproduction of DreamDesk

Source Code Works – Whether Biggin & Scott, Mr Stoner, Ms Bartels and Real Estate Tool Box Pty Ltd ("Biggin & Scott parties") infringed copyright in DreamDesk Source Code Works by authorising infringing acts of Mr Semmens and others in developing Toolbox and of users in using Toolbox – Whether Biggin & Scott parties infringed copyright in DreamDesk Database and Table Works by authorising infringing acts of Mr Semmens and of users in using Toolbox.

Copyright – Infringement – Authorisation of infringement – Where Toolbox developed at third appellant's ("Dream Desk Pty Ltd") premises – Where fourth appellant ("Mr Meissner") sole director and shareholder of Dream Desk Pty Ltd – Where Dream Desk Pty Ltd staff assisted Toolbox development – Where DreamDesk Pty Ltd and Mr Meissner ("DDPL parties") participated in Toolbox development – Whether DDPL parties infringed copyright in DreamDesk Database and Table Works and DreamDesk PDF Works by authorising infringing acts of Mr Semmens.

Words and phrases – "any act comprised in the copyright", "authorisation", "duty of control", "indifference", "infringement of copyright", "intellectual property", "nature of any relationship", "on notice of copyright infringement", "permission", "power to prevent", "reason to suspect", "reasonable person", "reasonable steps to prevent or avoid", "sanction, approve, countenance".

Copyright Act 1968 (Cth), ss 36(1), 36(1A).

Appealed from FCA (FC): [2022] FCAFC 112; (2022) 292 FCR 512; (2022) 402 ALR 576; (2022) 167 IPR 411

Appealed from FCA (FC): [2022] FCAFC 121

Held: Appeal allowed with costs.

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3: CASES RESERVED

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

Administrative Law

AB (a pseudonym) & Anor v Independent Broad-based Anti-corruption Commission

M63/2023: [2023] HCATrans 180

Date heard: 7 December 2023

Coram: Gageler CJ, Gordon, Edelman[1], Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Administrative law – Natural justice – Procedural fairness – Meaning of "adverse material" – Reasonable opportunity to respond to "adverse material" – Where first appellant senior officer of second appellant, a non-governmental body – Where between 2019 and 2021, respondent, Independent Broad-based Anti-corruption Commission ("IBAC"), conducted investigation – Where AB gave evidence in private examination conducted by IBAC – Where IBAC prepared draft special report containing adverse comments and opinions relating to appellants – Where IBAC provided redacted draft reports to appellants seeking response – Where IBAC agreed to provide transcripts of AB's examination but not transcript of other witnesses – Where *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) contains procedural fairness protections in ss 162(2)-(4) regarding adverse findings about public bodies – Where AB commenced proceeding in Trial Division of Supreme Court of Victoria seeking judicial review remedies in relation to draft report on basis of infringement of natural justice – Where CD added to AB's proceedings against IBAC seeking same relief – Where appellants were unsuccessful at trial, and on appeal in Victorian Court of Appeal – Whether Court of Appeal erred in concluding that "adverse material" in s 162(3) of *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) refers only to comments or opinions contained in draft report that are adverse to person, and not evidentiary material on which such comments or opinions are based.

Appealed from VSC (CA): [2022] VSCA 283

[1] The parties consented to Justice Edelman participating in the hearing by reading the transcript.

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Arbitration

Tesseract International Pty Ltd v Pascale Construction Pty Ltd
A9/2023: [2023] HCATrans 160

Date heard: 15 November 2023

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Arbitration – Arbitral proceedings – Proportionate liability – Powers and duties of arbitrator –– Where appellant agreed to provide engineering consultancy services to respondent in relation to design and construction of warehouse – Where, under contract, if dispute between appellant and respondent arose, dispute could be submitted to arbitration – Where dispute arose where respondent alleged breach of contract, duty of care and misleading or deceptive conduct in contravention of s 18 of *Australian Consumer Law* – Where appellant denied allegations, but pleaded in alternative that any damages payable should be reduced by reason of proportionate liability provisions under Part 3 of *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA) and Part VIA of *Competition and Consumer Act 2010* (Cth) (collectively "proportionate liability regimes") – Whether proportionate liability regimes amenable to arbitration – Whether s 28 of *Commercial Arbitration Act 2011* (SA) empowers arbitrator to apply proportionate liability regimes, or whether terms of legislation preclude arbitrator from doing so – Whether implied power conferred on arbitrator to determine parties' dispute empowers arbitrator to apply proportionate liability regimes, or whether terms of legislation preclude arbitrator from doing so.

Appealed from SASC (CA): [2022] SASCA 107; (2022) 140 SASR 395; (2022) 406 ALR 293

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Constitutional Law

Chief Executive Officer, Aboriginal Areas Protection Authority v Director of National Parks (ABN 13 051 694 963) & Anor
D3/2023: [2023] HCATrans 181; [2023] HCATrans 182

Date heard: 12 and 13 December 2023

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – Territories – Territory crown – Crown immunity – Where s 34(1) of *Northern Territory Aboriginal Sacred Sites Act 1989* (NT) ("Sacred Sites Act") prescribes offence and penalty for carrying out work on sacred site – Where Director of National Parks arranged for contractor to perform work on walking track at Gunlom Falls, in Kakadu National Park in Northern Territory – Where track works in area amounting to "sacred site" – Where Director a corporation with perpetual succession established by s 15 of *National Parks and Wildlife Conservation Act 1975* (Cth) and continued in existence as body corporate by s 514A of *Environment Protection and Biodiversity Conservation Act 1999* (Cth) – Whether s 34(1) of Sacred Sites Act applies to Director.

Statutory interpretation – Statutory presumption – Presumption against imposition of criminal liability on executive – Where presumption considered in *Cain v Doyle* (1946) 72 CLR 409 – Proper approach to scope of presumption in *Cain v Doyle* – Whether presumption in *Cain v Doyle* applies to statutory corporations – Whether Sacred Sites Act expresses intention to apply to persons or bodies corporate associated with Commonwealth.

Appealed from NTSC (FC): [2022] NTSCFC 1

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Criminal Law

Hurt v The King; Delzotto v The King
C7/2023; C8/2023; S44/2023: [2023] HCATrans 156

Date heard: 9 November 2023

Coram: Gageler CJ, Edelman, Steward, Gleeson and Jagot JJ

Catchwords:

Criminal law – Sentencing – Mandatory minimum sentences – Sentencing discretion – Where s 16AAB of *Crimes Act 1914* (Cth) imposes minimum sentences for certain offences – Whether minimum sentence to be regarded as base of range of appropriate sentence or minimum permissible sentence – Proper approach to

minimum sentences – Whether proper approach involves sentencing judge having regard to minimum from outset as prescribing bottom of range of appropriate sentence, consistent with *Bahar v The Queen* (2011) 45 WAR 100 – Whether proper approach involves sentencing judge exercising sentencing discretion in usual way and only if proposed sentence falls below minimum penalty that minimum penalty has effect, consistent with approach in *R v Pot, Wetangky and Lande* (Supreme Court (NT), 18 January 2011, unrep).

Appealed from ACTSC (CA) (C25/2022; C26/2022): [2022] ACTCA 49; (2022) 18 ACTLR 272; (2022) 372 FLR 312

Appealed from NSWSC (CCA): [2022] NSWCCA 117; (2022) 298 A Crim R 483

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The King v Anna Rowan – A Pseudonym
M47/2023: [2023] HCATrans 159

Date heard: 14 November 2023

Coram: Gageler CJ, Gordon, Edelman, Jagot and Beech-Jones JJ

Catchwords:

Criminal law – Defence of duress – Duress of circumstances – Where respondent convicted of multiple sexual offences against daughters – Where respondent, at time of offending, residing with partner ("JR"), father of complainants, also convicted of sexual offences against complainants – Where respondent sought to raise defence of duress, relying on report recording JR's controlling behaviour towards, and physical and sexual abuse of, respondent – Where, during periods covered by alleged offences, defence of duress covered by common law and then s 322O of *Crimes Act 1958* (Vic) – Where trial judge held not sufficient factual basis for duress to be left to jury – Where Court of Appeal found continuing or ever present threat could constitute duress and ordered re-trial – Whether law of duress applies in case of duress of circumstances, namely where accused has not been in receipt of specific threat enjoining them to engage in criminal act or suffer consequences, but accused still reasonably fears if they do not commit criminal act they will suffer such consequences.

