



HIGH COURT BULLETIN

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High Court of Australia Library
[2018] HCAB 4 (29 May 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>Re Gallagher</i>	Constitutional Law
<i>Collins v The Queen</i>	Criminal Law
<i>CRI026 v The Republic of Nauru</i>	Migration
<i>DWN027 v The Republic of Nauru</i>	Migration
<i>EMP144 v The Republic of Nauru</i>	Migration

3: Cases Reserved

Case	Title
<i>Minogue v State of Victoria</i>	Constitutional Law
<i>DL v The Queen</i>	Criminal Law

<u>Lane v The Queen</u>	Criminal Law
<u>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</u>	Criminal Law
<u>Nobarani v Mariconte</u>	Probate

[4: Original Jurisdiction](#)

[5: Section 40 Removal](#)

[6: Special Leave Granted](#)

Case	Title
<u>Rinehart & Anor v Hancock Prospecting Pty Ltd & Ors; Rinehart & Anor v Georgina Hope Rinehart (in her personal capacity and as trustee of the Hope Margaret Hancock Trust and as trustee of the HFMF Trust) & Ors</u>	Arbitration
<u>Australian Securities & Investments Commission v Lewski & Anor; Australian Securities & Investments Commission v Wooldridge & Anor; Australian Securities & Investments Commission v Butler & Anor; Australian Securities & Investments Commission v Jaques & Anor; Australian Securities & Investments Commission v Clarke & Anor</u>	Corporations Law
<u>Grajewski v Director of Public Prosecutions (NSW)</u>	Criminal Law
<u>BEG15 v Minister for Immigration and Border Protection & Anor</u>	Migration
<u>CQZ15 v Minister for Immigration and Border Protection & Anor</u>	Migration
<u>Parkes Shire Council v Stephenson & Ors; Parkes Shire Council v Stephenson & Ors; Parkes Shire Council v Stephenson & Ors</u>	Tort

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

Case	Title
<i>Coshott v Spencer & Ors</i>	Costs

2: CASES HANDED DOWN

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

Constitutional Law

Re Gallagher

C32/2017: [\[2018\] HCA 17](#)

Judgment delivered: 9 May 2018

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

Catchwords:

Constitutional law (Cth) – Parliamentary elections – Senate – Questions referred to Court of Disputed Returns by Senate – Where senator was foreign citizen at date of nomination for election – Where renunciation of foreign citizenship registered after return as duly elected senator – Whether senator disqualified by reason of s 44(i) of Constitution because of foreign citizenship – Whether foreign law irretrievably prevented participation in representative government.

Words and phrases – "a subject or a citizen ... of a foreign power", "constitutional imperative", "incapable of being chosen", "irretrievably prevent".

Constitution – s 44(i).

Held: Questions answered

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Criminal Law

Collins v The Queen

B68/2017: [\[2018\] HCA 18](#)

Judgment delivered: 9 May 2018

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

Catchwords:

Criminal law – Appeal against convictions – Jury direction – Prior inconsistent statement – Where appellant indicted for indecent assault, aggravated indecent assault and rape – Where consent main issue at trial – Where complainant made preliminary complaints to mother and others – Where mother gave evidence at committal hearing – Where mother gave different account at trial – Where trial judge directed jury committal evidence could only be used to assess mother's credibility – Where mother confirmed at trial she had given that evidence at committal and her memory was better at committal – Whether mother actually adopted committal evidence – Whether prior inconsistent statement available to jury to assess complainant's credibility – Whether trial judge misdirected jury.

Criminal law – Appeal against convictions – Application of proviso – Where Court of Appeal found erroneous jury direction – Where prosecution disavowed reliance on proviso – Where Court of Appeal applied proviso without notice and notwithstanding disavowal – Whether Court of Appeal bound to put appellant on notice of possibility of applying proviso.

Words and phrases – "preliminary complaint", "prior inconsistent statement", "proviso", "substantial miscarriage of justice".

Criminal Code (Q) – ss 337, 349, 352, 668E(1A).

