



# HIGH COURT BULLETIN

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High Court of Australia Library  
[2015] HCAB 3 (30 April 2015)

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

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## SUMMARY OF NEW ENTRIES

### [1: Cases Handed Down](#)

<b>Case</b>	<b>Title</b>
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia & Ors v Queensland Rail & Anor	<u><a href="#">Constitutional Law</a></u>
Queensland Nickel Pty Limited v Commonwealth of Australia	<u><a href="#">Constitutional Law</a></u>
Duncan v The State of New South Wales; NuCoal Resources Ltd v State of New South Wales; Cascade Coal Pty Ltd & Ors v The State of New South Wales	<u><a href="#">Constitutional Law</a></u>
Independent Commission Against Corruption v Cunneen & Ors	<u><a href="#">Statutes</a></u>

## 2: Cases Reserved

<b>Case</b>	<b>Title</b>
Isbester v Knox City Council	<a href="#">Administrative Law</a>
Tomlinson v Ramsey Food Processing Pty Limited	<a href="#">Estoppel</a>
Minister for Immigration and Border Protection v WZAPN & Anor	<a href="#">Migration</a>
WZARV v Minister for Immigration and Border Protection & Anor	<a href="#">Migration</a>
Construction, Forestry, Mining and Energy Union v Boral Resources (Vic) Pty Ltd & Ors	<a href="#">Procedure</a>
Ausnet Transmission Group Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia	<a href="#">Taxation</a>

## 3: Original Jurisdiction

No new entries for April 2015.

## 4: Special Leave Granted

<b>Case</b>	<b>Title</b>
Smith v The Queen	<a href="#">Juries</a>
Minister for Immigration and Border Protection v WZARH & Anor	<a href="#">Migration</a>
Commissioner of Taxation v Australian Building Systems Pty Ltd (in liq); Commissioner of Taxation v Muller & Anor as Liquidators of Australian Building Systems Pty Ltd (in liq)	<a href="#">Taxation</a>
Correy Fuller-Lyons by his tutor Nita Lyons v State of New South Wales	<a href="#">Torts</a>

# 1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the April 2015 sittings.

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## Constitutional Law

*Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia & Ors v Queensland Rail & Anor*

**B63/2013:** [\[2015\] HCA 11](#).

**Judgment Delivered:** 8 April 2015.

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

### Catchwords:

Constitutional law – Constitution, s 51(xx) – "[T]rading or financial corporations formed within the limits of the Commonwealth" – *Queensland Rail Transit Authority Act 2013 (Q)* established right and duty bearing entity which "is not a body corporate" – Functions of entity included provision of labour hire services – Functions to be carried out as a commercial enterprise – Whether entity a trading corporation formed within the limits of the Commonwealth.

Words and phrases – "is not a body corporate", "trading corporation".

**Held:** Questions answered.

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*Queensland Nickel Pty Limited v Commonwealth of Australia*

**B25/2013:** [\[2015\] HCA 12](#).

**Judgment Delivered:** 8 April 2015.

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

### Catchwords:

Constitutional law – Constitution, s 99 – Prohibition on Commonwealth, by any law of revenue, giving preference to one State over another – Discrimination – Practical operation of law – *Clean Energy Act 2011 (Cth)*, *Clean Energy (Charges – Excise) Act 2011 (Cth)*, Pt 3, *Clean Energy (Charges – Customs) Act 2011*

(Cth), Pt 3, and *Clean Energy (Unit Shortfall Charge – General) Act 2011* (Cth) established and imposed tax on certain greenhouse gas emissions – Schedule 1 ("JCP") to Clean Energy Regulations 2011 (Cth) provided for reduction of tax liability for emissions generated by certain activities – JCP, Pt 3, Div 48 defined "production of nickel" as an activity – Whether JCP, Pt 3, Div 48 discriminates between States because of differences between States in natural, business or other circumstances – Whether JCP, Pt 3, Div 48 contrary to Constitution, s 99.

Words and phrases – "discrimination", "natural, business or other circumstances", "practical effect", "practical operation", "States or parts of States".

