



HIGH COURT BULLETIN

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[2016] HCAB 4 (25 May 2016)

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

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SUMMARY OF NEW ENTRIES

[1: Cases Handed Down](#)

Case	Title
Day v Australian Electoral Officer for the State of South Australia & Anor; Madden & Ors v Australian Electoral Officer for the State of Tasmania & Ors	Constitutional Law
Bell Group NV (In Liq) & Anor v State of Western Australia; WA Glendinning & Associates Pty Ltd v The State of Western Australia; Maranoa Transport Pty Ltd (In Liq) & Ors v State of Western Australia & Ors	Constitutional Law
Nguyen v The Queen	Criminal Law
Attwells & Anor v Jackson Lalic Lawyers Pty Limited	Negligence
Badenach & Anor v Calvert	Negligence
Military Rehabilitation and Compensation Commission v May	Workers Compensation

2: Cases Reserved

Case	Title
Murphy & Anor v Electoral Commissioner & Anor	Constitutional Law
Miller v The Queen; Smith v The Queen; Presley v The Director of Public Prosecutions for the State of South Australia	Criminal Law
Crown Melbourne Limited v Cosmopolitan Hotel (Vic) Pty Ltd & Anor	Equity
Hall v Hall	Family

4: Special Leave Granted

Case	Title
Simic & Ors v NSW Land and Housing Corporation & Ors	Contract
The Queen v Baden Clay	Criminal Law
Hua Wang Bank Berhad v Commissioner of Taxation	Taxation
Bywater Investments Ltd & Ors v Commissioner of Taxation	Taxation
Blank v Commissioner of Taxation	Taxation
Comcare v Martin	Workers' Compensation

1: CASES HANDED DOWN

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

Constitutional Law

Day v Australian Electoral Officer for the State of South Australia & Anor; Madden & Ors v Australian Electoral Officer for the State of Tasmania & Ors

[S77/2016](#); [S109/2016](#): [\[2016\] HCA 20](#)

Judgment delivered: 13 May 2016

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

Catchwords:

Constitutional law – Election of Senators – Validity of provisions of Commonwealth Electoral Act 1918 (Cth) as amended by Commonwealth Electoral Amendment Act 2016 (Cth) – Whether provisions for voting above or below dividing line on ballot paper prescribed more than one method of choosing Senators contrary to s 9 of Constitution – Whether indicating vote for party or group above dividing line contrary to requirement in s 7 of Constitution that Senators be "directly chosen by the people" – Whether prescription of "Droop quota" resulted in effective disenfranchisement – Whether instructions on ballot paper infringed implied freedom of political communication or system of representative government.

Words and phrases – "above the line", "ballot paper", "below the line", "directly chosen by the people", "dividing line", "Droop quota", "free and informed vote", "group voting ticket", "method of choosing senators", "preferential voting".

Constitution – ss 7, 9 and 24.

Commonwealth Electoral Act 1918 (Cth) – ss 4(1), 123, 124, 126, 168, 169, 209(1), 210, 214, 214A, 239, 268, 268A, 269, 272 and 273.

Held: Application dismissed with costs.

Bell Group NV (In Liq) & Anor v State of Western Australia; WA Glendinning & Associates Pty Ltd v The State of Western Australia; Maranoa Transport Pty Ltd (In Liq) & Ors v State of Western Australia & Ors

[S248/2015](#); [P63/2015](#); [P4/2016](#): [\[2016\] HCA 21](#)

Judgment delivered: 16 May 2016

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

Catchwords:

Constitutional law – Inconsistency between Commonwealth and State laws – Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015 (WA) – Where rights and obligations arose and had accrued to Commonwealth under Commonwealth law prior to commencement of State law – Where State law purports to create scheme under which Commonwealth tax debts stripped of characteristics ascribed to them by Income Tax Assessment Act 1936 (Cth) and Taxation Administration Act 1953 (Cth) – Whether State law invalid by reason of s 109 of Constitution – Whether State law alters, impairs or detracts from operation of Commonwealth law – Whether provisions can be read down or severed – Whether State law invalid in its entirety.