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

Held: Appeal allowed

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Migration

CRI026 v The Republic of Nauru

M131/2017: [\[2018\] HCA 19](#)

Judgment delivered: 16 May 2018

Coram: Kiefel CJ, Gageler and Nettle JJ

Catchwords:

Migration – Refugees – Appeal as of right from Supreme Court of Nauru – Where Secretary of Department of Justice and Border Control of Nauru ("Secretary") determined appellant not refugee under *Refugees Convention Act 2012* (Nr) – Where Secretary determined Nauru did not owe appellant complementary protection under *Refugees Convention Act* – Where Refugee Status Review Tribunal ("Tribunal") affirmed Secretary's determinations on basis

appellant could reasonably relocate within country of origin to place where persecutors had little or no influence or power – Where Tribunal's reasons contained typographical error – Where Tribunal issued corrigendum correcting error – Where Supreme Court of Nauru affirmed Tribunal's decision – Whether appellant's ability reasonably to relocate within country of origin relevant to claim for complementary protection – Whether typographical error in Tribunal's reasons disclosed error – Whether ability of appellant's family reasonably to relocate relevant to assessing appellant's ability reasonably to relocate – Whether Tribunal erred in failing to consider whether appellant's family able reasonably to relocate in assessing appellant's ability reasonably to relocate – Whether Tribunal's finding that persecutors had little or no influence or power in place of relocation supported by evidence.

Words and phrases – "complementary protection", "corrigendum", "freedom of movement", "internal flight alternative", "internal relocation", "non-refoulement", "reasonable internal relocation", "reasonable relocation", "refugee", "subsidiary protection", "typographical error", "well-founded fear of persecution".

Convention Relating to the Status of Refugees (1951) as modified by the Protocol Relating to the Status of Refugees (1967) – Art 1A(2).

Convention for the Protection of Human Rights and Fundamental Freedoms (1950) – Art 3.

International Covenant on Civil and Political Rights (1966) – Arts 2, 6, 7, 12.

Nauru (High Court Appeals) Act 1976 (Cth) – s 5.

Refugees Convention Act 2012 (Nr) – ss 3, 4, 43.

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

Held: Appeal dismissed with costs

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DWN027 v The Republic of Nauru

M145/2017: [\[2018\] HCA 20](#)

Judgment delivered: 16 May 2018

Coram: Kiefel CJ, Gageler and Nettle JJ

Catchwords:

Migration – Refugees – Appeal as of right from Supreme Court of Nauru – Where Secretary of Department of Justice and Border Control of Nauru ("Secretary") determined appellant not refugee under *Refugees Convention Act 2012* (Nr) – Where Secretary determined Nauru did not owe appellant complementary protection under *Refugees Convention Act* – Where Refugee Status Review Tribunal ("Tribunal") affirmed Secretary's determinations on basis appellant could reasonably relocate within country of origin – Where Supreme Court of Nauru affirmed Tribunal's decision – Whether appellant's ability reasonably to relocate within country of origin relevant to claim for complementary protection – Whether Tribunal failed to take into account factors relevant to appellant's ability reasonably to relocate – Whether Tribunal required under Convention on the Rights of the Child (1989) to give primary consideration to best interests of appellant's child.

Words and phrases – "best interests of children", "best interests of the child", "complementary protection", "internal relocation", "reasonable internal relocation", "reasonable relocation", "refugee", "well-founded fear of persecution".

Convention on the Rights of the Child (1989) – Arts 2, 3(1).

International Covenant on Civil and Political Rights (1966).

Nauru (High Court Appeals) Act 1976 (Cth) – s 5.

Refugees Convention Act 2012 (Nr) – ss 4, 43.

