



HIGH COURT BULLETIN

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High Court of Australia Library
[2018] HCAB 1 (28 February 2018)

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

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1: SUMMARY OF NEW ENTRIES

2: Cases Handed Down

Case	Title
<i>Maxcon Constructions Pty Ltd v Vadasz & Ors</i>	Administrative Law
<i>Probuild Constructions (Aust) Pty Ltd v Shade Systems Pty Ltd & Anor</i>	Administrative Law
<i>Falzon v Minister for Immigration and Border Protection</i>	Constitutional Law
<i>Commissioner of the Australian Federal Police v Hart & Ors; Commonwealth of Australia v Yak 3 Investments Pty Ltd as Trustee for Yak 3 Discretionary Trust & Ors; Commonwealth of Australia & Anor v Flying Fighters Pty Ltd & Ors</i>	Criminal Law
<i>Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union & Anor</i>	Industrial Law

3: Cases Reserved

Case	Title
<i>DL v The Queen</i>	Criminal Law
<i>CRI026 v Republic of Nauru</i>	Migration
<i>CRI028 v Republic of Nauru</i>	Migration
<i>DWN027 v Republic of Nauru</i>	Migration
<i>EMP144 v Republic of Nauru</i>	Migration
<i>WET044 v Republic of Nauru</i>	Migration
<i>Rozenblit v Vainer & Anor</i>	Procedure

4: Original Jurisdiction

5: Court of Disputed Returns

Case	Title
<i>Re Gallagher</i>	Court of Disputed Returns
<i>Re Kakoschke-Moore</i>	Court of Disputed Returns
<i>Re Lambie</i>	Court of Disputed Returns

6: Special Leave Granted

Case	Title
<i>Mighty River International Limited v Mineral Resources Limited & Ors</i>	Corporations
<i>Johnson v The Queen</i>	Criminal Law
<i>Minister for Immigration and Border Protection v SZMTA & Anor</i>	Migration
<i>Commonwealth of Australia v Alan Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples & Anor; Northern Territory of Australia v Alan Griffiths and Lorraine Jones on</i>	Native Title

<u><i>behalf of the Ngaliwurru and Nungali Peoples & Anor; Alan Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples v Northern Territory of Australia & Anor</i></u>	
<u><i>Commissioner of State Revenue v Placer Dome Inc</i></u>	Stamp Duty
<u><i>Amaca Pty Limited v Latz; Latz v Amaca Pty Limited</i></u>	Torts

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

2: CASES HANDED DOWN

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

Administrative Law

Maxcon Constructions Pty Ltd v Vadasz & Ors

A17/2017: [\[2018\] HCA 5](#)

Judgment delivered: 14 February 2018

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

Catchwords:

Administrative law – Judicial review – *Building and Construction Industry Security of Payment Act 2009 (SA)* – Where subcontract provided for sum to be paid to subcontractor after issue of certificate of occupancy – Where issue of certificate of occupancy required certification from builder that building work performed in accordance with head contract – Where adjudicator appointed to determine disputed payment claim – Where adjudicator determined provisions of subcontract ineffective because pay when paid provisions – Whether adjudicator's determination involved error of law – Whether adjudicator's determination should be quashed.

Administrative law – Judicial review – Availability of certiorari – Error of law on face of record – Whether *Building and Construction Industry Security of Payment Act 2009 (SA)* ousts jurisdiction of Supreme Court of South Australia to make order in nature of certiorari to quash adjudicator's determination for non-jurisdictional error of law on face of record.

Words and phrases – "contingent or dependent on the operation of", "error of law on the face of the record", "order in the nature of certiorari", "pay when paid provision", "retention provisions".

Building and Construction Industry Security of Payment Act 2009 (SA) – Pts 2, 3.

Development Act 1993 (SA) – s 67.

Development Regulations 2008 (SA) – reg 83, Sched 19A.

Appealed from SASC (CA): [\[2017\] SASCF 2](#); (2017) 127 SASR 193; (2017) 341 ALR 628

Held: Appeal dismissed

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Probuild Constructions (Aust) Pty Ltd v Shade Systems Pty Ltd & Anor

S145/2017: [\[2018\] HCA 4](#)

Judgment delivered: 14 February 2018

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

Catchwords:

Administrative law – Judicial review – Availability of certiorari – Error of law on face of record – Non-jurisdictional error – *Building and Construction Industry Security of Payment Act 1999* (NSW) – Where Act confers entitlement to "progress payment" on persons who undertake to carry out construction work under construction contracts and provides scheme for determining disputed claims – Where first respondent made claim for progress payment – Where claim referred to adjudicator for determination – Where adjudicator made error of law in reasons for determination – Where reasons form part of record – Whether Act ousts jurisdiction of Supreme Court of New South Wales to make order in nature of certiorari to quash determination for non-jurisdictional error of law on face of record.

Words and phrases – "clear legislative intention", "error of law on the face of the record", "interim entitlement", "jurisdictional error", "non-jurisdictional error", "order in the nature of certiorari".

Building and Construction Industry Security of Payment Act 1999 (NSW) – Pts 2, 3.

Supreme Court Act 1970 (NSW) – ss 22, 69.

Appealed from NSWSC (CA): [\[2016\] NSWCA 379](#); (2016) 344 ALR 355

Held: Appeal dismissed

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Constitutional Law

Falzon v Minister for Immigration and Border Protection

S31/2017: [\[2018\] HCA 2](#)

Judgment delivered: 7 February 2018

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

Catchwords:

Constitutional law (Cth) – Judicial power – Ch III – Where plaintiff holder of Absorbed Person Visa and Class BF Transitional (Permanent) Visa – Where plaintiff convicted of trafficking large commercial quantity of cannabis and sentenced to 11 years' imprisonment – Where s 501(3A) of *Migration Act* 1958 (Cth) requires Minister for Immigration and Border Protection to cancel visa where visa holder has substantial criminal record and is serving sentence of imprisonment on full-time basis – Where plaintiff's visas cancelled under s 501(3A) – Where plaintiff held in immigration detention pending deportation – Whether s 501(3A) authorises or requires detention – Whether purpose of s 501(3A) is to punish – Whether s 501(3A) confers judicial power on Minister – Whether s 501(3A) invalid as contrary to Ch III of Constitution.

Words and phrases – "aliens", "character test", "immigration detention", "judicial power", "protection of society", "punishment", "punitive purpose", "substantial criminal record", "unlawful non-citizen".

Constitution – Ch III, s 51(xix).

Migration Act 1958 (Cth) – ss 34, 189, 196, 198, 501, 501CA.