Constitutional law – Standing – Where Attorney-General of Commonwealth intervened generally in support of plaintiffs – Whether plaintiffs have standing in their own right to challenge validity of State law.

Words and phrases – "accrued rights", "alter, impair or detract from", "inconsistency", "justiciable controversy", "reading down", "severance", "standing".

Constitution – s 109.

Income Tax Assessment Act 1936 (Cth) – ss 177, 208, 209, 215, 254.

Taxation Administration Act 1953 (Cth) – Sched 1, ss 255-5, 260-45, 350-10(1).

Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015 (WA).

Held: [Special questions answered.](#)

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Criminal Law

Nguyen v The Queen

[S271/2015: \[2016\] HCA 17](#)

Judgment delivered: 4 May 2016

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

Catchwords:

Criminal law – Sentencing – Manslaughter – Excessive self-defence – Where deceased a police officer – Where appellant taken to have shot deceased in honest but mistaken belief that deceased was person posing as police officer with intent to rob appellant – Whether sentencing judge erred in assessment of objective gravity of offence by taking into account absence of circumstance which if present would render subject offence a different offence – Relevance of *R v De Simoni* (1981) 147 CLR 383.

Criminal law – Sentencing – Totality principle – Where appellant convicted of manslaughter and wounding with intent to cause grievous bodily harm – Whether open to sentencing judge to impose wholly concurrent sentences – Whether appellate court erred in partially accumulating sentences – Whether sentence imposed manifestly inadequate.

Words and phrases – "accumulation", "concurrency", "De Simoni principle", "manifestly inadequate", "objective gravity", "totality".

Crimes (Sentencing Procedure) Act 1999 (NSW) – ss 3A(a), 21A(1).

Appealed from NSWSC (CCA): [\[2013\] NSWCCA 195](#).

Held: Appeal dismissed.

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Negligence

Attwells & Anor v Jackson Lalic Lawyers Pty Limited

[S161/2015](#): [\[2016\] HCA 16](#)

Judgment delivered: 4 May 2016

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

Catchwords:

Legal practitioners – Negligence – Advocate's immunity from suit – Advice given out of court – Where advice given by advocate led to agreed settlement of proceedings – Where terms of settlement reflected in consent orders made by court and court's noting of agreement – Where negligence proceedings issued in respect of advice – Whether advocate immune from suit.

High Court – Stare decisis – Whether *D'Orta-Ekenaike v Victoria Legal Aid* (2005) 223 CLR 1 and *Giannarelli v Wraith* (1988) 165 CLR 543 should be reconsidered.

Words and phrases – "advocate's immunity", "collateral attack", "consent orders", "finality", "intimately connected", "judicial determination", "judicial power", "statement of agreed facts".

Civil Procedure Act 2005 (NSW) – ss 90, 133(1).

Uniform Civil Procedure Rules 2005 (NSW) – Pt 36.

Appealed from NSWSC (CA): [\[2014\] NSWCA 335](#).

Held: Appeal allowed with costs.

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Badenach & Anor v Calvert

[H12/2015](#): [\[2016\] HCA 18](#)

Judgment delivered: 11 May 2016

Coram: French CJ, Kiefel, Gageler, Keane and Gordon JJ.

Catchwords:

Negligence – Duty of care – Scope of duty of care – Where solicitor received instructions from testator to prepare a will – Where entirety of testator's estate was to pass to respondent – Where testator's daughter brought successful proceedings under Testator's Family Maintenance Act 1912 (Tas) ("TFM Act") for provision out of

testator's estate – Whether duty of care owed by solicitor to testator extended to advising testator of possible steps to avoid exposing testator's estate to a claim under TFM Act.

Negligence – Duty of care – Existence of duty of care – Whether solicitor owed duty of care to intended beneficiary under testator's will – Whether *Hill v Van Erp* (1997) 188 CLR 159 applied – Whether interests of testator coincident with interests of intended beneficiary.

Negligence – Causation – Whether, but for solicitor's failure to give advice, respondent would have received entirety of testator's estate – Whether relevant loss is a loss of chance.