Appealed from VSC (CA): [2022] VSCA 236

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The King v Rohan (a pseudonym)
M33/2023: [2023] HCATrans 132

Date heard: 12 October 2023

Coram: Gageler, Gordon, Edelman, Gleeson and Jagot JJ

Catchwords:

Criminal law – Liability – Primary – Derivative – Where s 323(1)(c) of *Crimes Act 1958* (Vic) provides that person is involved in commission of offence if person enters into agreement, arrangement or understanding with another person to commit offence – Where respondent jointly charged with co-offenders – Where respondent and co-offenders each found guilty by jury verdict, relevantly, of two charges of supplying drug of dependence to child (charges 1 and 2) (in relation to two complainants) and seven charges of sexual penetration of child under 12 (including charges 3, 7, 8 and 9) (in relation to one complainant) – Where Court of Appeal held respondent suffered substantial miscarriage of justice on charges 1, 2, 3, 7, 8 and 9, because jury not directed that it needed to be satisfied to criminal standard that respondent knew relevant complainants were under statutory prescribed age when respondent agreed with co-offenders that he would engage in criminal act – Whether, on proper construction, implied into s 323(1)(c) should be words "intentionally" and "knowing or believing facts that make proposed conduct offence".

Appealed from VSC (CA): [2022] VSCA 215

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Immigration

Ismail v Minister for Immigration, Citizenship and Multicultural Affairs
M20/2023: [2023] HCATrans 111

Date heard: 6 September 2023

Coram: Gageler, Gordon, Edelman, Gleeson, Jagot JJ

Catchwords:

Immigration – Application for Return (Residence) (Class BB) (Subclass 155) visa ("Return visa") – Character test – Family violence – Where delegate of Minister refused application for Return visa, finding plaintiff did not pass character test on basis of his substantial criminal record, which included domestic violence offences – Where,

having regard to *Direction No. 90 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* ("Direction 90"), delegate decided not to exercise power to grant plaintiff visa – Where plaintiff seeks orders for certiorari and mandamus, and consequential declarations – Whether delegate made jurisdictional error: (1) by failing to make inquiry as to critical fact, and/or failing to comply with para 8.3 of Direction 90, requiring decision-maker to make determination as to best interests of minor children; (2) in interpreting and/or applying para 8.2 of Direction 90 by giving weight to acts of family violence committed by plaintiff where weight also given to acts of family violence under other paras of Direction 90; (3) by interpreting and/or applying para 8.2 of Direction 90 as if it permitted weight to be given to family violence unconnected to protection and/or expectations of Australian community – Whether para 8.2 valid exercise of power under s 499(1) of *Migration Act 1958* (Cth).

Administrative law – Judicial review – Jurisdictional error – Direction 90 made under s 499 of *Migration Act*.

Application for constitutional or other writ referred to the Full Court on 5 June 2023.

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Lesianawai v Minister for Immigration, Citizenship and Multicultural Affairs

S12/2023: [2023] HCATrans 161

Date heard: 16 November 2023

Coram: Gageler CJ, Gordon, Edelman, Gleeson and Beech-Jones JJ

Catchwords:

Immigration – Cancellation of Class BF 154 Transitional (Permanent) visa ("visa") – Character test – Plaintiff charged with offences before Children's Court – Misunderstanding of law – Irrelevant considerations – Where between 1996 and 1998, plaintiff found guilty by Children's Court of New South Wales of various offences – Where in 2010 plaintiff sentenced to terms of imprisonment for armed robbery offences – Where on 9 October 2013 delegate of defendant cancelled plaintiff's visa under s 501(2) of *Migration Act 1958* (Cth) – Where there has been no merits review because plaintiff did not lodge application with Administrative Appeals Tribunal within prescribed time limits – Where proceedings were held in abeyance pending judgment in *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Thornton* [2023] HCA 17 – Whether defendant acted on misunderstanding of law by treating plaintiff's sentences between 1996 and 1998 as criminal convictions

– Whether defendant took into account irrelevant consideration by having regard to plaintiff's offences between 1996 and 1998 and treating such conduct as criminal offending.

Application for constitutional or other writ referred to the Full Court on 14 July 2023.

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Minister for Immigration, Citizenship and Multicultural Affairs v McQueen

P2/2023: [2023] HCATrans 183

Date heard: 14 December 2023

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Immigration – Visas – Mandatory cancellation – Representations to Minister to revoke cancellation – Relying on Departmental summary or synthesis of documents – Where respondent's visa mandatorily cancelled pursuant to s 501(3A) of *Migration Act 1958* (Cth) – Where s 501CA requires Minister to invite person affected by mandatory cancellation to "make representations to the Minister", and empowers Minister to revoke such cancellation if "person makes representations in accordance with the invitation" and Minister satisfied, inter alia, that there is another reason why the original decision should be revoked – Where following notification of visa cancellation respondent submitted documents and former Minister personally decided not to revoke cancellation – Where primary judge found former Minister did not consider representation by respondent – Where Full Court upheld finding, and concluded that where Minister exercises power under s 501CA(4), Minister required to read actual documents submitted, and that Minister cannot rely on Departmental synthesis or summary of those documents – Whether Minister when required by statute to consider documents may rely on Departmental synthesis or summary of those documents.

Appealed from FCA (FC): [2022] FCAFC 199; (2022) 292 FCR 595

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Restitution

Redland City Council v Kozik & Ors

B17/2023: [2023] HCATrans 116; [2023] HCATrans 121

Date heard: 13 and 14 September 2023

Coram: Gageler, Gordon, Edelman, Steward and Jagot JJ

Catchwords:

Restitution – Unjust enrichment – Payment of public impost – Mistake of law – Restitutionary defence in public law – Where respondents plaintiffs in representative action against appellant seeking recovery of monies paid as ratepayers for charges wrongly levied by appellant – Where appellant accepts charges wrongly levied, but refuses to repay amount of charges expended for particular benefit of group of ratepayers – Where primary judge held appellant unable to raise restitutionary defences in circumstances where plaintiffs' claims brought as cause of action in debt and no contractual relationship arose – Where Court of Appeal majority found restitution claims available in circumstances where monies paid under invalid laws, but that ratepayers could not be considered to be unjustly enriched by repayment of monies – Whether defence of unjust enrichment available where payment of public impost made under mistake of law – Whether defence of unjust enrichment available where, though wrongly levied, charges expended to special benefit of group – Whether defence of unjust enrichment to be framed by reference to contractual principles of failure of consideration or by reference to material benefit derived.