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

Held: Appeal dismissed with costs

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EMP144 v The Republic of Nauru

M151/2017: [\[2018\] HCA 21](#)

Judgment delivered: 16 May 2018

Coram: Kiefel CJ, Gageler and Nettle JJ

Catchwords:

Migration – Refugees – Appeal as of right from Supreme Court of Nauru – Where Secretary of Department of Justice and Border Control of Nauru ("Secretary") determined appellant not refugee under *Refugees Convention Act 2012* (Nr) – Where Secretary determined Nauru did not owe appellant complementary protection under *Refugees Convention Act* – Where Refugee Status Review Tribunal ("Tribunal") affirmed Secretary's determinations on basis

appellant could reasonably relocate within country of origin – Where Supreme Court of Nauru affirmed Tribunal's decision – Whether appellant's ability reasonably to relocate within country of origin relevant to claim for complementary protection – Whether Tribunal failed to raise issue of whether appellant could reasonably relocate – Whether Tribunal failed to take into account factors relevant to appellant's ability reasonably to relocate – Whether Tribunal misunderstood country information.

Words and phrases – "complementary protection", "country information", "internal relocation", "reasonable internal relocation", "refugee", "well-founded fear of persecution".

Convention against Torture and Other Cruel – Inhuman or Degrading Treatment or Punishment (1984), Art 3.

International Covenant on Civil and Political Rights (1966) – Arts 6, 7.

Nauru (High Court Appeals) Act 1976 (Cth) – s 5.

Refugees Convention Act 2012 (Nr) – ss 4, 22(b), 34(4), 40(1), 43.

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

Held: Appeal dismissed with costs

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3: CASES RESERVED

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

Constitutional Law

Minogue v State of Victoria

M2/2017: [\[2018\] HCATrans 84](#)

Date heard: 15 May 2018

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

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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Contracts

Pipikos v Trayans

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

Date heard: 15 March 2018

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

Catchwords:

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

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

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Criminal Law

DL v The Queen

S309/2017: [\[2018\] HCATrans 83](#)

Date heard: 11 May 2018

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

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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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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Lane v The Queen

S308/2017: [\[2018\] HCATrans 86](#)

Date heard: 16 May 2018

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

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](#): [\[2018\] HCATrans 75](#); [\[2018\] HCATrans 78](#)

Date heard: 8 and 9 May 2018

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

Catchwords:

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

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

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The Queen v Falzon

[M161/2017](#): [\[2018\] HCATrans 68](#)

Date heard: 19 April 2018

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

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](#)

*Orders made on 19 April 2018 allowing appeal.
Written reasons of the Court to be published at a future date.*

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Equity

Ancient Order of Foresters in Victoria Friendly Society Limited v Lifeplan Australia Friendly Society Limited & Anor
A37/2017: [\[2018\] HCATrans 64](#)

Date heard: 12 April 2018

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

Catchwords:

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

profits actually made and without regard to accumulated losses incurred by appellant.

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

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Migration

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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Hossain v Minister for Immigration and Border Protection & Anor

S1/2018: [\[2018\] HCATrans 52](#)

Date heard: 21 March 2018

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

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](#); (2017) 252 FCR 31

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Minister for Immigration and Border Protection v SZVFW & Ors
S244/2017: [\[2018\] HCATrans 44](#)

Date heard: 13 March 2018

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

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](#): [\[2018\] HCATrans 52](#)

Date heard: 21 March 2018

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

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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Probate

Nobarani v Mariconte
[S270/2017](#): [\[2018\] HCATrans 87](#)

Date heard: 17 May 2018

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

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

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

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

Date heard: 18 April 2018

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

Catchwords:

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

Where respondents commenced proceedings in Federal Court in 2014 raising same factual matters – Where proceedings permanently stayed by primary judge as abuse of process – Where majority of Full Federal Court allowed appeal – Whether majority of Full Federal Court erred in failing to take into account manifest unfairness to appellant and effect of proceedings in bringing administration of justice into disrepute – Whether majority erred in failing to take into account Singapore proceedings in determining whether abuse of process.