Words and phrases – "coincident", "duty of care", "interests of the intended beneficiary", "interests of the testator", "loss of a chance", "testamentary intention".

Civil Liability Act 2002 (Tas) – s 13(1)(a).

Testator's Family Maintenance Act 1912 (Tas).

Appealed from TASC (FC): [\[2015\] TASFC 8](#).

Held: Appeal allowed with costs.

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Workers Compensation

Military Rehabilitation and Compensation Commission v May
[S243/2015](#): [\[2016\] HCA 19](#)

Judgment delivered: 11 May 2016

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

Catchwords:

Workers compensation – Where employee vaccinated in course of employment and later felt unwell, described as "vertigo" – Where evidence did not establish nature and incidents of any physiological or psychiatric change – Whether employee suffered "injury" within meaning of s 4(1) of Safety, Rehabilitation and Compensation Act 1988 (Cth).

Words and phrases – "ailment", "disease", "disturbance of the normal physiological state", "injury", "injury (other than a disease)", "physiological change", "psychiatric change", "sudden or identifiable".

Safety – Rehabilitation and Compensation Act 1988 (Cth), ss 4(1), 14(1).

Appealed from FCA (FC): [\[2015\] FCAFC 93](#).

Held: Appeal allowed with costs.

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2: CASES RESERVED

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

Banking

Paciocco & Anor v Australia and New Zealand Banking Group Limited

[M219/2015](#); [M220/2015](#): [\[2016\] HCATrans 9](#); [\[2016\] HCATrans 10](#).

Date heard: 4 February 2016; 5 February 2016.

Coram: French CJ, Kiefel, Gageler, Keane and Nettle JJ.

Catchwords:

Banking and financial institutions – Consumer protection – *Australian Securities and Investments Commission Act 2001* (Cth) s 12CB – *National Consumer Credit Protection Act 2009* (Cth) s 76 and *Fair Trading Act 1999* (Vic) s 8 – Where first appellant was charged 26 late payment fees on two credit card accounts held with respondent – Where there was a disparity between the fee charged and the loss accrued as a consequence of late payment - Whether the terms “unconscionable”, “unfair” and “unjust”, as used in the statutory causes of action available, are intended to extend the common law in respect of standard form consumer contracts – Whether disproportion between the quantum of late payment fees and cost to respondent associated with late payment gives rise to statutory unconscionability, unjustness or unfairness if the fees were not exorbitant from respondent’s perspective.

Appealed from FCA (FC): [\[2015\] FCAFC 50](#).

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Constitutional Law

Alqudsi v The Queen

[S279/2015](#): [\[2016\] HCATrans 13](#).

Date heard: 10 February 2016.

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

Catchwords:

Constitutional law – Trial by jury for Commonwealth indictable offences – Whether s 80 of the Constitution can be read to permit a state Parliament to pass a statute allowing for a trial to be by a judge alone where the prosecution and accused agree or the accused seeks that outcome and the Court considers it in the interest of justice – Whether such a position would be consistent with *Brown v The Queen*.

Orders made on 10 February 2016 dismissing motion. Written reasons of the Court to be published at a future date.

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Murphy & Anor v Electoral Commissioner & Anor

M247/2015: [\[2016\] HCATrans 108](#); [\[2016\] HCATrans 111](#).

Date heard: 11 May 2016; 12 May 2016.

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

Catchwords:

Constitutional law – Legislative power – Franchise – Constitutional limitations upon power of Parliament to regulate exercise of entitlement to enrol to vote – Date for close of Electoral Rolls in Commonwealth Electoral Act 1918 (Cth) – Where Act suspends the enrolment or transfer of enrolment of electors in the period between the close of the Rolls and the close of the poll – Whether denial of enrolment effected by Act contravenes constitutional requirement that representatives be "directly chosen by the people" – Whether amendments operated as disqualification from entitlement to vote and, if so, whether disqualification for substantial reason – Relevance of *Roach v Electoral Commissioner* (2007) 233 CLR 162 – Relevance of *Rowe v Electoral Commissioner* (2010) 243 CLR 1.