Held: Application dismissed with costs

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Criminal Law

Commissioner of the Australian Federal Police v Hart & Ors; Commonwealth of Australia v Yak 3 Investments Pty Ltd as Trustee for Yak 3 Discretionary Trust & Ors; Commonwealth of Australia & Anor v Flying Fighters Pty Ltd & Ors

[B21/2017](#); [B22/2017](#); [B23/2017](#): [\[2018\] HCA 1](#)

Judgment delivered: 7 February 2018

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

Catchwords:

Criminal law – Forfeiture of property – Where restraining orders made in respect of certain property suspected of being under effective control of person suspected of certain offences – Where person convicted of offences – Where property automatically

forfeited to Commonwealth under s 92 of *Proceeds of Crime Act* 2002 (Cth) – Where companies associated with convicted person applied for orders under s 102 of *Proceeds of Crime Act* for recovery of interests, or amounts equal to value of interests, in forfeited property – Whether forfeited property "not used in, or in connection with, any unlawful activity" within s 102(3)(a) of *Proceeds of Crime Act* – Whether "use" requires that property be necessary for or have made unique contribution to unlawful activity – Whether degree of use must be proportionate to forfeiture of property – Whether forfeited property "not derived or realised, directly or indirectly, by any person from any unlawful activity" within s 102(3)(a) of *Proceeds of Crime Act* – Whether property "derived" if wholly or partly derived from unlawful activity – Whether degree of derivation must be substantial – Whether forfeited property "acquired . . . lawfully" within s 102(3)(b) of *Proceeds of Crime Act* – Whether applicant must prove each step in process of acquisition lawful – Whether applicant must prove all consideration paid for property lawfully acquired.

Criminal law – Forfeiture of property – Application under s 141 of *Proceeds of Crime Act* 2002 (Cth) for order that forfeited property be available to satisfy pecuniary penalty order against convicted person – Where court must be satisfied property subject to effective control of convicted person – Whether effective control determined as at date of restraining order in respect of property or as at date of determination of application under s 141.

Words and phrases – "acquired the property lawfully", "derived", "directly or indirectly", "effective control", "forfeiture", "interest", "lawfully acquired", "partly derived", "proceeds of an offence", "proceeds of crime", "realised", "unlawful activity", "used in, or in connection with", "wholly derived".

Proceeds of Crime Act 2002 (Cth) – ss 5, 6, 16, 17, 18, 24, 24A, 25, 26(4), 29, 42, 44, 66, 67, 92, 102, 104, 116, 141, 314, 315, 317, 329, 330, 337, 338.

Appealed from QSC (CA): [\[2016\] QCA 215](#); (2016) 336 ALR 492; (2016) 314 FLR 1 and [\[2016\] QCA 284](#)

Held: Appeal dismissed; appeal allowed in part; appeal allowed

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Industrial Law

Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union & Anor

M65/2017: [\[2018\] HCA 3](#)

Judgment delivered: 14 February 2018

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

Catchwords:

Industrial law – Pecuniary penalties – Where union official contravened civil remedy provision of *Fair Work Act 2009* (Cth) – Where union contravened civil remedy provision through union official's conduct – Where s 546 of *Fair Work Act* provides court can order person to pay pecuniary penalty – Where s 545(1) of *Fair Work Act* provides court can make any order it considers appropriate if satisfied person contravened, or proposes to contravene, civil remedy provision – Where pecuniary penalties imposed on both union official and union – Whether s 545(1) or s 546 of *Fair Work Act* or s 23 of *Federal Court of Australia Act 1976* (Cth) empowers court to order that union not indemnify union official against pecuniary penalty – Whether s 545(1) or s 546 of *Fair Work Act* or s 23 of *Federal Court of Australia Act* empowers court to order that union official not seek or accept indemnity or contribution from union in respect of pecuniary penalty.

Words and phrases – "appropriate", "Bragdon order", "civil remedy provision", "deterrence", "implied power", "legally ancillary", "non-indemnification order", "pecuniary penalty", "penal outcome", "penal purpose", "person other than the contravener", "personal payment order", "reasonably required".

Fair Work Act 2009 (Cth) – ss 545, 546, 564.

Federal Court of Australia Act 1976 (Cth) – s 23.

Appealed from FCA (FC): [\[2016\] FCAFC 184](#); (2016) 247 FCR 339; (2016) 341 ALR 383; (2016) 266 IR 151

Held: Appeal allowed

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3: CASES RESERVED

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

Constitutional Law

Alley v Gillespie

[S190/2017](#); [\[2017\] HCATrans 257](#)

Date heard: 12 December 2017

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

Catchwords:

Constitutional law – Constitution ss 44(v), 46 – *Common Informers (Parliamentary Disqualifications) Act* 1975 (Cth) – Where defendant has sat as Member of House of Representatives since 30 August 2016 after being declared elected as result of general election held on 2 July 2016 – Where defendant is majority shareholder of company which owns premises leased to tenant – Where tenant operates post office at premises pursuant to contract between Australia Post and company of which tenant is shareholder – Where plaintiff commenced proceedings under Act alleging defendant liable to pay penalties because incapable of sitting by reason of s 44(v) – Whether Court can and should decide whether defendant incapable of sitting as Member of House of Representatives for purposes of s 3 of Act – If yes, whether Court should not issue subpoenas directed to forensic purpose of assisting plaintiff in attempt to demonstrate defendant incapable of sitting.

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Burns v Corbett & Ors; Burns v Gaynor & Ors; Attorney General for New South Wales v Burns & Ors; Attorney General for New South Wales v Burns & Ors; State of New South Wales v Burns & Ors

[S183/2017](#); [S185/2017](#); [S186/2017](#); [S187/2017](#); [S188/2017](#):
[\[2017\] HCATrans 247](#); [\[2017\] HCATrans 249](#)

Date heard: 5 and 6 December 2017

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

Catchwords:

Constitutional law – Constitution ss 75, 76, 77 – *Judiciary Act* 1903 (Cth) s 39(2) – Diversity jurisdiction – Where resident of New South Wales made complaints to Anti-Discrimination Board of NSW about statements made by Victorian resident and Queensland resident – Where Administrative Decisions Tribunal of New South Wales (ADT) ordered Victorian resident to make apologies – Where New South Wales Civil and Administrative Tribunal (NCAT) dismissed complaints against Queensland resident – Where Court of Appeal held ADT and NCAT lacked jurisdiction to resolve complaints – Whether Court of Appeal erred in failing to find State diversity jurisdiction retained by State tribunals – Whether Court of Appeal erred in concluding State law purporting to confer jurisdiction upon State tribunal with respect to matters identified in ss 75 and 76 of Constitution inconsistent with s 39(2) of *Judiciary Act* within meaning of s 109 of Constitution – Whether Court of Appeal erred in concluding person or body that is not “court of a State” unable to exercise judicial power to determine matters between residents of different States – Whether judicial power conferred upon NCAT to determine matters under *Anti-Discrimination Act* 1977 (NSW) between residents of different States regarding conduct that occurs outside New South Wales.