Appealed from QLDSC (CA): [2022] QCA 158; (2022) 11 QR 524; (2022) 252 LGERA 315

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Sentence

Xerri v The King
S76/2023: [2023] HCATrans 142

Date heard: 18 October 2023

Coram: Gageler, Gordon, Steward, Gleeson and Jagot JJ

Catchwords:

Sentence – Maximum penalty – Where appellant sentenced in respect of offence of persistent sexual abuse of child contrary to s 66EA(1) of *Crimes Act 1900* (NSW) – Where maximum penalty at time of sentence was life imprisonment and a discounted sentence was assessed on that basis – Where maximum penalty at time of offending was 25 years imprisonment – Where s 66EA repealed and

reconstituted by *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018* (NSW) – Where s 19(1) of *Crimes (Sentencing Procedure) Act 1999* (NSW) provides if Act increases penalty for offence, increased penalty applies only to offences committed after commencement of provision of Act increasing penalty – Where majority of NSW Court of Criminal Appeal held it correct for appellant to be sentenced on basis that maximum penalty life imprisonment – Whether maximum penalty life imprisonment or 25 years for purposes of sentencing – Whether s 66EA of *Crimes Act*, as amended, a "new offence" or existing offence that has been reformulated, refined and improved – Whether s 19(1) of *Crimes (Sentencing Procedure) Act* precludes retrospective application of increased maximum penalty for offence without express provision in offence as to disapplication of s 19(1).

Appealed from NSW (CCA): [2021] NSWCCA 268; (2021) 292 A Crim R 355

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Shipping and Navigation

Carmichael Rail Network Pty Ltd as Trustee for the Carmichael Rail Network Trust v BBC Chartering Carriers GmbH & Co. KG & Anor

B32/2023: [2023] HCATrans 141

Date heard: 17 October 2023

Coram: Gageler, Gordon, Steward, Gleeson and Jagot JJ

Catchwords:

Shipping and navigation – Bill of lading – Arbitration clause – Application for stay of proceedings in favour of arbitration – Anti-suit injunction – Where Art 3(8) of Hague-Visby Rules (given effect in Australia, with some modifications, in Sch 1A of *Carriage of Goods by Sea Act 1991* (Cth) ("Australian Hague Rules")) relevantly provides any clause, covenant, or agreement in contract of carriage relieving carrier or ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in duties and obligations or lessening such liability otherwise than as provided in Rules, shall be null and void and of no effect – Where applicant consignee of domestic shipment of hardened steel rails from Whyalla to Mackay, under bill of lading drafted and issued by first respondent – Where applicant also entered into contracts with second respondent to supply rails, and to load them onto second respondent's ship – Where, on arrival at Mackay, members of first respondent's crew observed collapse had occurred, and steel rails damaged and unfit for use – Where bill of lading provided that any

dispute arising thereunder shall be referred to arbitration in London – Where first respondent gave notice that it commenced arbitral proceedings seeking declaration it not liable for damage suffered by applicant, and inviting applicant to nominate arbitrator – Where applicant applied for anti-suit injunction restraining first respondent from taking further steps in purported arbitration – Where Full Court held arbitration clause contained in clause 4 of bill of lading valid – Proper test to apply to anti-suit injunction based on putatively invalid arbitration clause under Article 3(8) of the Australian Hague Rules – Whether for foreign jurisdiction clause to be held void as contrary to Art 3(8) of the Australian Hague Rules, shipper must prove conduct of foreign proceeding would be such as to lessen liability of carrier.

Appealed from FCA (FC): [2022] FCAFC 171; (2022) 295 FCR 81; (2022) 406 ALR 431

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Statutes

Harvey & Ors v Minister for Primary Industry and Resources & Ors **D9/2022:** [2023] HCATrans 110

Date heard: 5 September 2023

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

Catchwords:

Statutes – Interpretation – *Native Title Act 1993* (Cth), s 24MD(6B)(b) – Meaning of "right to mine" – Meaning of "infrastructure facility" – Where first respondent intended to grant mineral lease (ML 29881) to third respondent under s 40(1)(b)(ii) of *Mineral Titles Act 2010* (NT) – Where land subject to proposed lease would be used for construction of "dredge spoil emplacement area" to deposit dredged material from loading facility located on adjacent land subject to mineral lease already held by third respondent – Whether proposed grant of ML 29881 is future act within s 24MD(6B)(b) of *Native Title Act*, being creation of right to mine for sole purpose of construction of infrastructure facility associated with mining.

Appealed from FCA (FC): [2022] FCAFC 66; (2022) 291 FCR 263; (2022) 401 ALR 578

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4: ORIGINAL JURISDICTION

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

Courts

HBSY Pty Ltd ACN 151 894 049 v Lewis & Anor
S106/2023

Catchwords:

Courts – Jurisdiction – Cross-vesting – State court invested with federal jurisdiction – *Jurisdiction of Courts (Cross-Vesting) Act 1987* (Cth) ss 7(3), 7(5) – Where dispute arose in respect of first defendant's late aunt's estate – Where first defendant's brother director of Lewis Securities Ltd – Where estate's largest asset money owing to it by Sir Moses Montefiore Jewish Home ("Montefiore sum") – Where brother deposited Montefiore Sum with Lewis Securities – Where Lewis Securities entered liquidation and Montefiore sum lost – Where brother liable to estate and declared bankrupt – Where plaintiff purchased various assets from trustee in bankruptcy including interest in residue of estate – Where brother discharged from bankruptcy – Where plaintiff sought orders in Supreme Court revoking letters of administration granted to first defendant, or alternatively order that he be replaced as trustee – Where first defendant cross-claimed seeking declarations that plaintiff not entitled to be paid brother's share of estate – Where plaintiff unsuccessful at first-instance – Where on 27 July 2022, plaintiff filed and served notice of intention to appeal to New South Wales Court of Appeal – Where on 31 August 2022, plaintiff's legal advisers came to view appeal would concern matter arising under *Bankruptcy Act 1966* (Cth) and would therefore have to be brought in Full Federal Court – Where plaintiff sought extension of time to appeal from judgment of Supreme Court of New South Wales to Full Court of Federal Court of Australia – Where Full Court held s 7(5) of *Cross-Vesting Act* did not apply and suggested plaintiff may wish to revive process it had commenced in Court of Appeal – Where plaintiff seeks writ of mandamus requiring Full Court to determine substantive appeal – Whether Full Court has jurisdiction to hear appeal – Proper construction of s 7(5) of *Cross-Vesting Act*.

Application for constitutional or other writ referred to the Full Court on 22 November 2023.

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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.

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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

CBI Constructors Pty Ltd & Anor v *Chevron Australia Pty Ltd*
P22/2023: [2023] HCATrans 166

Date heard: 17 November 2023 – *Special leave granted*

Catchwords:

Arbitration – Bifurcation of proceedings – Admissibility/jurisdiction dichotomy – *Functus officio* – Standard of supervisory court review – Where arbitration proceedings arose from contract under which appellants required to provide staff to carry out work at construction sites and respondent required to reimburse appellants for costs of providing staff – Where arbitral tribunal bifurcated proceedings principally on basis that first hearing would deal with liability and second hearing would deal with quantum – Where following first interim award appellants included additional pleading in repleaded case as to staff costs calculation ("Contract Criteria Case") – Where respondent objected to Contract Criteria Case on basis of *res judicata*, issue estoppel, *Anshun* estoppel and Tribunal *functus officio* in respect of liability – Where Tribunal in second interim award declared appellants not prevented from advancing Contract Criteria Case by any estoppels and Tribunal not *functus officio* in respect of Contract Criteria Case – Where respondent applied to set aside second interim award pursuant to s 34(2)(a)(iii) of *Commercial Arbitration Act 2012* (WA) on ground beyond scope of parties' submission to arbitration – Where Court of Appeal dismissed appeal – Whether Court of Appeal erred finding arbitral tribunal *functus officio* with respect to Contract Criteria Case for purpose of s 34(2)(a)(iii) – Whether Court erred finding standard of supervisory court's review of scope of parties' submission to arbitration in application to set aside arbitral award under s 34(2)(a)(iii) is de novo review in which supervisory court applies "correctness" standard of intervention.