Questions answered on 12 May 2016. Written reasons of the Court to be published at a future date.

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Criminal Law

Betts v The Queen

S281/2015: [\[2016\] HCA Trans 82](#).

Date heard: 8 April 2016.

Coram: French CJ, Kiefel, Bell, Gageler and Gordon JJ.

Catchwords:

Criminal law – Sentencing – Where Court of Criminal Appeal found that the sentencing judge made errors in the sentencing of appellant – Where Court of Appeal considered the matter afresh – Whether Court of Appeal erred by failing to consider new evidence when exercising the sentencing discretion afresh.

Appealed from NSWSC (CCA): [\[2015\] NSWCCA 39](#).

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Miller v The Queen; Smith v The Queen; Presley v The Director of Public Prosecutions for the State of South Australia

[A28/2015](#); [A22/2015](#); [A17/2015](#): [\[2016\] HCATrans 106](#); [\[2016\] HCATrans 107](#).

Date heard: 10 May 2016; 11 May 2016

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

Catchwords:

Criminal law – *Criminal Law Consolidation Act 1935* (SA) ss 11, 24(1), 269 - Murder – Intention – Where appellant was convicted of one count of murder and one count of aggravated causing of harm with two others – Where appellant was convicted on the basis of joint criminal enterprise or extended joint criminal enterprise - Where appellant was highly intoxicated – Where evidence was given that this intoxication significantly impaired appellant's decision-making – Whether appellant was too intoxicated to form the relevant intention for a conviction of murder.

Appealed from SASC (FC): [\[2015\] SASFC 53](#).

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Equity

Crown Melbourne Limited v Cosmopolitan Hotel (Vic) Pty Ltd & Anor

[M253/2015](#): [\[2016\] HCATrans 103](#).

Date heard: 5 May 2016

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

Catchwords:

Equity – Promissory estoppel – Where respondent operated restaurants at appellant’s complex - Where the appellant made representations to the respondent that if certain refurbishments were made respondent would be “looked after” when it came time to renew the lease for the premises – Whether an ambiguous representation is capable of founding a promissory estoppel – Whether a promissory estoppel can be found to exist by proving the making and the resiling from a representation made.

Appealed from VSC (CA): [\[2014\] VSCA 353](#).

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Family

Hall v Hall

A7/2016: [\[2016\] HCATrans 99](#)

Date heard: 4 May 2016

Coram: French CJ, Gageler, Keane, Nettle and Gordon JJ.

Catchwords:

Family – spousal maintenance – appeal from an interlocutory order – where primary judge made order that respondent husband pay spousal maintenance on the basis that applicant wife was ‘unable to support herself adequately’ under s 72(1) *Family Law Act* 1975 (Cth) – where applicant wife’s deceased father’s will contains ‘wish’ that the applicant wife receives annual payment of \$150,000 net of income tax until such time as she receives a payment of \$16.5 million – whether voluntary payment is a ‘financial resource’ under the *Family Law Act* 1975 (Cth).

Appealed from FamCA (FC): [\[2015\] FamCAFC 154](#).

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Torts

Robinson Helicopter Company Incorporated v McDermott & Ors

B61/2015: [\[2016\] HCATrans 83](#).

Date heard: 12 April 2016

Coram: French CJ, Bell, Keane, Nettle and Gordon JJ.

Catchwords:

Torts – Negligence – Where first respondent was a passenger in a Robinson R 22 helicopter which was manufactured by the appellant – Where helicopter crashed, killing the pilot and seriously injuring first respondent – Where it was a failure in the forward flexplate of the helicopter which caused it to crash – Whether appellant is liable for the failures of the helicopter – Whether a manufacturer of goods is to be held liable under ss 75AD and AE of the *Trade Practices Act* 1974 (Cth) or in negligence by reason of the maintenance manual calling for a technician to verify the parts without specifying the particular method to do so – Whether appellant should have been held liable without consideration of whether the negligence or breach of the Trade Practices Act was causative of any loss.