Appealed from NSWSC (CA): [\[2017\] NSWCA 3](#); (2017) 343 ALR 690; (2017) 316 FLR 448

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Criminal Law

Craig v The Queen

B24/2017: [\[2017\] HCATrans 261](#)

Date heard: 14 December 2017

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

Catchwords:

Criminal law – Murder – Appeal against conviction – *Criminal Code* 1899 (Qld) s 668E – Miscarriage of justice – Where trial counsel advised appellant not to give evidence at murder trial due to likelihood he would be cross-examined on criminal history – Where appellant did not testify – Where jury found appellant guilty of murder – Where Court of Appeal held advice incorrect as only possibility not probability appellant would be cross-examined as to criminal history – Where Court of Appeal held no miscarriage of justice because appellant instructed counsel he did not wish to be cross-examined about sequence of events such that sound forensic

reason existed for not giving evidence – Whether Court of Appeal erred in finding incorrect advice did not result in miscarriage of justice.

Appealed from QSC (CA): [\[2016\] QCA 166](#)

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DL v The Queen

A38/2017: [\[2018\] HCATrans 22](#)

Date heard: 15 February 2018.

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

Catchwords:

Criminal law – *Criminal Law Consolidation Act 1935 (SA)* s 50 – Where appellant convicted of persistent sexual exploitation of child under s 50 of Act – Where trial judge found appellant sexually assaulted victim “on numerous occasions over a period of some years” – Where Court of Criminal Appeal dismissed appeal – Whether Court of Criminal Appeal erred in failing to find trial judge gave inadequate reasons because failed to identify particular sexual offences separated by at least three days – Whether Court of Criminal Appeal erred in failing to find verdict unsafe, uncertain and/or unreasonable.

Appealed from SASC (FC): [\[2015\] SASCF 24](#)

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Irwin v The Queen

B48/2017: [\[2017\] HCATrans 250](#)

Date heard: 6 December 2017

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

Catchwords:

Criminal law – Criminal responsibility – *Criminal Code 1899 (Qld)* s 23(1)(b) – Where s 23(1)(b) provides person not criminally responsible for event “that an ordinary person would not reasonably foresee as a possible consequence” – Where complainant suffered broken hip requiring surgery – Where appellant gave evidence of pushing complainant – Where appellant convicted of inflicting grievous bodily harm – Where Court of Appeal held complainant’s evidence could not rationally be accepted but dismissed appeal on

basis open to jury to conclude ordinary person "could" reasonably have foreseen possibility of broken hip as result of push – Whether Court of Appeal erred in application of test under s 23(1)(b) by substituting "could" for "would" – Whether Court of Appeal erred in failing to find verdict unreasonable.

Appealed from QSC (CA): [\[2017\] QCA 2](#)

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Kalbasi v The State of Western Australia

P21/2017: [\[2017\] HCATrans 224](#)

Date heard: 7 November 2017

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

Catchwords:

Criminal law – Appeal against conviction – *Criminal Appeals Act 2004* (WA) s 30(4) – Where appellant convicted of attempt to possess prohibited drug with intent to sell or supply contrary to *Misuse of Drugs Act 1981* (WA) ss 6(1)(a), 33(1) – Where Court of Appeal concluded jury directions on intention erroneous as presumption of intent to sell or supply under s 11 of Act did not apply, but held no substantial miscarriage of justice – Whether Court of Appeal erred in finding no substantial miscarriage of justice and applying proviso – Whether *Weiss v The Queen* (2005) 224 CLR 300 should be revisited and/or qualified and/or overruled.

Appealed from WASC (CA): [\[2016\] WASCA 144](#)

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Migration

Plaintiff M174/2016 v Minister for Immigration and Border Protection & Anor

M174/2016: [\[2017\] HCATrans 251](#)

Date heard: 7 December 2017

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

Catchwords:

Constitutional law – Migration – *Migration Act 1958* (Cth) ss 57(2), 473CA, 473CC – Where plaintiff applied for Temporary Protection

(Class XD) (Subclass 785) visa – Where delegate of Minister conducted interview with pastor in relation to plaintiff’s church attendance – Where delegate did not inform plaintiff – Where delegate refused to grant visa – Where Immigration Assessment Authority (“IAA”) affirmed decision – Whether delegate failed to comply with s 57(2) of Act – If yes, whether failure to comply with s 57(2) had consequence that there was no decision capable of referral to IAA under s 473CA or essential precondition for valid exercise of power by IAA under s 473CC not satisfied – Whether IAA failed to conduct review in accordance with Pt 7AA by unreasonably failing to exercise statutory powers to obtain or consider new information.

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CRI026 v Republic of Nauru

M131/2017: [\[2018\] HCATrans 8](#); [\[2018\] HCATrans 11](#)

Date heard: 7 and 8 February 2018

Coram: Kiefel CJ, Gageler and Nettle JJ

Catchwords:

Migration – *Nauru (High Court Appeals) Act 1976 (Cth)* – *Refugees Convention Act 2012 (Nr)* – Where appellant applied to Nauru for refugee status determination under Act – Where Secretary of Nauru Department of Justice determined appellant not refugee and not entitled to complementary protection – Where Refugee Status Review Tribunal affirmed Secretary’s determination – Where Supreme Court of Nauru dismissed appeal – Whether Supreme Court erred in failing to conclude Tribunal misapplied Nauruan law of complementary protection by applying “reasonable relocation” test – Whether Supreme Court erred in failing to conclude erroneous reference by Tribunal in decision to appellant as Tamil from Sri Lanka gave rise to error of law.

Appealed from Supreme Court of Nauru: [\[2017\] NRSC 67](#)

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CRI028 v Republic of Nauru

M66/2017: [\[2018\] HCATrans 19](#)

Date heard: 14 February 2018

Coram: Bell, Gordon and Edelman JJ

Catchwords:

Migration – *Nauru (High Court Appeals) Act 1976 (Cth) – Refugees Convention Act 2012 (Nr)* – Where appellant applied to Nauru for refugee status determination under Act – Where Secretary of Nauru Department of Justice determined appellant not refugee and not entitled to complementary protection – Where Refugee Status Review Tribunal affirmed Secretary’s determination – Where Supreme Court of Nauru dismissed appeal – Whether Supreme Court erred in failing to find Tribunal erred in identifying and applying law of “internal protection” or relocation.