Appealed from WASC (CA): [2023] WASCA 1

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Bankruptcy

Morgan & Ors v McMillan Investment Holdings Pty Ltd & Anor
S119/2023: [2023] HCATrans 122

Date heard: 15 September 2023 – *Special leave granted*

Catchwords:

Bankruptcy – Pooling order – *Corporations Act 2001* (Cth), s 579E – Meaning of "particular property" – Where first applicant is liquidator of second and third applicants – Where first applicant sought order before primary judge that, inter alia, Australian Securities and Investments Commission ("ASIC") reinstate registration of third applicant, and Court make pooling order pursuant to s 579E of *Corporations Act* in respect of second and third applicants – Where primary judge made orders that ASIC reinstate registration of third applicant, and that second and third applicants be pooled group for purpose of s 579E of *Corporations Act* – Where first respondent appealed to Full Court on question of whether pooling order should be set aside – Where Full Court found precondition in s 570E(1)(b)(iv) of *Corporations Act* not satisfied – Whether Full Court majority erred in finding precondition in s 579E(1)(b)(iv) of *Corporations Act* not satisfied in circumstances where second and third applicants jointly and severally owned "particular property", being chose in action, at time of making pooling order, being immediately following reinstatement of third applicant – Whether Full Court majority impermissibly departed from clear and unambiguous language of s 601AH(5) of *Corporations Act*.

Appealed from FCA (FC): [2023] FCAFC 9; (2023) 295 FCR 543; (2023) 407 ALR 328; (2023) 164 ACSR 129

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Civil Procedure

Willmot v The State of Queensland
B65/2023: [2023] HCATrans 155

Date determined: 9 November 2023 – *Special leave granted*

Catchwords:

Civil procedure – Stay of proceedings – Where appellant claimed damages as result of physical and sexual abuse which she claimed she suffered whilst State Child pursuant to *State Children Act 1911* (Qld) and under control of respondent by virtue of *Aboriginals*

Protection and Restriction of the Sale of Opium Act 1897 (Qld) – Where alleged perpetrators either deceased or in case of NW, 78 year old man who was 16 at time of alleged conduct – Where trial judge held case in exceptional category where permanent stay warranted – Where Court of Appeal upheld trial judge's decision – Whether Court of Appeal erred in determining trial judge did not err in exercise of discretion to grant permanent stay of applicant's proceeding.

Appealed from QLDSC (CA): [2023] QCA 102

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Constitutional Law

Attorney-General for the State of Tasmania v Casimaty & Anor
H3/2023: [2023] HCATrans 139

Date heard: 13 October 2023 – *Special leave granted*

Catchwords:

Constitutional law – Legislature – Privileges – Privilege of parliamentary debate and proceedings – Admissibility of report of parliamentary committee – Where proceedings concern road works at intersection – Where first respondent claims to hold interest in land at intersection – Where proposal by Department of State Growth to upgrade intersection considered and reported upon by Parliamentary Standing Committee on Public Works ("Committee") in 2017 – Where second respondent engaged to construct new interchange – Where first respondent claims that works that second respondent was to perform not same as public works considered and reported upon by Committee – Where Attorney-General joined as second defendant and applied to, inter alia, strike out parts of statement of claim as offending parliamentary privilege – Where primary judge found cause of action could not proceed without court adjudicating upon 2017 report of Committee, which would contravene Article 9 of Bill of Rights – Where Full Court dismissed Attorney-General's interlocutory application – Whether Full Court erred in construing s 15 and s 16 of *Public Works Committee Act 1914* (Tas) ("PWC Act") as creating public obligation which falls outside parliamentary process and hence ambit of parliamentary privilege – Whether it would infringe parliamentary privilege for court to determine whether road works complied with s 16(1) of PWC Act by adjudicating upon whether road works that second respondent were engaged to undertake were different from road works reported on by Committee.

Appealed from TASSC (FC): [2023] TASFC 2

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Commonwealth of Australia v Yunupingu (on behalf of the Gumatj Clan or Estate Group) & Ors
D5/2023: [2023] HCATrans 143

Date determined: 19 October 2023 – *Special leave granted*

Catchwords:

Constitutional law – *Constitution,* s 51(xxxi) – Acquisition of property on just terms – Extinguishment of native title – Where principal proceeding is application for compensation under *Native Title Act 1993* (Cth) for alleged effects of grants or legislative acts on native title in period after Northern Territory became territory of Commonwealth in 1911 and before enactment of *Northern Territory Self-Government Act 1978* (Cth) – Whether Full Court erred by failing to find that just terms requirement contained in s 51(xxxi) of *Constitution* does not apply to laws enacted pursuant to s 122 of *Constitution*, including *Northern Territory (Administration) Act 1910* (Cth) and Ordinances made thereunder – Whether *Wurridjal v Commonwealth* (2009) 237 CLR 309 should be re-opened – Whether Full Court erred in failing to find that, on facts set out in appellant's statement of claim, neither vesting of property in all minerals on or below surface of land in claim area in Crown, nor grants of special mineral leases capable of amounting to acquisitions of property under s 51(xxxi) of *Constitution* because native title inherently susceptible to valid exercise of Crown's sovereign power to grant interests in land and to appropriate to itself unalienated land for Crown purposes.

Native title – Extinguishment – Reservations of minerals – Whether Full Court erred in failing to find that reservation of "all minerals" from grant of pastoral lease "had the consequence of creating rights of ownership" in respect of minerals in Crown, such that Crown henceforth had right of exclusive possession of minerals and could bring an action for intrusion.

Appealed from FCA (FC): [2023] FCAFC 75; (2023) 298 FCR 160; (2023) 410 ALR 231

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Contract

Cessnock City Council (ABN 60 919 148 928) v 123 259 932 Pty Ltd (ACN 123 259 932)
S115/2023: [2023] HCATrans 125

Date heard: 15 September 2023 – *Special leave granted*

Catchwords:

Contract – Breach of contract – Remedies – Damages – Reliance damages – Recoupment presumption – Where dispute arose from plan to develop airport at Cessnock – Where applicant operated as both commercial party and relevant planning authority – Where applicant lodged development applicant for consolidation of airport land into lots 1 and 2 – Where respondent was company that hoped to build hanger on lot 2 – Where on 26 July 2007, applicant executed agreement whereby it promised to grant respondent lease of part of airport – Where respondent spent around $3.7 million constructing hangar – Where on 29 June 2011, applicant told respondent that it would not be proceeding with subdivision of airport as it could not afford to connect proposed lots to sewerage system – Where primary judge held applicant breached parties' agreement by not committing funds to connect proposed lots to sewerage, but only awarded nominal damages – Where primary judge distinguished case from *Amann Aviation and McRae v Commonwealth Disposals Commission* (1951) 84 CLR 377, such that recoupment presumption did not arise, and even if such presumption had arisen, applicant had rebutted it – Where Court of Appeal held recoupment presumption was engaged, and presumption had not been rebutted – Whether Court of Appeal erred in concluding presumption arose that respondent would have at least recouped its wasted expenditure if contract had been performed – Whether presumption arises where contract has inherent contingency that no net profit would be made.

Appealed from NSWSC (CA): [2023] NSWCA 21; (2023) 110 NSWLR 464

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Criminal Law

Dayney v The King
B69/2023: [2023] HCATrans 174

Date heard: 21 November 2023 – *Special leave granted*

Catchwords:

Criminal law – Appeal against conviction – Self-defence against provoked assault – *Criminal Code* (Qld), s 272 – Where appellant involved in violent altercation resulting in death of another individual – Where appellant convicted of murder – Where appellant successfully appealed conviction – Where s 272 of *Criminal Code* (Qld) affords defence of self-defence against provoked assault – Where majority in first appeal held final clause of s 272(2) ousts

protection afforded by s 271(1) only where force used in self-defence results in death or grievous bodily harm – Where minority held final clause of s 272(2) applies to modify effect of first two clauses in s 272(2) – Where jury in retrial directed in accordance with majority's interpretation of s 272 and appellant convicted of murder – Where appellant appeals second time on ground minority's interpretation of s 272(2) in first appeal is correct and decision of majority plainly wrong – Whether Court of Appeal erred in holding final clause of s 272(2) constitutes standalone exception to protection afforded by self-defence against provoked assault – Proper meaning of "before such necessity arose".