Appealed from QSC (CA): [\[2014\] QCA 357](#).

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3: ORIGINAL JURISDICTION

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

Constitutional Law

Cunningham & Ors v Commonwealth of Australia & Anor

[S140/2015](#): *Special Case*

Catchwords:

Constitution – s 51(xxxi) – *Remuneration and Other Legislation Amendment Act 2011 (Cth) – Members of Parliament (Life Gold Pass) and Other Legislation Amendment Act 2012 (Cth) – Acquisition of property on just terms – Where applicants are former members of the House of Representatives – Where applicants occupied positions as Ministers of State or where officeholders of the Parliament or of a House of Parliament – Where Parliament reduced the ‘retiring allowance’ of past members – Where Parliament restricted the number of return trips per year using the ‘Gold Pass’.*

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

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Migration

The Maritime Union of Australia & Anor v Minister for Immigration and Border Protection & Anor

[S136/2015](#): *Special case.*

Catchwords:

Migration – Categories of visas – *Migration Act 1958 (Cth) (“Act”)* – Where Act contains a regime under which non-citizens working in the offshore resources industries must hold permanent or prescribed temporary visas – Where Minister made two Determinations which excluded some off-shore activities from the regime - Whether Determinations IMMI 14/073 and IMMI 14/074 made pursuant to s 9A(6) of the Act by the Minister are valid.

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Native Title

Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland

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

Catchwords:

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

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

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4: SPECIAL LEAVE GRANTED

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

Contract

Simic & Ors v NSW Land and Housing Corporation & Ors
S136/2016: [\[2016\] HCATrans 102](#).

Date heard: 5 May 2016 – *Special leave granted*

Catchwords:

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

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

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Criminal Law

Graham v The Queen
B14/2016: [\[2016\] HCATrans 62](#).

Date Heard: 11 March 2016 – *Special leave granted*.

Catchwords:

Criminal law – misdirection and non-direction – effect of misdirection or non-direction – where the appellant was convicted after a trial of attempted murder – where the defence of self-defence was raised at trial under ss 271(1), 271(2) and 272(1) of the Criminal Code – where the trial judge gave detailed directions to the jury about each form of self-defence – where the trial judge provided further directions to the jury at their request – where no redirection was sought at trial – whether the trial judge failed to properly direct the jury as to the defence of self-defence under ss 271(1), 271(2) and 272(1) of the Criminal Code.

Appealed from QCA: [\[2015\] QCA 137](#).

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Sio v The Queen

S83/2016: [\[2016\] HCATrans 56](#).

Date Heard: 11 March 2016 – *Special leave granted on limited grounds.*

Catchwords:

Criminal law – conviction appeal – armed robbery – joint criminal enterprise – unreasonable verdict – where appellant was acquitted of constructive murder based on the appellant's participation in a joint criminal enterprise to commit armed robbery – where appellant was convicted of armed robbery with wounding – whether appellant's conviction on alternative count is inconsistent with acquittal on principle count.

Criminal law – evidence – hearsay rule – accomplice – made admission against interest in police interview – accomplice not available - whether the trial judge was required to take into account the “demonstrable unreliability” of individual representations to determine whether interview was “made in circumstance that made it likely the representation was reliable”.

Appealed from NSWSC (CCA): [\[2015\] NSWCCA 42](#).

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Zefi v The Director of Public Prosecutions; Jakaj v The Director of Public Prosecutions; Stakaj v The Director of Public Prosecutions; NH v The Director of Public Prosecutions

A16/2016; A15/2016; A19/2016; A14/2016: [\[2016\] HCATrans 65](#); [\[2016\] HCATrans 84](#).

Date heard: 11 March 2016; 13 April 2016 – *Special leave granted*

Catchwords:

Criminal law – procedure – jury – verdict – alternative verdict – exercise of jurisdiction – whether the Supreme Court of a State has an inherent jurisdiction to set aside perfected orders that there be a conviction or acquittal – whether open to the court to admit evidence of the 12 (former) jurors in relation to whether the jury had determined to return a verdict of not guilty of the charge of murder.