Appealed from Supreme Court of Nauru: [\[2017\] NRSC 32](#)

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DWN027 v Republic of Nauru

M145/2017: [\[2018\] HCATrans 8](#); [\[2018\] HCATrans 11](#)

Date heard: 7 and 8 February 2018

Coram: Kiefel CJ, Gageler and Nettle JJ

Catchwords:

Migration – *Nauru (High Court Appeals) Act 1976 (Cth) – Refugees Convention Act 2012 (Nr)* – Where appellant applied to Nauru for refugee status determination under Act – Where Secretary of Nauru Department of Justice determined appellant not refugee and not entitled to complementary protection – Where Refugee Status Review Tribunal affirmed Secretary’s determination – Where Supreme Court of Nauru dismissed appeal – Whether Supreme Court erred in failing to conclude Tribunal misapplied Nauruan law of complementary protection by applying “reasonable relocation” test – Whether Supreme Court erred in failing to conclude Tribunal erred by failing to consider Nauru’s obligations under Convention on the Rights of the Child – Whether Supreme Court erred in failing to conclude Tribunal erred by failing to consider integer of appellant’s objections to relocation.

Appealed from Supreme Court of Nauru: [\[2017\] NRSC 77](#)

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EMP144 v Republic of Nauru

M151/2017: [\[2018\] HCATrans 8](#); [\[2018\] HCATrans 11](#)

Date heard: 7 and 8 February 2018

Coram: Kiefel CJ, Gageler and Nettle JJ

Catchwords:

Migration – *Nauru (High Court Appeals) Act 1976 (Cth)* – *Refugees Convention Act 2012 (Nr)* – Where appellant applied to Nauru for refugee status determination under Act – Where Secretary of Nauru Department of Justice determined appellant not refugee and not entitled to complementary protection – Where Refugee Status Review Tribunal affirmed Secretary’s determination – Where Supreme Court of Nauru dismissed appeal – Whether Supreme Court erred by failing to conclude Tribunal failed to consider objections to relocation under Refugees Convention – Whether Supreme Court erred in failing to conclude Tribunal denied appellant procedural fairness – Whether Supreme Court erred by failing to conclude Tribunal failed to consider integers of complementary protection claim – Whether Supreme Court erred in failing to conclude Tribunal misapplied Nauruan law of complementary protection by applying “reasonable relocation” test.

Appealed from Supreme Court of Nauru: [\[2017\] NRSC 73](#)

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WET044 v Republic of Nauru

M132/2017: [\[2018\] HCATrans 18](#)

Date heard: 14 February 2018

Coram: Kiefel CJ, Gageler and Keane JJ

Catchwords:

Migration – *Nauru (High Court Appeals) Act 1976 (Cth)* – *Refugees Convention Act 2012 (Nr)* – Where appellant applied to Nauru for refugee status determination under Act – Where Secretary of Nauru Department of Justice determined appellant not refugee and not entitled to complementary protection – Where Refugee Status Review Tribunal affirmed Secretary’s determination – Where Supreme Court of Nauru dismissed appeal – Whether appellant should be permitted to raise new grounds of appeal – Whether Tribunal erred by failing to consider submissions and country information with respect to risk of return as failed asylum seeker – Whether Tribunal denied appellant procedural fairness.

Appealed from Supreme Court of Nauru: [\[2017\] NRSC 66](#)

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Procedure

Rozenblit v Vainer & Anor

[M114/2017](#); [\[2018\] HCATrans 13](#)

Date heard: 9 February 2018

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

Catchwords:

Procedure – Stay of proceeding – *Supreme Court (General Civil Procedure) Rules 2005 (Vic) r 63.03(3)* – Where appellant commenced proceeding in Supreme Court – Where appellant made applications for leave to file and serve amended statement of claim – Where applications refused with costs – Where costs unpaid because appellant impecunious – Where appellant made further application – Where associate judge granted leave to file and serve amended statement of claim but ordered proceeding be stayed under r 63.03(3) until appellant paid interlocutory costs orders – Where Court of Appeal dismissed appeal – Whether Court of Appeal erred in failing to find associate judge erred in making order to stay proceedings.

Appealed from VSC (CA): [\[2017\] VSCA 52](#)

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Clone Pty Ltd v Players Pty Ltd (In Liquidation) (Receivers & Managers Appointed) & Ors; Clone Pty Ltd v Players Pty Ltd (In Liquidation) (Receivers & Managers Appointed) & Ors

[A22/2017](#); [A23/2017](#): [\[2017\] HCATrans 260](#)

Date heard: 13 December 2017

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

Catchwords:

Procedure – Application to set aside judgment – Equitable jurisdiction to set aside perfected judgment – Where dispute arose between parties in respect of lease – Where two photocopies of lease tendered at trial – Where appellant knew third photocopy in possession of fifth respondent – Where appellant inspected files of fifth respondent but did not discover or disclose existence of document – Where primary judge held appellant’s legal advisers engaged in “serious malpractice” by recklessly failing to discover document and set aside judgment – Where majority of Full Court dismissed appeal – Whether Court of Appeal erred in formulation

and application of principles that inform jurisdiction to set aside perfected judgment on ground of malpractice for failure to disclose document – Whether power of Supreme Court to set aside perfected orders in equitable jurisdiction extends to malpractice not amounting to fraud.

Appealed from SASC (CA): [\[2016\] SASCFC 134](#); (2016) 127 SASR 1

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Real Property

Pike & Anor v Tighe & Ors

B33/2017: [\[2017\] HCATrans 252](#)

Date heard: 8 December 2017

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

Catchwords:

Real property – *Sustainable Planning Act 2009* (Qld) – Enforcement orders – Enforcement of development approval condition against successors in title – Where appellants and first respondents registered owners of adjoining lots – Where lots created in 2009 by development approval issued by second respondent to previous owner of parent parcel – Where approval subject to condition that easement for “pedestrian and vehicle access, on-site manoeuvring and connection of services and utilities” be registered for benefit of appellants’ lot – Where registered easement does not permit “on-site manoeuvring and connection of services and utilities” – Where appellants applied to Planning and Environment Court for order compelling first respondents to comply with condition – Where Planning and Environment Court made enforcement order under s 604(1) on basis first respondents had committed “development offence” – Where Court of Appeal allowed appeal – Whether Court of Appeal erred failing to conclude power to make enforcement order under s 604(1) arose upon Planning and Environment Court being satisfied development offence committed whether by first respondents or other person – Whether Court of Appeal erred in failing to conclude condition in development approval imposed continuing obligation after reconfiguration approval effected by registration of survey plan.