**Held:** Questions answered.

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*Duncan v The State of New South Wales; NuCoal Resources Ltd v State of New South Wales; Cascade Coal Pty Ltd & Ors v The State of New South Wales*

[S119/2014](#); [S138/2014](#); [S206/2014](#): [\[2015\] HCA 13](#).

**Judgment Delivered:** 15 April 2015.

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

**Catchwords:**

Constitutional law – Judicial power – Independent Commission Against Corruption produced reports which recommended passing legislation to cancel three exploration licences granted under *Mining Act 1992* (NSW) – *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014* (NSW) ("Amendment Act") inserted Sched 6A into *Mining Act 1992* (NSW), cancelling three licences without compensation – Whether Amendment Act involves exercise of judicial power in nature of, or akin to, bill of pains and penalties. Constitutional law – *Constitution Act 1902* (NSW) – Legislative competence of New South Wales Parliament – Whether Amendment Act is "law" within meaning of s 5 of *Constitution Act 1902* (NSW). Constitutional law – Inconsistency between Commonwealth and State laws – Provision of Amendment Act authorised use or disclosure of information contained in works – Whether provision of Amendment Act inconsistent with *Copyright Act 1968* (Cth) and invalid to extent of inconsistency.

Words and phrases – "bill of pains and penalties", "judicial power", "law".

**Held:** Questions answered.

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## Statutes

*Independent Commission Against Corruption v Cunneen & Ors*  
**S302/2014:** [\[2015\] HCA 14.](#)

**Judgment Delivered:** 15 April 2015.

**Coram:** French CJ, Hayne, Kiefel, Gageler and Nettle JJ.

### Catchwords:

Statutory bodies – Investigating commission – Independent Commission Against Corruption – Powers – *Independent Commission Against Corruption Act 1988 (NSW)*, s 8(2) defines "corrupt conduct" as conduct that could "adversely affect" exercise of official function by public official – Whether conduct that could adversely affect efficacy, but not probity, of exercise of official function by public official "corrupt conduct".

Statutes – Interpretation – Context and purpose – Statutory definitions – Effect of express statement of objects of Act – Where purpose of Act cannot be identified without reference to terms to be interpreted.

Statutes – Interpretation – Extrinsic materials – Legislative history – Where legislation not amended after review of Act.

Words and phrases – "adversely affect", "and which could involve", "corrupt conduct".

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 421.](#)

**Held:** Special leave granted, appeal dismissed.

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## 2: CASES RESERVED

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

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### Administrative Law

*Isbester v Knox City Council*  
**M19/2015:** [\[2015\] HCATrans 79](#).

**Date Heard:** 14 April 2015.

**Coram:** Kiefel, Bell, Gageler, Keane and Nettle JJ.

**Catchwords:**

Administrative law – Procedural fairness – Where respondent’s delegate ordered pursuant to s 84P of the *Domestic Animals Act* 1994 (Vic) (“Act”) for the destruction of appellant’s dog due to an incident the year before in which the appellant’s dog bit a person – Where appellant pleaded guilty to offences under the Act relating to that incident – Where appellant claimed that she was not afforded procedural fairness at the hearing to determine whether appellant’s dog should be destroyed – Where appellant claims that there was apprehended bias because one of the panel members had previously been an accuser in appellant’s criminal prosecution for the same incident – Whether the Victorian Court of Appeal erred in failing to find that the decision was affected by apprehended bias.

Animals – Various statutory provisions – Regulation of companion animals – seizure and destruction.

**Appealed from VSC (CA):** [\[2014\] VSCA 214](#).

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### Animals

See also **[Administrative Law](#)**: *Isbester v Knox City Council*.