Appealed from SASC (CCA): [\[2015\] SASCF 139](#).

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The Queen v Baden Clay

B1/2016: [\[2016\] HCATrans 110](#).

Date heard: 12 May 2016 – *Special leave granted*.

Catchwords:

Criminal law – Where the respondent was convicted at trial of murdering his wife – Where the Court of Appeal set aside verdict of murder and substituted a verdict of manslaughter – Whether Court of Appeal decision is inconsistent with *R v Ciantar* (2006) 16 VR 26 – Whether the evidence raised an inference that the respondent killed his wife with intent to do her grievous bodily harm or to kill her – Whether evidence was capable of establishing motive relevant to the intention to kill

Appealed from QSC (CA): [\[2015\] QCA 265](#)

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Competition

Australian Competition & Consumer Commission v Flight Centre Travel Group Limited

B15/2016: [\[2016\] HCATrans 59](#).

Date heard: 11 March 2016 – *Special leave granted*.

Catchwords:

Competition – whether appellant travel agent attempted to induce specific airlines to make a contract, arrangement or arrive at an understanding which had the purpose or effect of substantially lessening competition in a market – consideration of relevant market – characterisation of relevant services supplied by airlines and travel agents – whether airlines and travel agents competed in a market for booking and distribution services, or whether the only relevant market was the market for international passenger air travel services – whether travel agents competed with airlines in that market given they were the agent of the airlines when supplying such services – application of ss 45 and 45A of the *Trade Practices Act 1974* (Cth)

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

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Discrimination

Lyons v State of Queensland
B16/2016: [\[2016\] HCATrans 60](#).

Date Heard: 11 March 2016 – *Special leave granted*.

Catchwords:

Discrimination – direct discrimination – where the appellant, who was deaf, was excluded from jury service by a Deputy Registrar – where the appellant made a complaint of direct discrimination – construction of s 11 of the *Anti-Discrimination Act 1991* (Qld) – where the appellant argues that her impairment was inextricably linked to her requirement of an Auslan interpreter – construction of *Jury Act 1995* (Qld).

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

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Migration

Minister for Immigration and Border Protection & Anor v SZSSJ & Anor; Minister for Immigration and Border Protection & Ors v SZTZI
S75/2016; **S76/2016**: [\[2016\] HCATrans 55](#).

Date heard: 11 March 2016 – *Special leave granted*.

Catchwords:

Migration – procedural fairness – whether the processes adopted by the Department for considering consequences of release of personal information for protection visa applicant in immigration detention procedurally fair – whether the Full Court erred in finding that s 197C of the *Migration Act 1958* does not apply because the respondent had an accrued right not to be removed from Australia under s 198 until a procedurally fair assessment of his/her non-refoulement claims was conducted – whether Federal Circuit Court has jurisdiction to determine the claims – whether the rules of procedural fairness apply to conduct preparatory to the Minister's dispensing powers under s 48B, 195A and 417 – whether the conduct of officers of the Department are capable of generating an

obligation of procedural fairness in circumstances in which the rules of procedural fairness would not otherwise apply.

Appealed from FCA (FC): [\[2015\] FCAFC 125](#).

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Taxation

Hua Wang Bank Berhad v Commissioner of Taxation

S135/2016: [\[2016\] HCATrans 101](#)

Date heard: 5 May 2016 – *Special Leave Granted*

Catchwords:

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

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

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Bywater Investments Ltd & Ors v Commissioner of Taxation

S134/2016: [\[2016\] HCATrans 100](#)

Date heard: 5 May 2016 – *Special Leave Granted*

Catchwords:

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

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

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Blank v Commissioner of Taxation

S244/2015: [\[2016\] HCATrans 115](#)

Date Heard: 16 May 2016 – *Special Leave Granted*

Catchwords:

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

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

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Torts

Prince Alfred College Incorporated v A, DC

A20/2016: [\[2016\] HCATrans 89](#).

Date Heard: 15 April 2016 – *Special leave granted*.