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

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Taxation

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

[B60/2017](#); [B61/2017](#); [B62/2017](#); [B63/2017](#): [\[2018\] HCATrans 62](#); [\[2018\] HCATrans 63](#)

Date heard: 10 and 11 April 2018

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

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
A8/2018, A7/2018: [\[2018\] HCATrans 66](#)

Date heard: 17 April 2018

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

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](#); (2017) 129 SASR 61

Orders made on 11 May 2018 allowing appeal by Amaca Pty Limited in part and dismissing appeal by Latz.

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

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Trkulja v Google Inc
M88/2017: [\[2018\] HCATrans 48](#)

Date heard: 20 March 2018

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

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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4: ORIGINAL JURISDICTION

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

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5: SECTION 40 REMOVAL

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

Constitutional Law

Clubb v Edwards & Anor

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

Catchwords:

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

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Preston v Avery & Anor

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

Catchwords:

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

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6: SPECIAL LEAVE GRANTED

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

Arbitration

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

S302/2017; S303/2017: [\[2018\] HCATrans 90](#)

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

Catchwords:

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

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

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Constitutional Law

Work Health Authority v Outback Ballooning Pty Ltd & Anor

D4/2018: [\[2018\] HCATrans 69](#)

Date heard: 20 April 2018 – *Special leave granted.*

Catchwords:

Constitutional law – Inconsistency – *Work Health and Safety (National Uniform Legislation) Act 2011 (NT)* – Where hot air balloon passenger died from injuries suffered as result of scarf being sucked into inflation fan – Where appellant alleged first

respondent breached s 32 of Act – Where magistrate dismissed complaint on basis *Air Navigation Act 1920 (Cth)*, *Civil Aviation Act 1988 (Cth)* and other Commonwealth regulation covered field of safety of air navigation – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in concluding federal civil aviation legislation excluded operation of *Work Health and Safety (National Uniform Legislation) Act 2011 (NT)*.

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

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Corporations

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

M169/2017; M170/2017; M171/2017; M172/2017; M173/2017:
[\[2018\] HCATrans 91](#)

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

Catchwords:

Corporations – Managed investment schemes – Third party transactions – *Corporations Act 2001 (Cth)* ss 208, 209, 601FC, 601FD, 601GC – Where directors resolved to lodge deed purporting to amend constitution to authorise payment of fee to responsible entity – Where appellant brought civil penalty proceedings for contraventions of Act against responsible entity and directors – Where trial judge concluded directors breached duties in resolving to lodge deed and authorising payment of fee – Where Full Court allowed appeals – Whether Full Court erred in concluding deed purporting to amend constitution valid until set aside by Court – Whether Full Court erred in concluding deed binding on responsible entity – Whether Full Court erred in failing to find directors involved in contravention of s 208 by authorising payment of fee to responsible entity.

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

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

P7/2018, P8/2018: [\[2018\] 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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Criminal Law

Grajewski v Director of Public Prosecutions (NSW)

S307/2017: [\[2018\] HCATrans 89](#)

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

Catchwords:

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

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

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Johnson v The Queen

A9/2018: [\[2018\] 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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Rodi v State of Western Australia

P24/2018: [\[2018\] HCATrans 71](#)

Date heard: 20 April 2018 – *Special leave granted.*

Catchwords:

Criminal law – Miscarriage of justice – Fresh evidence – *Criminal Appeals Act 2004 (WA)* – Where appellant convicted at trial of possession with intent to sell or supply contrary to s 6(1)(a) of *Misuse of Drugs Act 1981 (WA)* – Where prosecution witness gave evidence at trial about cannabis yields – Where witness’ evidence inconsistent with witness’ earlier evidence – Where majority of Court of Appeal characterised witness’ earlier evidence as fresh evidence but dismissed appeal on basis no significant possibility appellant would have been acquitted if fresh evidence before jury – Whether majority of Court of Appeal erred in concluding no significant possibility of acquittal – Whether majority of Court of Appeal erred in holding that if prosecutor breached duty of disclosure, breach did not give rise to miscarriage of justice.