Appealed from QSC (CA): [\[2016\] QCA 353](#); (2016) 225 LGERA 121

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4: ORIGINAL JURISDICTION

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

Constitutional Law

Minogue v State of Victoria

[M2/2017](#): *Special Case*

Catchwords:

Constitutional law – Parole – *Corrections Act* 1986 (Vic) s 74AAA – Where plaintiff convicted of murder – Where victim was police officer – Where plaintiff sentenced to life imprisonment – Where non-parole period expired on 30 September 2016 – Where *Justice Legislation Amendment (Parole Reform and Other matters) Act* 2016 (Vic) inserted s 74AAA into *Corrections Act* – Where s 74AAA imposes conditions for making parole order for prisoner who murdered police officer – Where *Corrections Legislation Further Amendment Act* 2017 (Vic) inserted s 127A into *Corrections Act* – Where s 127A provides s 74AAA applies regardless of whether prior to commencement of s 74AAA prisoner became eligible for parole, prisoner took steps to ask Board to grant parole, or Board began consideration of whether prisoner should be granted parole – Whether s 74AAA applies where prior to commencement of s 74AAA, plaintiff became eligible for parole, plaintiff made application for parole, or Board decided to proceed with parole planning – Whether s 74AAA applies where plaintiff commenced proceeding prior to commencement of s 127A – Whether s 74AAA applies where knowledge or recklessness as to whether victim was police officer was not element of offence of which plaintiff convicted – Whether s 74AAA and/or s 127A invalid as unconstitutional.

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5: COURT OF DISPUTED RETURNS

Re Gallagher

C32/2017: Questions referred to the Court of Disputed Returns pursuant to section 376 of the *Commonwealth Electoral Act 1918* (Cth).

Questions:

- (a) whether, by reason of s 44(i) of the Constitution, there is a vacancy in the representation for the Australian Capital Territory in the Senate for the place for which Katy Gallagher was returned;
- (b) if the answer to Question (a) is “yes”, by what means and in what manner that vacancy should be filled;
- (c) what directions and other orders, if any, should the Court make in order to hear and finally dispose of this reference; and
- (d) what, if any, orders should be made as to the costs of these proceedings.

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Re Kakoschke-Moore

C30/2017: [\[2018\] HCATrans 15](#)

Date heard: 13 February 2018

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

Catchwords:

Constitutional law – Constitution s 44(i) – Vacancies – Where incumbent submitted resignation from Senate upon becoming aware of foreign citizenship – Where Court held vacancy in representation of South Australia in Senate by reason of s 44(i) – Whether vacancy should be filled by special count – Whether incumbent capable of being chosen to fill vacancy because renounced foreign citizenship – Whether candidate should be excluded from special count because ceased to be member of political party to which he belonged at election.

Question answered on 13 February 2018.

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

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Re Lambie

C27/2017: [\[2018\] HCATrans 7](#)

Date heard: 6 February 2018

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

Catchwords:

Constitutional law – Constitution s 44(iv) – Office of profit – Where Court held vacancy in representation of Tasmania in Senate – Where Court ordered special count of ballot papers to fill vacancy – Where special count identified candidate as person who should fill vacancy in representation of Tasmania – Where candidate at all times since 2011 Councillor and Mayor of City of Devonport – Whether candidate incapable of being chosen or sitting as a Senator by reason of s 44(iv) because position of councillor or mayor an office of profit under the Crown.

Question answered on 6 February 2018.

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

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6: SPECIAL LEAVE GRANTED

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

Contracts

Pipikos v Trayans

A30/2017: [\[2017\] HCATrans 164](#)

Date heard: 18 August 2017 – *Special leave granted.*

Catchwords:

Contracts – Enforceability – *Law of Property Act 1936 (SA) s 26* – Memorandum or note of agreement – Part performance – Where appellant alleges parties entered into oral agreement that appellant would pay share of deposit on property in exchange for respondent selling interest in another property – Where trial judge held no oral agreement existed – Where Full Court held agreement existed but unenforceable – Whether Full Court erred in failing to find appellant’s payment of deposit amounted to part performance sufficient to entitle appellant to enforce agreement – Whether Full Court erred in holding handwritten note not sufficient “memorandum or note” of agreement for purposes of s 26 – Whether Full Court erred in holding appellant not entitled to enforce agreement in circumstances where respondent acknowledged agreement – Whether Full Court erred in failing to consider concessions in handwritten note to identify acts of part performance.

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

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Corporations

Mighty River International Limited v Mineral Resources Limited & Ors

P50/2017, P51/2017: [\[2018\] HCATrans 26](#)

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

Catchwords:

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

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

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Costs

Coshott v Spencer & Ors

S4/2018: [\[2017\] HCATrans 263](#)

Date heard: 15 December 2017 – *Special leave granted.*

Catchwords:

Costs – *Civil Procedure Act* 2005 (NSW) s 98 – Exception in *London Scottish Benefit Society v Chorley* (1884) 13 QBD 87 – Solicitor acting as self-represented litigant – Where first respondent represented clients in Federal Court proceedings – Where clients and appellant bought application for assessment of costs claimed in respect of Federal Court proceedings – Where costs assessor dismissed appellant’s application on basis appellant not “third party payer” within meaning of *Legal Profession Act* 2004 (NSW) s 302A – Where District Court dismissed appeal against costs assessment – Where District Court ordered appellant pay costs of proceedings – Where costs assessor allowed first respondent professional costs for self-representation at costs appeal – Where Court of Appeal dismissed appeal against second costs assessment – Whether Court of Appeal erred in finding first respondent entitled to recover costs in respect of time spent in conduct of legal proceedings – Whether costs assessor has jurisdiction to determine if appellant “third party payer” within meaning of s 302A – Whether *Chorley* exception inapplicable because of *Civil Procedure Act* 2005 (NSW) s 98.

Appealed from NSW (CA): [\[2017\] NSWCA 118](#)

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Criminal Law

Collins v The Queen

[B68/2017](#): [\[2017\] HCATrans 237](#)

Date heard: 17 November 2017 – *Special leave granted.*

Catchwords:

Criminal law – Appeal against conviction – Proviso – Where appellant convicted of three counts of sexual assault and one count of rape – Where trial judge directed jury inconsistency between complainant’s mother’s evidence at committal hearing and trial relevant to mother’s credibility but not complainant’s credibility – Where Court of Appeal found trial judge misdirected jury – Where Crown did not submit proviso should apply – Where Court of Appeal applied proviso and dismissed appeal – Whether Court of Appeal erred in applying proviso.

Appealed from QSC (CA): [\[2017\] QCA 113](#)

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DL v The Queen

[S309/2017](#): [\[2017\] HCATrans 262](#)

Date heard: 15 December 2017 – *Special leave granted.*

Catchwords:

Criminal law – Appeal against sentence – *Muldrock* error – Miscarriage of justice – Where appellant convicted of murder – Where primary judge sentenced appellant to 22 years’ imprisonment with non-parole period of 17 years – Where appellant appealed sentence to Court of Criminal Appeal – Where Crown conceded in light of *Muldrock v The Queen* (2011) 44 CLR 120 that primary judge erred in application of standard non-parole period legislation – Where majority of Court of Criminal Appeal dismissed appeal, holding no lesser sentence warranted – Whether Court of Criminal Appeal denied appellant procedural fairness – Whether majority of Court of Criminal Appeal erred in substituting aggravated factual findings in absence of challenge to primary judge’s findings in circumstances where majority held findings open to primary judge.