Appealed from QLDSC (CA): [2023] QCA 62

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Director of Public Prosecutions (Cth) v Kola

A21/2023: [2023] HCATrans 165

Date heard: 17 November 2023 – *Special leave granted*

Catchwords:

Criminal law – Drug offences – Scope of conspiracy – Misdirection and non-direction – Where respondent charged with conspiring to import commercial quantity of border controlled drug contrary to ss 1.5(1) and 307.1(1) of *Criminal Code* (Cth) – Where Crown case respondent agreed with others to conduct being engaged in, which if successful, would result in commercial quantity of cocaine being imported from Panama to Australia – Where no direct evidence of quantity of cocaine agreed to import – Where Crown relied on inferences to support case amount of cocaine to be imported 2kg or more – Where trial judge directed jury elements to be proven beyond reasonable doubt included substance imported pursuant to agreement commercial quantity – Where approach to directing juries about elements of conspiracy offence differs in Victoria, New South Wales and present South Australian case – Whether Court of Appeal erred in concluding element of offence of conspiracy to import commercial quantity that conspirators agree to conduct which, if executed would have resulted in importation of commercial quantity where conspirators knew or intended agreement would result in importation of product of that weight.

Appealed from SASC (CA): [2023] SASCA 50

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Obian v The King

M77/2023: [2023] HCATrans 135

Date heard: 13 October 2023 – *Special leave granted*

Catchwords:

Criminal law – Reopening of prosecution case – Substantial miscarriage of justice – Proper test for re-opening under s 233(2) *Criminal Procedure Act 2009* (Vic) – Where appellant charged with three counts of trafficking in not less than commercial quantity of 1,4-butanediol ("1,4-BD"), which is drug of dependence except when possessed or used "for a lawful industrial purpose and not for human consumption" – Where defence case was that appellant imported and used 1,4-BD in course of his cleaning business – Where prosecution case was appellant imported and possessed 1,4-BD for purposes of sale for human consumption – Where after close of prosecution case, appellant gave evidence, which included admitting hiring HiAce van but did so on behalf of another person – Where part-way through appellant's cross-examination, prosecution granted leave to re-open its case to call evidence from surveillance operatives to rebut aspects of appellant's evidence about his hiring of van – Where majority of Court of Appeal refused appellant's application for leave to appeal against conviction – Whether trial judge erred in permitting prosecution to reopen prosecution case under s 233(2) of *Criminal Procedure Act* and that substantial miscarriage of justice occurred as result.

Appealed from VSC (CA): [2023] VSCA 18

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Damages

Commonwealth of Australia v Sanofi (formerly Sanofi-Aventis) & Ors

S90/2023: [2023] HCATrans 184

Date heard: 18 December 2023 – *Special leave granted*

Catchwords:

Damages – Patent litigation – Compensation for loss flowing from interlocutory injunction – Where respondent held patent for clopidogrel – Where interlocutory injunction obtained restraining generic supplier from entering market – Where generic supplier undertook not to seek Pharmaceutical Benefits Scheme ("PBS") listing – Where respondent undertook to compensate persons adversely affected by injunction – Where respondent's patent subsequently found invalid – Where Commonwealth sought recovery of additional subsidies provided to respondent due to non-listing of

generic clopidogrel – Where primary judge dismissed Commonwealth's application, and Full Court dismissed appeal by Commonwealth – Whether Full Court erred in failing to hold Commonwealth's evidential burden was to establish *prima facie* case that its loss flowed directly from interlocutory injunction with evidential burden shifted to respondents to establish that generic supplier would not have sought listing on PBS even if not enjoined – Whether Full Court erred in failing to hold Commonwealth discharged its evidential burden but respondents did not – Whether Full Court erred in failing to find, by inference from evidence, that in absence of interlocutory injunction, it was likely that Dr Sherman would have reconfirmed plan to seek PBS listing.

Appealed from FCA (FC): [2023] FCAFC 97; (2023) 411 ALR 315; (2023) 174 IPR 66

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Evidence

BQ v The King
S92/2023: [2023] HCASL 214

Date determined: 7 December 2023 – *Special leave granted on limited grounds*

Catchwords:

Evidence – Admissibility of expert evidence – Where complainants two sisters and nieces of appellant – Where appellant convicted at second trial of child sexual assault offending – Where Crown sought to rely on evidence from Associate Professor Shackel with respect to (a) how victims of child sexual assault respond to and disclose their victimisation and (b) matters relevant to complainants' conduct during and after alleged assaults and whether such conduct consistent with research – Where trial judge ruled evidence in respect of (a) admissible but refused to admit evidence in respect of (b) – Whether Court of Criminal Appeal erred in holding expert evidence concerning behaviour of perpetrators of child sexual assault offences, risk factors for sexual abuse and when abuse commonly takes place admissible as expert opinion evidence and occasioned no miscarriage of justice in trial – Whether Court erred in holding that trial judge's directions to jury in respect of expert evidence adequate and did not occasion miscarriage of justice.

Appealed from NSW (CCA): [2023] NSWCCA 34

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Cook (A Pseudonym) v The King
S158/2023: [2023] HCATrans 169

Date heard: 21 November 2023 – *Special leave granted*

Catchwords:

Evidence – Admissibility of evidence about complainant's sexual experience or activity – Temporal limitations – Where appellant convicted of sexual offences against child – Where issue arose prior to trial regarding admissibility of evidence relating to complainant's complaint of sexual assault by another member of her family – Where common ground evidence of other offences probative and appellant sought to adduce the evidence in their defence – Where s 293 of *Criminal Procedure Act 1986* (NSW) provides evidence of sexual experience inadmissible subject to exceptions – Where trial judge ruled evidence of other offences inadmissible in appellant's trial – Whether Court of Criminal Appeal erred in constructing s 293(4) – Whether Court erred in holding permissible to mislead jury by cross-examination in order to attempt to counteract unfairness occasioned by exclusion of s 293 evidence – Whether Court erred in ordering appellant be retried – Whether Court erred in refusing to stay proceedings.

Appealed from NSW (CCA): [2022] NSWCCA 282

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MDP v The King
B40/2023: [2023] HCASL 215

Date determined: 7 December 2023 – *Special leave granted*

Catchwords:

Evidence – Propensity evidence – Miscarriage of justice – Where appellant convicted of various child sexual assault and domestic violence offences against former partner's daughter – Where evidence included evidence from complainant's sister that appellant smacked complainant on bottom – Where trial judge directed jury if they accepted bottom slapping evidence was true, and that it displayed sexual interest of appellant in complainant beyond reasonable doubt, they could use it to reason that it was more likely that offences occurred – Where Court of Appeal found bottom slapping evidence did not meet test for admissibility of propensity evidence – Where Court of appeal found evidence admissible under s 132B of *Evidence Act 1977* (Qld) ("evidence of domestic violence") – Whether Court of Appeal erred holding that no miscarriage of

justice occurred when evidence inadmissible as propensity evidence was nonetheless left to jury to be used as propensity evidence.