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

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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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Evidence

McPhillamy v The Queen

S121/2018: [\[2018\] HCATrans 73](#)

Date heard: 20 April 2018 – *Special leave granted on limited grounds.*

Catchwords:

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

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

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Interpretation

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

[B9/2018](#): [\[2018\] HCATrans 56](#)

Date heard: 23 March 2018 – *Special leave granted.*

Catchwords:

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

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

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Comptroller General of Customs v Zappia

[S91/2018](#): [\[2018\] HCATrans 51](#)

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

Catchwords:

Interpretation – *Customs Act* 1901 (Cth) s 35A – Where respondent employed as general manager of company operating warehouse – Where cigarettes stolen from warehouse – Where respondent served with notice under s 35A of Act requiring payment of amount of duty payable on stolen cigarettes – Where Administrative Appeals Tribunal dismissed application for review of decision to issue notice – Where Full Federal Court allowed appeal – Whether majority of Full Court erred in holding employee of entity holding license to warehouse dutiable goods not capable of being “person

who has, or has been entrusted with, the possession, custody or control of dutiable goods” within meaning of s 35A(1) – Whether majority of Full Court erred in holding that on proper construction of s 35A(1), statutory demand issued by appellant to respondent invalid and of no effect.

Appealed from FCA (FC): [\[2017\] FCAFC 147](#)

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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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Williams v Wreck Bay Aboriginal Community Council & Anor

C5/2018: [\[2018\] HCATrans 50](#)

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

Catchwords:

Interpretation – Concurrent operation – Where Council leased property to appellant under residential tenancy agreement – Where appellant commenced proceedings in ACT Civil and Administrative Tribunal seeking orders for repairs and compensation – Where Tribunal referred questions of law to Supreme Court for determination – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in concluding ACT laws retain subordinate status when applied to Jervis Bay Territory by force of s 4A of *Jervis Bay Territory Acceptance Act 1915* (Cth) – Whether Court of Appeal

erred in concluding ss 8 and 9 of *Residential Tenancies Act 1997* (ACT) not capable of operating concurrently with *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* (Cth) such that ss 8 and 9 do not apply to "Aboriginal Land" for purposes of s 46 of *Aboriginal Land Grant (Jervis Bay Territory) Act*.

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

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Migration

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

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

Catchwords:

Migration – Jurisdictional error – *Migration Act 1958* (Cth) s 438 – Where appellant applied for protection visa – Where application refused by delegate – Where appellant applied to Refugee Review Tribunal for review of decision – Where delegate issued certificate under s 438(1)(a) that disclosure of certain information would be contrary to public interest – Where certificate invalid – Where Tribunal did not inform appellant of certificate or disclose information to appellant – Where Tribunal affirmed delegate's decision – Where Federal Circuit Court dismissed application for judicial review – Where Full Federal Court dismissed appeal – Whether Full Court erred in failing to find Tribunal fell into jurisdictional error in acting on invalid certificate – Whether Full Court erred in failing to find not open to primary judge to withhold relief where decision affected by jurisdictional error – Whether necessary for applicant to show denial of procedural fairness in addition to invalidity of certificate.

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

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

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

Catchwords:

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

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

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

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

Catchwords:

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

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

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Native Title

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

[D1/2018](#); [D2/2018](#); [D3/2018](#): [\[2018\] HCATrans 28](#)

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

Catchwords:

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

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

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Stamp Duty

Commissioner of State Revenue v Placer Dome Inc

P6/2018: [\[2018\] 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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Tort

Parkes Shire Council v Stephenson & Ors

S13/2018; S16/2018; S17/2018: [\[2018\] HCATrans 92](#)

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

Catchwords:

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

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

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7: CASES NOT PROCEEDING OR VACATED

Costs

Coshott v Spencer & Ors

S4/2018: [\[2018\] HCATrans 81](#)

Date heard: 10 May 2018 – *Special leave revoked.*

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

Catchwords:

Costs – *Civil Procedure Act 2005 (NSW) s 98* – Exception in *London Scottish Benefit Society v Chorley* (1884) 13 QBD 872 – 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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8: SPECIAL LEAVE REFUSED