Catchwords:

Torts – Negligence – Negligence of school authorities or teachers – Liability of employer – Limitation of actions – Extension of time in personal injuries matters – Knowledge of material facts of decisive character – Principles upon which discretion to grant extension of time – Whether Full Court erred in granting extension of time.

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

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Workers Compensation

Deal v Kodakkathanath

M252/2015: [\[2015\] HCATrans 333](#).

Date heard: 11 December 2015 – *Special leave granted*.

Catchwords:

Workers compensation – Accident compensation – *Occupational Health and Safety Regulations 2007* (Vic) r 3.1.2 (“regulations”) – Where appellant fell off a step ladder whilst attempting to remove large displays from a wall and suffered a knee injury – Whether “associated with” in the phrase “associated with a hazardous manual handling task affecting an employee” requires a close connection between the manual handling task and the anticipated risk – Whether injury is the kind that the regulations are designed to prevent – Whether regulations should be interpreted to apply to an injury occasioned by the stresses or forces involved in the activity.

Appealed from VSC (CA): [\[2015\] VSCA 191](#).

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Comcare v Martin

S4/2016: [\[2016\] HCATrans 116](#)

Date heard: 16 May 2016 – *Special leave granted*.

Catchwords:

Workers compensation – The operation and exclusion in S5A of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) – Causation of injury, disease or aggravation under the Act – Whether injury, disease or aggravation suffered ‘as a result of’ administrative action – Whether administrative action taken ‘in a reasonable manner’

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

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5: CASES NOT PROCEEDING OR VACATED

6: SPECIAL LEAVE REFUSED

Publication of Reasons: 5 May 2016

No.	Applicant	Respondent	Court appealed from	Result
1.	SZSUT	Minister for Immigration and Border Protection & Anor (S66/2015)	Federal Court of Australia [2015] FCA 190	Application dismissed [2016] HCASL 78
2.	Clark	The Queen (S274/2015)	Supreme Court of New South Wales (Court of Criminal Appeal) [2011] NSWCCA 275	Application dismissed [2016] HCASL 79
	Clark	The Queen (S275/2015)	Supreme Court of New South Wales (Court of Criminal Appeal) [2014] NSWCCA 241	Application dismissed [2016] HCASL 79
	Clark	The Queen (S276/2015)	Supreme Court of New South Wales (Court of Criminal Appeal) [2015] NSWCCA 265	Application dismissed [2016] HCASL 79
	Clark	The Queen (S54/2016)	Supreme Court of New South Wales (Court of Criminal Appeal) [2015] NSWCCA 271	Application dismissed [2016] HCASL 79
3.	SZTOF	Minister for Immigration and Border Protection & Anor (S46/2016)	Federal Court of Australia [2016] FCA 60	Application dismissed [2016] HCASL 80
4.	ACA15	Minister for Immigration and Border Protection & Anor (S48/2016)	Federal Court of Australia [2016] FCA 107	Application dismissed [2016] HCASL 81
5.	Grocon Constructors (QLD) Pty Ltd	Juniper Developers No. 2 Pty Ltd (Receivers and Managers Appointed) (In Liquidation) & Anor (B3/2016)	Supreme Court of Queensland (Court of Appeal) [2015] QCA 291	Application dismissed with costs [2016] HCASL 82
6.	James Baker (A Pseudonym)	The Queen (M1/2016)	Supreme Court of Victoria (Court of Appeal) [2015] VSCA 323	Application dismissed [2016] HCASL 83
7.	RPL Central Pty Ltd	Commissioner of Patents (M11/2016)	Full Court of the Federal Court of Australia [2015] FCAFC 177	Application dismissed with costs [2016] HCASL 84

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
8.	Vestas-Australian Wind Technology Pty Limited	Comptroller-General of Customs (M15/2016)	Full Court of the Federal Court of Australia [2015] FCAFC 185	Application dismissed with costs [2016] HCASL 85
9.	Obeid	The Queen (S265/2015)	Supreme Court of New South Wales (Court of Criminal Appeal) [2015] NSWCCA 309	Application dismissed [2016] HCASL 86
10.	Esposito & Ors	Commonwealth Australia & Ors (S269/2015)	Full Court of the Federal Court of Australia [2015] FCAFC 160	Application dismissed with costs [2016] HCASL 87
11.	Paul Joseph Ure in his capacity as the executor of the estate of the late Doreen Margaret Ure	The Commonwealth of Australia & Anor (S52/2016)	Full Court of the Federal Court of Australia [2016] FCAFC 8	Application dismissed with costs [2016] HCASL 88