Appealed from QLDSC (CA): [2023] QCA 134

The Director of Public Prosecutions v Benjamin Roder (a pseudonym)
M85/2023: [2023] HCATrans 179

Date heard: 7 December 2023 – *Special leave referred to Full Court for consideration as on appeal*

Catchwords:

Evidence – Tendency evidence – Standard of proof – Where respondent is to be tried in County Court of Victoria on indictment charging him with 27 sexual offences against two sons of his former domestic partner – Where prosecution gave notice of intention to adduce tendency evidence that respondent had tendency to have improper sexual interest in stepchildren and tendency to act in particular ways towards them – Where trial judge ruled jury should be directed that "the charged acts must be proved beyond reasonable doubt" before they could be used as tendency evidence – Where Court of Appeal refused leave to appeal from trial judge's decision – Whether Court of Appeal erred in upholding interlocutory decision of County Court of Victoria on basis that where charged act relied upon as evidence to prove tendency, jury should be directed that charged act must be proved beyond reasonable doubt before it can be so used – Whether such direction prohibited by s 61 of *Jury Directions Act 2015* (Vic).

Appealed from VSC (CA): [2023] VSCA 262

Immigration

LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor
M70/2023: [2023] HCATrans 117

Date determined: 14 September 2023 – *Special leave granted*

Catchwords:

Immigration – Visas – Cancellation – Direction 90 – Materiality – Where applicant convicted of criminal offences and sentenced to term of imprisonment – Where applicant's visa cancelled under s 501(3A) of *Migration Act 1958* (Cth) – Where applicant applied under s 501CA(4) to have cancellation revoked – Where Minister required

Tribunal under s 499(1) of *Migration Act* to comply with certain directions as to how evaluative discretionary power should be exercised – Where Direction 90 requires Tribunal to consider "seriousness" of conduct – Where delegate decided not to revoke cancellation under s 501CA of *Migration Act* – Where Administrative Appeals Tribunal and primary judge affirmed delegate's decision – Where Full Court found Tribunal erred in purporting to consider certain matters set out in cl 8.1.1 of Direction 90 – Where Full Court found each error immaterial – Whether Full Court erred in concluding each of second respondent's multiple failures to comply as required by s 499(2A) of *Migration Act* with Direction 90 were not material to Tribunal's decision – Whether Full Court erred in failing to conclude that, cumulatively, Tribunal's multiple non-compliances with Direction 90 were material – Proper approach to materiality of jurisdictional error.

Appealed from FCA (FC): [2023] FCAFC 64; (2023) 297 FCR 1

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

S120/2023: [2023] HCATrans 126

Date heard: 15 September 2023 – *Special leave granted*

Catchwords:

Immigration – Visas – Cancellation – Invalid applications – Application for review of decision of Administrative Appeals Tribunal ("Tribunal") – Requirements under s 29(1) of *Administrative Appeals Tribunal Act 1975* (Cth) for application for review of migration decision – Where applicant filed document in Tribunal seeking review of delegate's decision not to revoke cancellation of his visa under s 501CA(4) of *Migration Act 1958* (Cth) – Where in courts below, Minister accepted application complied with all requirements in s 29(1) of *Administrative Appeals Tribunal Act* other than requirement in s 29(1)(c) to "contain a statement of reasons for the application" – Where at directions hearing on 1 April 2021, Tribunal requested applicant provide by 9 April 2021 email stating reasons for application – Where on that day, applicant's migration agent emailed reasons – Where primary judge and Full Court held that statement required by s 29(1)(c) essential to validity of application and thus Tribunal's jurisdiction – Where Full Court held that 9 April 2021 email stating reasons sent outside nine-day period specified by s 500(6B) of *Migration Act 1958* (Cth) "perfected" application out of time – Whether Full Court erred in concluding second respondent did not have jurisdiction to determine applicant's application filed on 24 March 2021.

Appealed from FCA (FC): [2022] FCAFC 183; (2022) 295 FCR 254

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Private International Law

Greylag Goose Leasing 1410 Designated Activity Company & Anor v P.T. Garuda Indonesia Ltd
S135/2023: [2023] HCATrans 144

Date determined: 19 October 2023 – *Special leave granted*

Catchwords:

Private international law – Jurisdiction – Immunities – *Foreign State Immunities Act 1985* (Cth) ("FSIA") – Where s 9 of FSIA provides immunity for foreign States from proceedings in Australian courts, except as provided by FSIA – Where s 14(3)(a) of FSIA provides exception for proceedings concerning "bankruptcy, insolvency or the winding up of a body corporate" – Where appellants instituted proceedings to wind up respondent – Where respondent is separate entity of foreign State under FSIA – Where primary judge and Court of Appeal held s 14(3)(a) did not apply, because it applied only to insolvency or winding up of body corporate other than separate entity of foreign State – Whether Court of Appeal erred in construing s 14(3)(a) as not applying to proceedings in so far as they concern winding up, including in insolvency, of body corporate that is separate entity of foreign State.

Appealed from NSWSC (CA): [2023] NSWCA 134; (2023) 410 ALR 371

Taxation

Automotive Invest Pty Limited v Commissioner of Taxation
S108/2023: [2023] HCASL 200

Date determined: 7 December 2023 – *Special leave granted*

Catchwords:

Taxation – Luxury car tax – Goods and services tax – *A New Tax System (Luxury Car Tax) Act 1999* (Cth) ("LCT Act") – Where appellant operated business called "Gosford Classic Car Museum" – Where museum displayed motor vehicles – Where displayed motor vehicles also generally available for sale and were trading stock – Where LCT Act is single stage tax imposed on supply or importation of "luxury cars" where value exceeds "luxury car tax threshold" –

Proper test for non-application of LCT Act – Whether LCT Act to be read and construed by reference to underlying legislative policy – Whether whole of s 9-5(1) determinative of whether appellant subject to increasing adjustment under charging provisions in ss 15-30(3)(c) and 15-35(3)(c) – Whether Full Court majority erred in concluding because LCT Act does not define "retail" sale there was no basis for importing into s 9-5(1)(a) "the idea of taking only a 'retail sale'".

Appealed from FCA (FC): [2023] FCAFC 129

Godolphin Australia Pty Ltd ACN 093921021 v Chief Commissioner of State Revenue

S130/2023: [2023] HCATrans 136

Date heard: 13 October 2023 – *Special leave granted*

Catchwords:

Taxation – Land tax – Assessments – Exemption for land used for primary production – Where appellant runs thoroughbred stud operation – Where appellant also engages in associated agricultural activities such as raising cattle and growing lucerne – Where no dispute that appellant's broad use or activities on land involved maintenance of horses and that use dominated over any other use of land – Where s10AA(1) of *Land Tax Management Act 1956* (NSW) provides exemption for "land that is rural land from taxation if it is land used for primary production" – Where s10AA(3)(b) provides that "land used for primary production" means land the dominant purpose of which is for "the maintenance of animals (including birds), whether wild or domesticated, for the purpose of selling them or their natural increase or bodily produce" – Where Court of Appeal found appellant failed to establish exempt purpose was dominant including that non-exempt purpose was not merely incidental and subservient to exempt purpose – Whether Court of Appeal erred in concluding that requirement of dominance in s 10AA(3)(b) applies to both use and purpose – Whether Court of Appeal should have concluded that where dominant use of land involves same physical activity for two or more complementary or overlapping purposes, one of which satisfies s 10AA(3)(b) and does not prevail over other purpose, it is unnecessary to demonstrate separately that exempt purpose is dominant purpose – Whether Court of Appeal should have concluded that appellant's use of land for maintenance of animals was for purpose of selling animals, their progeny and bodily produce.

Appealed from NSWSC (CA): [2023] NSWCA 44; (2023) 115 ATR 490

Torts

Bird v DP (a pseudonym)
M82/2023: [2023] HCATrans 145

Date heard: 20 October 2023 – *Special leave granted*

Catchwords:

Torts – Personal Injury – Sexual assault – Vicarious liability – Where trial concerned allegations of sexual assaults against respondent by Catholic Priest in 1971, when respondent was five years of age – Where respondent sued Diocese of Ballarat through current Bishop, who was nominated defendant – Where respondent's negligence case failed, but appellant, representing Diocese, found to be vicariously liable for Priest's sexual assaults – Whether Court of Appeal erred in holding that appellant could be vicariously liable for tortfeasor's wrong where express finding that tortfeasor not in employment relationship with appellant and was no finding that tortious conduct occurred as part of any agency relationship between tortfeasor and appellant – Where in circumstances Court finds relationship between appellant and tortfeasor gives rise to relationship of vicarious liability, whether Court of Appeal erred in concluding, based on general and non-specific evidence accepted, that conduct of tortfeasor was conduct for which appellant ought be liable as having provided both opportunity and occasion for its occurrence.