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

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Johnson v The Queen

A29/2017: [\[2018\] HCATrans 31](#)

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

Catchwords:

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

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

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Lane v The Queen

S308/2017: [\[2017\] HCATrans 264](#)

Date heard: 15 December 2017 – *Special leave granted on limited grounds.*

Catchwords:

Criminal law – Appeal against conviction – Proviso – *Criminal Appeal Act 1912* (NSW) s 6(1) – Where jury found appellant not guilty of murder but guilty of manslaughter – Where Crown alleged two discrete voluntary acts causing death – Where Court of Criminal Appeal held trial judge erred by failing to direct that jury must be unanimous as to at least one of acts upon which the Crown relied – Where majority of Court of Appeal held no substantial miscarriage of justice within meaning of s 6(1) – Whether majority of Court of Criminal Appeal erred in application of proviso.

Appealed from NSW (CA): [\[2017\] NSWCCA 46](#)

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

[M168/2017](#); [M176/2017](#); [M175/2017](#); [M174/2017](#): [\[2017\] HCATrans 238](#)

Date heard: 17 November 2017 – *Special leave granted on limited grounds.*

Catchwords:

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

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

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The Queen v Dennis Bauer (a pseudonym) (No 2)

[M1/2018](#): [\[2017\] HCATrans 269](#)

Date heard: 15 December 2017 – *Special leave granted.*

Catchwords:

Criminal law – Appeal against conviction – Sexual offences against child – Re-trial after appeal – Where trial judge permitted previously recorded evidence of complainant to be tendered – Whether Court of Appeal erred in finding trial judge erred in permitting previously recorded evidence to be tendered as evidence in re-trial – Tendency evidence – Whether Court of Appeal erred in holding substantial miscarriage of justice because of admission of tendency evidence – Proper approach to tendency evidence where prosecution seeks to prove tendency on evidence from complainant

and source independent of complainant – Severance – Whether Court of Appeal erred in holding failure to sever charge 2 occasioned substantial miscarriage of justice – Whether Court of Appeal erred in holding admission of previous statement of complaint occasioned substantial miscarriage of justice.

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

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The Queen v Falzon

M161/2017: [\[2017\] HCATrans 212](#)

Date heard: 20 October 2017 – *Special leave granted.*

Catchwords:

Criminal law – Evidence – Admissibility – Drug trafficking – *Drugs, Poisons and Controlled Substances Act 1981* (Vic) ss 71AC, 72A – Where respondent convicted of cultivating commercial quantity of cannabis contrary to s 72A and trafficking drug of dependence contrary to s 71AC(1) – Where trial judge admitted evidence of cash secreted in various locations at respondent’s home as “indicia of trafficking” – *Evidence Act 2008* (Vic) ss 55(1), 137 – Where majority of Court of Appeal held substantial miscarriage of justice because trial judge erred in admitting evidence of cash found at respondent’s home – Whether Court of Appeal erred in concluding substantial miscarriage of justice.

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

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Equity

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

A37/2017: [\[2017\] HCATrans 210](#)

Date heard: 20 October 2017 – *Special leave granted on limited grounds.*

Catchwords:

Equity – Account of profits – *Corporations Act 2001* (Cth) ss 181-183, 1317H – Where appellant employed former employees of respondents – Where respondents brought claim against appellant for knowing assistance in former employees’ breaches of contractual and fiduciary duties and duties of confidence and

involvement in contraventions of ss 181-183 – Where primary judge held appellant knowingly participated in breaches of fiduciary duties and duties of confidence but dismissed claim for account of profits on basis no profits attributable to use of confidential information or breaches of duties – Where Full Court held sufficient causal connection established and awarded account of profits in equity – Where Full Court also held facts constituting knowing participation amounted to involvement in contraventions of ss 181-183 and made same order for account of profits under s 1317H – Whether Full Court erred in finding sufficient causal connection – Whether Full Court erred in ordering account of profits calculated on basis of net present value of future potential profits where no profits actually made and without regard to accumulated losses incurred by appellant.

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

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Interpretation

SAS Trustee Corporation v Miles
S260/2017: [\[2017\] HCATrans 208](#)

Date heard: 20 October 2017 – *Special leave granted.*

Catchwords:

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

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

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Migration

Hossain v Minister for Immigration and Border Protection & Anor
S1/2018: [\[2017\] HCATrans 259](#)

Date determined: 13 December 2017 – *Special leave granted.*

Catchwords:

Migration – *Migration Act* 1958 (Cth) – *Migration Regulations* 1994 (Cth) – Jurisdictional error – Where appellant applied for Partner (Temporary) (Class UK) visa under s 65 of Act – Where cl 820.211(2)(d)(ii) of sch 2 of Regulations required appellant to satisfy sch 3 criteria 3001, 3003 and 3004 unless Minister satisfied compelling reasons for not applying criteria – Where delegate of Minister refused visa on basis appellant did not satisfy item 3001 – Where Administrative Appeals Tribunal (“AAT”) affirmed delegate’s decision on basis no compelling reasons for not applying sch 3 criteria and appellant did not satisfy PIC 4004 as required by cl 820.223 of sch 2 – Where Federal Circuit Court quashed decision on basis AAT fell into jurisdictional error in confining itself to “compelling reasons” at time of application – Where majority of Full Federal Court allowed appeal, restoring AAT decision on basis AAT retained jurisdiction to determine discrete issue relating to PIC 4004 – Whether Full Federal Court erred in finding that, although AAT decision infected by jurisdictional error, AAT nevertheless retained jurisdiction to make decision.

Appealed from FCA (FC): [\[2017\] FCAFC 82](#)

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Minister for Immigration and Border Protection v SZMTA & Anor
S245/2017: [\[2018\] HCATrans 34](#)

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

Catchwords:

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

Tribunal denied first respondent procedural fairness – Whether Federal Court erred in holding Tribunal denied first respondent procedural fairness in circumstances where documents in possession of first respondent prior to Tribunal hearing.