Publication of Reasons: 9 May 2018

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	DPE16	Minister for Immigration and Border Protection & Anor (S42/2018)	Federal Court of Australia [2018] FCA 61	Application dismissed [2018] HCASL 105
2.	SZWDN	Minister for Immigration and Border Protection & Anor (S47/2018)	Federal Court of Australia [2018] FCA 278	Application dismissed [2018] HCASL 106
3.	CLL16	Minister for Immigration and Border Protection & Anor (S49/2018)	Federal Court of Australia [2018] FCA 348	Application dismissed [2018] HCASL 107
4.	SZTOH & Anor	Minister for Immigration and Border Protection & Ors (S52/2018)	Federal Court of Australia [2018] FCA 112	Application dismissed [2018] HCASL 108
5.	DTG16	Minister for Immigration and Border Protection & Anor (S56/2018)	Federal Court of Australia [2018] FCA 143	Application dismissed [2018] HCASL 109
6.	AUS15	Minister for Immigration and Border Protection & Anor (S58/2018)	Federal Court of Australia [2018] FCA 148	Application dismissed [2018] HCASL 110
7.	SZTGS	Minister for Immigration and Border Protection & Anor (S59/2018)	Federal Court of Australia [2018] FCA 329	Application dismissed [2018] HCASL 111
8.	BFF15	Minister for Immigration and Border Protection & Anor (S63/2018)	Federal Court of Australia [2018] FCA 279	Application dismissed [2018] HCASL 112
9.	CND16 & Ors	Minister for Immigration and Border Protection & Ors (S70/2018)	Federal Court of Australia [2018] FCA 199	Application dismissed [2018] HCASL 113
10.	ABC17	Minister for Immigration and Border Protection & Anor (S71/2018)	Federal Court of Australia [2018] FCA 254	Application dismissed [2018] HCASL 114
11.	Amos	Wiltshire (B73/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 279	Application dismissed with costs [2018] HCASL 115

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Publication of Reasons: 10 May 2018

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	EBC16	Minister for Immigration and Border Protection & Anor (B4/2018)	Federal Court of Australia [2018] FCA 210	Application dismissed [2018] HCASL 116
2.	SZUDO	Minister for Immigration and Border Protection & Anor (B7/2018)	Federal Court of Australia [2018] FCA 194	Application dismissed [2018] HCASL 117
3.	MZZRA	Minister for Immigration and Border Protection & Anor (M19/2018)	Federal Court of Australia [2015] FCA 622	Application dismissed [2018] HCASL 118
4.	In the matter of an application by AKM Azmerul Haque for leave to appeal (S45/2018)		High Court of Australia	Application dismissed [2018] HCASL 119
5.	Atta & Anor	Minister for Immigration and Border Protection (S48/2018)	Federal Court of Australia [2018] FCA 145	Application dismissed [2018] HCASL 120
6.	CTK15	Minister for Immigration and Border Protection & Anor (S57/2018)	Federal Court of Australia [2018] FCA 146	Application dismissed [2018] HCASL 121
7.	SZWBV	Minister for Immigration and Border Protection & Anor (S62/2018)	Federal Court of Australia [2018] FCA 147	Application dismissed [2018] HCASL 122
8.	CCD16	Minister for Immigration and Border Protection & Anor (S64/2018)	Federal Court of Australia [2018] FCA 343	Application dismissed [2018] HCASL 123
9.	AOX17	Minister for Immigration and Border Protection & Anor (S68/2018)	Federal Court of Australia [2018] FCA 397	Application dismissed [2018] HCASL 124
10.	SZVSW & Anor	Minister for Immigration and Border Protection & Anor (S74/2018)	Federal Court of Australia [2018] FCA 165	Application dismissed [2018] HCASL 125
11.	Badior	Morrison (S30/2018)	Supreme Court of New South Wales (Court of Criminal Appeal) [2017] NSWCCA 326	Application dismissed [2018] HCASL 126
12.	Hunter Quarries Pty Ltd	Morrison (S31/2018)	Supreme Court of New South Wales (Court of Criminal Appeal) [2017] NSWCCA 326	Application dismissed [2018] HCASL 126