Appealed from VSC (CA): [2023] VSCA 66; (2023) 69 VR 408; (2023) 323 IR 174

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Mallonland Pty Ltd ACN 051 136 291 & Anor v Advanta Seeds Pty Ltd ACN 010 933 061
B60/2023: [2023] HCATrans 138

Date heard: 13 October 2023 – *Special leave granted*

Catchwords:

Torts – Negligence – Pure economic loss – Duty of care – Where appellants and other group members commercial sorghum growers who between 2010 and 2014 conducted business of planting and commercial cultivation and sale of sorghum – Where they purchased, via distributors and resellers, "MR43 Elite" sorghum seeds manufactured by respondent, which were contaminated – Where MR43 sold in bags with "Conditions of Sale and Use" printed, including generic disclaimer – Where trial judge and Court of Appeal found that respondent did not owe duty of care to appellants –

Whether Court of Appeal erred in failing to find respondent owed duty of care to appellants as end users of respondent's product, to take reasonable care to avoid risk that such end users who used product as intended would sustain economic losses by reason of hidden defects in those goods – Whether Court of Appeal erred in finding that presence of disclaimer of liability on product packaging negated any assumption of responsibility by respondent so as to preclude duty of care on part of manufacturer arising, and thereby overwhelming consideration of all other salient features – Whether Court of Appeal erred by proceeding on basis that potential for farmers to avail themselves of contractual and statutory protection in dealings with distributors, and absence of statutory protection of farmers as consumers in Commonwealth consumer protection legislation, were matters which supported not expanding protection available to persons in position of applicants by recognising duty of care.

Appealed from QLDSC (CA): [2023] QCA 24

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Trade Practices

Productivity Partners Pty Ltd (trading as Captain Cook College) (ACN 085 570 547) & Anor v Australian Competition and Consumer Commission & Anor
S118/2023: [2023] HCATrans 118

Date determined: 14 September 2023 – *Special leave granted*

Catchwords:

Trade Practices – Consumer law – Unconscionable conduct – Statutory unconscionability under s 21 of *Australian Consumer Law* ("ACL") – Where first applicant carried on business providing vocational education and training courses to students – Where second applicant is parent company of first applicant – Where students enrolled in courses by first applicant were eligible for funding support under Commonwealth government scheme (VET-FEE HELP) – Where first applicant engaged agents to market to or recruit potential students – Where changes made to VET-FEE HELP scheme by Commonwealth to protect students from risk of misconduct by agents and providers – Where prior to 7 September 2015, first applicant had several controls in enrolment system which it implemented to ameliorate risk of unethical or careless conduct of agents with respect to enrolments –Where first applicant removed those controls after suffering declining enrolments – Where primary judge and Full Court held first applicant engaged in unconscionable conduct in contravention of s 21 of ACL – Whether Full Court ought

to have held that primary judge erred in holding first applicant engaged in unconscionable conduct within meaning of s 21 of ACL, which claim was framed, and considered by trial judge, without reference to factors prescribed by s 22 of ACL – Whether Full Court erred in holding first applicant's conduct of removing two system controls and operating enrolment system without those controls, in absence of intention that risks ameliorated by those controls eventuate, constituted unconscionable conduct in contravention of s 21 – Whether Full Court erred in holding second applicant knowingly concerned or party to first applicant's contravention of s 21.

Appealed from FCA (FC): [2023] FCAFC 54; (2023) 297 FCR 180

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Toyota Motor Corporation Australia Limited (ACN 009 686 097) v *Williams & Anor; Williams & Anor v Toyota Motor Corporation Australia Limited (ACN 009 686 097)*

S155/2023; S157/2023: [2023] HCATrans 162

Date heard: 17 November 2023 – *Special leave granted*

Catchwords:

Trade Practices – Consumer law – Measure of damages for failure to comply with guarantee of acceptable quality – Where representative proceedings concerned 264,170 Toyota motor vehicles with diesel engines sold to Australian consumers – Where vehicles supplied with defective diesel particulate filter system – Where appellant introduced effective solution known as "2020 field fix" – Where 2020 field fix effective in remedying defect and its consequences in all relevant vehicles – Where primary judge found on "common sense approach" breach of s 54 *Australian Consumer* Law ("*ACL*") resulted in reduction in value of all vehicles by 17.5% – Where primary judge ordered reduction in damages under s 272(1)(a) of *ACL* be awarded to all group members who had not opted out, had not received 2020 field fix and first consumer had not sold it during relevant period – Where Full Court set aside order awarding reduction in value damages and reassessed reduction in value to be 10% before taking into account availability of 2020 field fix – Whether Full Court erred in finding damages for reduction in value recoverable when no ongoing reduction in value due to availability of free repair - Whether Full Court erred in failing to find damages for breach of guarantee of acceptable quality always to be assessed by reference to true value of goods at time of supply - Whether assessment of damages imports discretion exercisable under standard of appropriateness to assess reduction in value of goods at some later time or make adjustment downwards to reflect future event unknown at date of supply.

Appealed from FCA (FC): [2023] FCAFC 50; (2023) 296 FCR 514; (2023) 408 ALR 582

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Wills v Australian Competition and Consumer Commission & Ors
S116/2023: [2023] HCATrans 119

Date determined: 14 September 2023 – *Special leave granted*

Catchwords:

Trade Practices – Consumer law – Unconscionable conduct – Statutory unconscionability under s 21 of *Australian Consumer Law* ("ACL") – Knowing concern in unconscionable conduct – Accessorial liability – Where second respondent carried on business providing vocational education and training courses to students – Where third respondent parent company of second respondent – Where applicant was Chief Operating Officer of third respondent, and for period Chief Executive Officer of second respondent – Where students enrolled in courses by second respondent were eligible for funding support under Commonwealth government scheme (VET-FEE HELP) – Where second respondent engaged agents to market to or recruit potential students – Where changes made to VET-FEE HELP scheme by Commonwealth to protect students from risk of misconduct by agents and providers – Where prior to 7 September 2015, second respondent had several controls in enrolment system which it implemented to ameliorate risk of unethical or careless conduct of agents with respect to enrolments – Where second respondent removed those controls after suffering declining enrolments – Where primary judge and Full Court held second respondent engaged in unconscionable conduct in contravention of s 21 of ACL – Where primary judge held applicant was knowingly concerned in contravention of prohibition second respondent's unconscionable conduct – Where Full Court majority allowed one of applicant's grounds of appeal in part, that applicant did not know all of matters essential to contravention until he was acting CEO – Whether Full Court majority erred in finding that applicant had requisite knowledge to be liable as accessory to contravention of s 21, notwithstanding applicant did not have knowledge that conduct involved taking advantage of consumers or was otherwise against conscience – Whether Full Court majority erred in finding that applicant satisfied participation element for accessorial liability by (i) applicant's conduct before he had knowledge of essential matters which make up contravention; together with (ii) applicant's continued holding of position of authority, but no identified positive acts after applicant had requisite knowledge.