Appealed from FCA (FC): [\[2017\] FCA 1055](#)

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Minister for Immigration and Border Protection v SZVFW & Ors
S244/2017: [\[2017\] HCATrans 191](#)

Date determined: 14 September 2017 – *Special leave granted.*

Catchwords:

Migration – *Migration Act* 1958 (Cth) s 426A(1) – Where first and second respondents applied for Protection (Class XA) visas – Where Department refused applications – Where respondents filed application for review by Refugee Review Tribunal – Where application form contained postal address, mobile phone number and email address – Where Tribunal by letter addressed to postal address invited first and second respondents to provide further information – Where first and second respondents did not respond – Where Tribunal by further letter invited first and second respondents to appear before it – Where first and second respondents did not attend – Where Tribunal exercised power under s 426A(1) to affirm decision without taking further action – Where Federal Circuit Court held Tribunal’s decision unreasonable – Where Full Court dismissed appeal – Whether Full Court erred by requiring Minister to establish *House v The King* (1936) 55 CLR 499 error – Whether Full Court erred by failing to find primary judge erred in concluding Tribunal’s decision unreasonable.

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

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Shrestha v Minister for Immigration and Border Protection & Anor;
Ghimire v Minister for Immigration and Border Protection & Anor;
Acharya v Minister for Immigration and Border Protection & Anor
M141/2017, M142/2017, M143/2017: [\[2017\] HCATrans 179](#)

Date determined: 14 September 2017 – *Special leave granted.*

Catchwords:

Migration – *Migration Act* 1958 (Cth) s 116(1)(a) – Visa cancellation – Where appellants granted Class TU subclass 573 Higher Education

Sector visas based on enrolments in bachelor degree and diploma courses – Where appellants’ enrolment in diploma courses ceased after appellants failed subjects – Where appellants’ enrolment in bachelor degree courses subsequently cancelled – Where Tribunal cancelled appellants’ visas under s 116(1)(a) – Where majority of Federal Court found decision affected by jurisdictional error but refused relief on basis of futility – Whether Federal Court erred in exercising discretion not to issue writs of certiorari.

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

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Native Title

Commonwealth of Australia v Alan Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples & Anor; Northern Territory of Australia v Alan Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples & Anor; Alan Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples v Northern Territory of Australia & Anor

D4/2017; D5/2017; D6/2017: [\[2018\] HCATrans 28](#)

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

Catchwords:

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

containing solatium-type payments irrelevant to assessment of compensation.

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

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Negligence

Govier v Uniting Church in Australia Property Trust (Q)

B51/2017: [\[2017\] HCATrans 183](#)

Date heard: 15 September 2017 – *Special leave granted on limited grounds.*

Catchwords:

Negligence – Duty of care – Psychiatric injury – Where appellant employed by respondent – Where appellant attacked by co-worker – Where respondent informed appellant on day of attack that her conduct was under investigation – Where appellant too ill to attend investigative interviews – Where respondent asserted appellant refused to attend interviews and made preliminary findings against her – Where appellant’s employment subsequently terminated – Where appellant claimed damages for psychiatric injuries – Where trial judge held respondent owed no duty of care to appellant with respect to conduct of investigative process – Where Court of Appeal dismissed appeal – Whether Court of Appeal erred in concluding respondent did not owe appellant duty of care in respect of investigative process.

Appealed from QSC (CA): [\[2017\] QCA 12](#)

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Probate

Nobarani v Mariconte

S270/2017: [\[2017\] HCATrans 236](#)

Date heard: 17 November 2017 – *Special leave granted.*

Catchwords:

Probate – Appeal against grant of probate – Procedural fairness – Where respondent sought grant of probate of will dated 5 December 2013 – Where earlier will left share of jewellery and

personal effects to appellant – Where appellant lodged caveat against grant of probate – Where primary judge granted probate – Where Court of Appeal found appellant denied procedural fairness at trial – Where majority of Court of Appeal held re-trial should not be ordered – Whether majority of Court of Appeal erred in failing to order re-trial – Whether intermediate appellate court can assess whether party denied procedural fairness would be unsuccessful if new trial ordered – Whether appellant lacked sufficient interest to challenge grant of probate.

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

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Procedure

UBS AG v Scott Francis Tyne as Trustee of the Argot Trust & Anor
B54/2017: [\[2017\] HCATrans 184](#)

Date heard: 15 September 2017 – *Special leave granted on limited grounds.*

Catchwords:

Procedure – *Federal Court of Australia Act 1976 (Cth) s 37M* – Abuse of process – Where appellant commenced proceedings in High Court of Singapore in 2010 against first respondent and another party – Where respondents and other party subsequently commenced proceedings in Supreme Court of New South Wales – Where Supreme Court proceedings permanently stayed in 2013 – Where respondents commenced proceedings in Federal Court in 2014 raising same factual matters – Where proceedings permanently stayed by primary judge as abuse of process – Whether majority of Full Federal Court erred in failing to take into account manifest unfairness to appellant and effect of proceedings in bringing administration of justice into disrepute – Whether majority erred in failing to take into account Singapore proceedings in determining whether abuse of process.

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

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Stamp Duty

Commissioner of State Revenue v Placer Dome Inc
P58/2017: [\[2018\] HCATrans 25](#)

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

Catchwords:

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

Appealed from WASC (CA): [\[2017\] WASCA 165](#)

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Taxation

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

[B60/2017](#); [B61/2017](#); [B62/2017](#); [B63/2017](#): [\[2017\] HCATrans 206](#)

Date heard: 20 October 2017 – *Special leave granted.*

Catchwords:

Taxation – Franking credits – *Income Tax Assessment Act* 1997 (Cth) pt 3-6 div 207 – Where trustee resolved to apply net income of trust fund to benefit of two beneficiaries on assumption franking credits could be treated as separate category of income from dividends to which credits attached – Where Commissioner of Taxation notified trustee of intention to commence audit – Where trustee sought directions from Queensland Supreme Court under *Trusts Act* 1973 (Qld) s 96 as to proper construction of trust deed and resolutions – Where Commissioner notified of proceedings but did not seek to become party – Where Supreme Court declared

trustee resolutions effective to achieve franking credit distributions – Where Commissioner of Taxation issued amended notices of assessment – Where primary judge upheld amended assessments – Where Full Court allowed appeal – Whether Full Court erred in concluding Commissioner bound by declarations made by Supreme Court – Whether Full Court erred in concluding franking credits may be distributed on a different basis to income from dividends.

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

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Torts

Amaca Pty Limited v Latz; Latz v Amaca Pty Limited
A8/2017, A7/2017: [\[2018\] HCATrans 24](#)

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

Catchwords:

Torts – Personal injury – Damages – Future economic loss – Where primary judge concluded plaintiff’s mesothelioma caused by asbestos emanating from products manufactured by defendant – Where primary judge awarded damages for loss of expectation of receiving age pension and superannuation pension during “lost years” – Where majority of Full Court held primary judge correctly awarded damages for future economic loss but reduced allowance for superannuation pension – Whether majority of Full Court erred in failing to find primary judge erred in awarding damages for future economic loss during “lost years” – Whether Full Court erred in including allowance for loss of expectation of receiving age pension and superannuation pension – Whether Full Court erred in deducting benefit payable to partner upon death from allowance for loss of expectation of receiving superannuation pension.