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<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Waldrow	Waldrow (B7/2016)	Family Court of Australia No media neutral citation	Application dismissed [2016] HCASL 89
2.	Saville	Hallmarc Pty Ltd (M8/2016)	Construction Supreme Court of Victoria (Court of Appeal) [2015] VSCA 318	Application dismissed [2016] HCASL 90
3.	Ted (a pseudonym)	Watkins The Queen (M27/2016)	Supreme Court of Victoria (Court of Appeal) [2015] VSCA 363	Application dismissed [2016] HCASL 91
4.	SZUXI & Ors	Minister for Immigration and Border Protection & Anor (S15/2016)	Federal Court of Australia [2015] FCA 1475	Application dismissed [2016] HCASL 92
5.	Kaur	Minister for Immigration and Border Protection & Anor (S41/2016)	Federal Court of Australia [2016] FCA 10	Application dismissed [2016] HCASL 93
6.	SZTYN	Minister for Immigration and Border Protection & Anor (S47/2016)	Federal Court of Australia [2016] FCA 56	Application dismissed [2016] HCASL 94
7.	TI	The Queen (C1/2016)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2015] ACTCA 62	Application dismissed [2016] HCASL 95
8.	Product Management Group Pty Ltd	Blue Gentian LLC (M14/2016)	Full Court of the Federal Court of Australia [2015] FCAFC 179	Application dismissed with costs [2016] HCASL 96
9.	SZUSP	Minister for Immigration and Border Protection & Anor (S268/2015)	Federal Court of Australia [2015] FCA 1260	Application dismissed with costs [2016] HCASL 97
10.	Sanofi (Formerly Sanofi-Aventis) & Ors	Commonwealth Australia (S1/2016)	of Full Court of the Federal Court of Australia [2015] FCAFC 172	Application dismissed with costs [2016] HCASL 98
11.	Wyeth & Anor	Commonwealth Australia (S2/2016)	of Full Court of the Federal Court of Australia [2015] FCAFC 172	Application dismissed with costs [2016] HCASL 99
	Wyeth & Anor	Commonwealth Australia (S3/2016)	of Full Court of the Federal Court of Australia [2015] FCAFC 172	Application dismissed with costs [2016] HCASL 99
	Wyeth & Anor	Commonwealth Australia (M5/2016)	of Full Court of the Federal Court of Australia [2015] FCAFC 172	Application dismissed with costs [2016] HCASL 99

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
12.	Electric Life Pty Ltd	Unison Finance Group Pty Ltd (S7/2016)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 394	Application dismissed with costs [2016] HCASL 100
13.	Nightingale	Blacktown City Council (S28/2016)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 423	Application dismissed with costs [2016] HCASL 101
14.	CLD	The Queen (S35/2016)	Supreme Court of New South Wales (Court of Criminal Appeal) [2015] NSWCCA 114	Application dismissed [2016] HCASL 102

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<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Kubovic	HMS Management Pty Ltd (S229/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 315	Application dismissed with costs [2016] HCATrans 117
2.	McCormack & Anor	Schultz (S240/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 330	Application dismissed with costs [2016] HCATrans 119
3.	Grills	Leighton Contractors Pty Limited & Anor (S264/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 72, [2015] NSWCA 348	Application dismissed with costs [2016] HCATrans 118
4.	Fernandez	Minister for Immigration and Border Protection & Anor (S272/2015)	Federal Court of Australia [2015] FCA 1265	Application dismissed with costs [2016] HCATrans 113
5.	Independent Public Business Corporation of Papua New Guinea	International Petroleum Investment Company (S287/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 363	Application dismissed with costs [2016] HCATrans 114

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