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
13.	The Owners Strata Plan Number 57164	Yau & Anor [No. 2] (S21/2018)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 341	Costs Order [2018] HCASL 127

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Publication of Reasons: 16 May 2018

No.	Applicant	Respondent	Court appealed from	Result
1.	DY016	Minister for Immigration and Border Protection & Anor (B5/2018)	Federal Court of Australia [2018] FCA 195	Application dismissed [2018] HCASL 128
2.	MZART	Minister for Immigration and Border Protection & Anor (M30/2018)	Federal Court of Australia [2018] FCA 240	Application dismissed [2018] HCASL 129
3.	Land Enviro Corp Pty Ltd	HTT Huntley Heritage Pty Ltd (in its own and as Trustee of the Huntley Trust) & Ors (S35/2018)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 322	Application dismissed [2018] HCASL 130
4.	AEX15 & Ors	Minister for Immigration and Border Protection & Anor (S44/2018)	Federal Court of Australia [2018] FCA 82	Application dismissed [2018] HCASL 131
5.	SZWAT	Minister for Immigration and Border Protection & Anor (S54/2018)	Federal Court of Australia [2018] FCA 280	Application dismissed [2018] HCASL 132
6.	CKN16	Minister for Immigration and Border Protection & Anor (S55/2018)	Federal Court of Australia [2018] FCA 314	Application dismissed [2018] HCASL 133
7.	AHZ16	Minister for Immigration and Border Protection & Anor (S60/2018)	Federal Court of Australia [2018] FCA 164	Application dismissed [2018] HCASL 134
8.	SZSUN & Anor	Minister for Immigration and Border Protection & Anor (S65/2018)	Federal Court of Australia [2018] FCA 234	Application dismissed [2018] HCASL 135
9.	ADE17	Minister for Immigration and Border Protection & Anor (S69/2018)	Federal Court of Australia [2018] FCA 282	Application dismissed [2018] HCASL 136
10.	CHE16	Minister for Immigration and Border Protection & Anor (S76/2018)	Federal Court of Australia [2018] FCA 262	Application dismissed [2018] HCASL 137
11.	Folau	Minister for Immigration and Border Protection (M18/2018)	Full Court of the Federal Court of Australia [2017] FCAFC 214	Application dismissed with costs [2018] HCASL 138
12.	Upside Property Group Pty Ltd	Tekin (S19/2018)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 336	Application dismissed with costs [2018] HCASL 139

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18 May 2018: Sydney

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Caratti	Commissioner of the Australian Federal Police & Anor (S280/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 177	Application dismissed with costs [2018] HCATrans 93
2.	SZVSE & Ors	Minister for Immigration and Border Protection & Anor (S310/2017)	Federal Court of Australia [2017] FCA 1435	Application dismissed with costs [2018] HCATrans 96
3.	Dashti	The Queen (S311/2017)	Supreme Court of New South Wales (Court of Criminal Appeal) [2016] NSWCCA 251	Application dismissed [2018] HCATrans 94
4.	Virk Pty Ltd (In Liquidation)	YUM! Restaurants Australia Pty Ltd (S315/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 190	Application dismissed with costs [2018] HCATrans 88
5.	Minister for Immigration and Border Protection	Maharjan & Ors (S18/2018)	Full Court of the Federal Court of Australia [2017] FCAFC 213	Application dismissed with costs [2018] HCATrans 95

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18 May 2018: Melbourne

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Mercer Superannuation (Australia) Limited	Billinghurst (M3/2018)	Full Court of the Federal Court of Australia [2017] FCAFC 201	Application dismissed with costs [2018] HCATrans 98
2.	Samsung Bioepis AU Pty Ltd	Pfizer Ireland Pharmaceuticals & Ors (S3/2018)	Full Court of the Federal Court of Australia [2017] FCAFC 193	Application dismissed with costs [2018] HCATrans 97

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