Appealed from SASC (FC): [\[2017\] SASCF 145](#)

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Trkulja v Google Inc
M88/2017: [\[2017\] HCATrans 129](#)

Date heard: 16 June 2017 – *Special leave granted.*

Catchwords:

Torts – Defamation – Publication – Respondent internet search engine – Search results – Images – Text – Autocomplete predictions – Whether respondent “published” matters relied on by applicant.

Practice and procedure – Service outside jurisdiction – *Supreme Court (General Civil Procedure) Rules 2005* (Vic) r 7.01(1)(i) and (j) – Where respondent served in United States – Where Court of Appeal held service should be set aside because no real prospect of success – Whether Court of Appeal erred in holding no real prospect of success in proving respondent was publisher – Whether Court of Appeal erred in confining case to primary publisher rather than secondary publisher – Whether Court of Appeal erred in finding material not capable of conveying defamatory meaning.

Appealed from VSC (CA): [\[2016\] VSCA 333](#); (2016) 342 ALR 504

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7: CASES NOT PROCEEDING OR VACATED

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8: SPECIAL LEAVE REFUSED

Publication of Reasons: 7 February 2018

No.	Applicant	Respondent	Court appealed from	Result
1.	Hemelaar	Brisbane City Council (B66/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QDC 17	Application dismissed [2018] HCASL 1
2.	Orbay	Tigell & Anor (B72/2017)	Family Court of Australia	Application dismissed [2018] HCASL 2
3.	TF & Anor	Director-General, Community Services Directorate & Anor (C29/2017)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2017] ACTCA 49	Application dismissed [2018] HCASL 3
4.	Neil	Legal Profession Complaints Committee (P55/2017, P56/2017 & P57/2017)	Supreme Court of Western Australia (Court of Appeal) [2017] WASCA 160	Applications dismissed [2018] HCASL 4
5.	Dickson	Commissioner of the Australian Federal Police (S233/2017)	Removal application	Application dismissed with costs [2018] HCASL 5
6.	Jensen	Legal Services Commissioner (B53/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 189	Application dismissed with costs [2018] HCASL 6
7.	Sklavos	Australasian College of Dermatologists (S238/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 128	Application dismissed with costs [2018] HCASL 7

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Publication of Reasons: 15 February 2018

No.	Applicant	Respondent	Court appealed from	Result
1.	ALQ16	Minister for Immigration and Border Protection & Anor (S228/2017)	Federal Court of Australia [2017] FCA 283	Application dismissed [2018] HCASL 8
2.	CPW16	Minister for Immigration and Border Protection & Anor (S261/2017)	Federal Court of Australia [2017] FCA 1210	Application dismissed [2018] HCASL 9
3.	BMQ16	Minister for Immigration and Border Protection & Anor (S263/2017)	Federal Court of Australia [2017] FCA 1197	Application dismissed [2018] HCASL 10
4.	Agarwal	Bagga (S264/2017)	Removal application	Application dismissed [2018] HCASL 11
5.	SZRIF & Ors	Minister for Immigration and Border Protection & Anor (S268/2017)	Federal Court of Australia [2016] FCA 1161	Application dismissed [2018] HCASL 12
6.	BLO15	Minister for Immigration and Border Protection & Anor (A35/2017)	Federal Court of Australia [2017] FCA 1092	Application dismissed [2018] HCASL 13
7.	Bert	Red 5 Limited & Ors (B59/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 233	Application dismissed [2018] HCASL 14
8.	Gupta & Ors	Minister for Immigration and Border Protection & Anor (M165/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 172	Application dismissed [2018] HCASL 15
9.	Schaefer	Foundation Housing Ltd (P61/2017)	Supreme Court of Western Australia (Court of Appeal) [2017] WASCA 117	Application dismissed [2018] HCASL 16
10.	BBR15	Minister for Immigration and Border Protection & Anor (S235/2017)	Federal Court of Australia [2017] FCA 1196	Application dismissed [2018] HCASL 17
11.	Mohareb	Palmer (S272/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 281	Application dismissed [2018] HCASL 18
12.	Perrin	The Queen (B56/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 194	Application dismissed [2018] HCASL 19
13.	Ghosh	Miller (S231/2017)	Federal Court of Australia [2017] FCA 890	Application dismissed with costs [2018] HCASL 20

No.	Applicant	Respondent	Court appealed from	Result
14.	Chan & Anor	Ku-ring-gai Council & Ors (S246/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 226	Application dismissed with costs [2018] HCASL 21
15.	Donaldson & Anor	Trilogy Funds Management Limited as the Responsible Entity of the Pacific First Mortgage Fund & Anor (S255/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 153	Application dismissed with costs [2018] HCASL 22
16.	Sullivan	Trilogy Funds Management Ltd as the Responsible Entity of the Pacific First Mortgage Fund & Ors (S256/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 153	Application dismissed with costs [2018] HCASL 23
17.	The Queen	Lee (C16/2017)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2017] ACTCA 30	Application dismissed [2018] HCASL 24
18.	The Queen	Cruz (C25/2017)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2017] ACTCA 48	Application dismissed [2018] HCASL 25
19.	BMW16	Minister for Immigration and Border Protection & Anor (S240/2017)	Federal Court of Australia [2017] FCA 1036	Application dismissed with costs [2018] HCASL 26
20.	Jarrett	Bugeja & Anor (S247/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 219	Application dismissed with costs [2018] HCASL 27
21.	Hilton	Legal Profession Admission Board & Anor (S251/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 232	Application dismissed with costs [2018] HCASL 28

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16 February 2018: Brisbane

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Tran	The Queen (A32/2017)	Supreme Court of South Australia (Court of Criminal Appeal) [2017] SASCFC 99	Application dismissed [2018] HCATrans 32
2.	Liv Pty Ltd & Ors	Accor Australia & New Zealand Hospitality Pty Ltd & Anor (B45/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 56	Application dismissed with costs [2018] HCATrans 33
3.	Sander	The Queen (B40/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 149	Application dismissed [2018] HCATrans 35

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16 February 2018: Canberra

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Koundouris	Owners – Unit Plan No 1917 (C19/2017)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2017] ACTCA 36	Application dismissed with costs [2018] HCATrans 23
2.	Shire of Kellerberrin	Nyoni & Ors (P18/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 59	Application dismissed with costs [2018] HCATrans 27
3.	Kleindyk	The Queen (P45/2016)	Supreme Court of Western Australia (Court of Appeal) [2016] WASCA 123	Application dismissed [2018] HCATrans 29
4.	Palaniappan	Westpac Banking Corporation (P52/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 121	Application dismissed with costs [2018] HCATrans 30

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