Appealed from FCA (FC): [2023] FCAFC 54; (2023) 297 FCR 180

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7: Cases Not Proceeding or Vacated

Constitutional Law

Rehmat & Mehar Pty Ltd & Anor v Hortle
M16/2023: [2023] HCATrans 177

Date heard: 1 December 2023 – *Case vacated and listed for further directions on 16 February 2024*

Catchwords:

Constitutional law – Powers of Commonwealth Parliament – States – Inconsistency between Commonwealth and State laws – Where first plaintiff operated restaurant in Victoria – Where Victorian Parliament passed *Fair Work (Commonwealth Powers) Act 2009* (Vic) ("Referral Act"), referring matters to Commonwealth Parliament for purposes of s 51(xxxvii) of *Constitution* – Where Commonwealth Parliament passed *Fair Work Act 2009* (Cth) – Where matters referred under Referral Act included administration of, inspection of, and enforcement of terms and conditions of employment for national system employers, covered under *Fair Work Act* – Where Restaurant Industry Award made under *Fair Work Act* and first plaintiff's employees subject to Award – Where Victorian Parliament passed *Wage Theft Act 2020* (Vic) – Where defendant Commissioner of Wage Inspectorate Victoria, appointed under *Wage Theft Act* – Where defendant, following investigation, filed charges against first plaintiff alleging contravention of *Wage Theft Act* for non-payment of entitlements allegedly payable under Award – Whether *Fair Work Act* intended to be exhaustive statement of law applicable to national system employers – Whether there exists alteration, impairment, detraction and/or collision between *Wage Theft Act* and *Fair Work Act* – Whether *Wage Theft Act* invalid by operation of s 109 of *Constitution* to extent of inconsistency.

Demurrer referred to the Full Court on 22 May 2023.

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8: SPECIAL LEAVE REFUSED

Publication of Reasons: 7 December 2023 (Canberra)

No.	*Applicant*	*Respondent*	*Court appealed from*	*Result*
1.	Storry	Weir (B31/2023)	Federal Court of Australia [2022] FCA 362 [2022] FCA 794 [2022] FCA 1360 [2022] FCA 1484	Special leave refused [2023] HCASL 183
2.	Storry	Business Licensing Authority & Anor (B43/2023)	Application for removal	Application dismissed with costs [2023] HCASL 184
3.	Storry	Parkyn (B58/2023)	Application for removal	Application dismissed with costs [2023] HCASL 185
4.	Ms. Newett	Mr. Newett & Ors (B41/2023)	Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction	Special leave refused [2023] HCASL 186
5.	Taylor	Victorian Institute of Teaching (M60/2023)	Supreme Court of Victoria (Court of Appeal) [2023] VSCA 119	Special leave refused [2023] HCASL 187
6.	In the matter of an application by Jan Marek Kant for leave to appeal (M71/2023)		High Court of Australia [2023] HCATrans 128	Leave refused [2023] HCASL 188
7.	Cappello & Anor	Lyons (S94/2023)	Supreme Court of New South Wales (Court of Appeal) [2023] NSWCA 137	Special leave refused [2023] HCASL 189
8.	Saffari	Australian Information Commissioner (S109/2023)	Full Court of the Federal Court of Australia [2023] FCAFC 127	Special leave refused [2023] HCASL 190
9.	In the matter of an application by Trevor Kingsley Ferdinands for leave to appeal (A15/2023)		High Court of Australia [2023] HCATrans 101	Leave refused [2023] HCASL 191
10.	Matute	Cramer (A16/2023)	Supreme Court of South Australia (Court of Appeal) [2023] SASCA 78	Special leave refused [2023] HCASL 192

No.	*Applicant*	*Respondent*	*Court appealed from*	*Result*
11.	CVD19	Minister for Immigration, Citizenship and Multicultural Affairs & Anor (S97/2023)	Federal Court of Australia [2023] FCA 747	Special leave refused [2023] HCASL 193
12.	Zhihui	Cun (S111/2023)	Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction	Special leave refused [2023] HCASL 194
13.	Edge Developments (SA) Pty Ltd as Trustee of the Edge Developments Unit Trust & Ors	Commissioner of State Taxation (A18/2023)	Supreme Court of South Australia (Court of Appeal) [2023] SASCA 88	Special leave refused with costs [2023] HCASL 195
14.	Southport Memorial Club Inc	Returned and Services League of Australia (Queensland) Southport Sub-Branch Inc (B48/2023)	Supreme Court of Queensland (Court of Appeal) [2023] QCA 146	Special leave refused with costs [2023] HCASL 196
15.	Boral Resources (Vic) Pty Ltd ACN 004 620 731	RW & ME Smith Pty Ltd ACN 105 445 645 (M67/2023)	Supreme Court of Victoria (Court of Appeal) [2023] VSCA 182	Special leave refused with costs [2023] HCASL 197
16.	Webb	Tang (P18/2023)	Supreme Court of Western Australia (Court of Appeal) [2023] WASCA 119	Special leave refused [2023] HCASL 198
17.	DDH17	Minister for Immigration, Citizenship and Multicultural Affairs & Anor (S100/2023)	Federal Court of Australia [2023] FCA 773	Special leave refused with costs [2023] HCASL 199
18.	Morant	Terry Ryan (The State Coroner) (B33/2023)	Supreme Court of Queensland (Court of Appeal) [2023] QCA 109	Special leave refused [2023] HCASL 201
19.	I.C. Formwork Services Pty Limited (ACN 008 591 811)	Moir (C12/2023)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2023] ACTCA 31	Special leave refused with costs [2023] HCASL 202
20.	ALT17	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (M57/2023)	Federal Court of Australia [2023] FCA 770	Special leave refused with costs [2023] HCASL 203

No.	*Applicant*	*Respondent*	*Court appealed from*	*Result*
21.	BJM16	Minister for Immigration, Citizenship and Multicultural Affairs & Anor (M62/2023)	Federal Court of Australia [2023] FCA 995	Special leave refused with costs [2023] HCASL 204
22.	Gould	The King (S66/2023)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 92	Special leave refused [2023] HCASL 205
23.	Gould	The King (S67/2023)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 103	Special leave refused [2023] HCASL 205
24.	Wang	Kim (S104/2023)	Full Court of the Federal Court of Australia [2023] FCAFC 115	Special leave refused with costs [2023] HCASL 206
25.	GJT	Director of Public Prosecutions & Anor (B46/2023)	Supreme Court of Queensland (Court of Appeal) [2023] QCA 142	Special leave refused [2023] HCASL 207
26.	Maher	State of Tasmania (H2/2023)	Supreme Court of Tasmania (Court of Criminal Appeal) [2023] TASCCA 7	Special leave refused [2023] HCASL 208
27.	Stubbings	The King (S85/2023)	Supreme Court of New South Wales (Court of Criminal Appeal) [2023] NSWCCA 69	Special leave refused [2023] HCASL 209
28.	Morrow	CJZ Pty Ltd & Anor (S88/2023)	Supreme Court of New South Wales (Court of Appeal) [2023] NSWCA 135	Special leave refused with costs [2023] HCASL 210
29.	Giant Dwarf Pty Ltd & Anor	CJZ Pty Ltd & Ors (S89/2023)	Supreme Court of New South Wales (Court of Appeal) [2023] NSWCA 135	Special leave refused with costs [2023] HCASL 211
30.	BNGP	Minister for Immigration, Citizenship and Multicultural Affairs (S101/2023)	Full Court of the Federal Court of Australia [2023] FCAFC 111	Special leave refused with costs [2023] HCASL 212

No.	*Applicant*	*Respondent*	*Court appealed from*	*Result*
31.	Aerotropolis Pty Ltd	Secretary, Department of Planning and Environment (S107/2023)	Supreme Court of New South Wales (Court of Criminal Appeal) [2023] NSWCCA 195	Special leave refused with costs [2023] HCASL 213
32.	Chief Commissioner of State Revenue ABN 77456270638	Meridian Energy Australia Pty Ltd (S73/2023)	Supreme Court of New South Wales (Court of Appeal) [2023] NSWCA 113	Special leave refused with costs [2023] HCASL 216