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## Corporations

*Selig & Selig v Wealthsure Pty Ltd & Ors*

[A11/2014: \[2015\] HCATrans 54.](#)

**Date heard:** 12 March 2015.

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

**Catchwords:**

Corporations – Provision of financial advice – Contravention of *Corporations Act* 2001 (Cth) (Act) – First and second respondents were appellants’ financial advisors – First and second respondents recommended financial product and provided appellants with disclosure document that did not comply with s 953A of Act – Financial product was insolvent and appellants lost their investment – First and second respondents argued that loss was apportionable and that promoters of financial product should bear majority of claim – Whether claim for damages for misleading financial advice pursuant to ss 769C, 945A, 945B and/or 1041E of Act apportionable under ss 1041H-1041S of Act – Whether claims should be reduced by reference to contributory conduct under s 1041I(1B) of Act.

**Appealed from FCA (FC):** (2014) 221 FCR 1; (2014) 100 ACSR 566; [\[2014\] FCAFC 64](#); (2014) 100 ACSR 566.

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## Criminal Law

*Lindsay v The Queen*

[A24/2014: \[2015\] HCATrans 52.](#)

**Date heard:** 11 March 2015.

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

**Catchwords:**

Criminal law – Defences – Provocation – Appellant convicted of murder – Circumstances of offence included two incidents where victim had made homosexual advances – Court of Criminal Appeal found errors in directions of trial judge as to provocation – Court of Criminal Appeal applied proviso without positive submission by prosecution and held that partial defence of provocation should not have been left to jury – Court of Criminal Appeal relied on academic literature on contemporary attitudes to homosexual behaviour to

support conclusion – Whether appropriate for Court of Criminal Appeal to initiate consideration of and then apply proviso – Whether academic literature is relevant in consideration of objective limb of provocation – Whether it is permissible for Court of Criminal Appeal to rely on academic literature without affording parties opportunity to make submissions.

**Appealed from SASC (CCA):** (2014) 119 SASR 320; [\[2014\] SASCF 56](#).

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## Estoppel

*Tomlinson v Ramsey Food Processing Pty Limited*  
**S7/2015:** [\[2015\] HCATrans 77](#).

**Date heard:** 10 April 2015.

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

### Catchwords:

Estoppel – Issue estoppel – Appellant was employee at abattoir owned by respondent – Appellant was injured as result of respondent’s negligence – Appellant and others complained to Fair Work Ombudsman about abattoir’s failure to pay all wage entitlements – Fair Work Ombudsman brought proceedings in its name against respondent – Appellant separately commenced proceedings claiming damages against respondent for personal injury under *Civil Liability Act 2002* (NSW) – Appellant argued in proceedings that abattoir was relevant employer – Respondent pleaded by way of defence that appellant was issue estopped by reason of earlier proceedings on the issue of employee/employer such that respondent was appellant’s relevant employer – Whether Fair Work Ombudsman was privy of appellant employee in earlier proceedings – Whether appellant was issue estopped by earlier decision made in proceedings commenced by Fair Work Ombudsman to which appellant was not party.

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 237](#).

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## Migration

*Ueese v Minister for Immigration and Border Protection*  
**S277/2014:** [\[2015\] HCATrans 48](#).



**Date heard:** 5 March 2015.

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

**Catchwords:**

Migration – Application of s 500(6H) of *Migration Act* 1958 (Cth) (“Act”) – Appellant’s visa was cancelled – In deciding whether to affirm Minister’s decision, Administrative Affairs Tribunal (“AAT”) was required to take into account best interests of minor children in Australia – AAT declined to consider or make determination as to best interests of two of appellant’s children – Information as to those children was not adduced by appellant but was apparent from documents tendered by first respondent – Whether Full Court erred in failing to find jurisdictional error in decision of AAT holding that s 500(6H) of Act prohibited AAT from having regard to information concerning two of appellant’s children unless appellant had set out information in written statement to first respondent at least two days before hearing – Whether Full Court erred in failing to find jurisdictional error in AAT holding that date upon which AAT “holds a hearing” for purposes of ss 500(6H) and 500(6I) of Act is first day of any such hearing, and does not include date upon which adjourned hearing is resumed.

**Appealed from FCA (FC):** [\[2013\] FCAFC 86](#).

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*Minister for Immigration and Border Protection v WZAPN & Anor*

**M17/2015:** [\[2015\] HCATrans 80](#).

**Date heard:** 15 April 2015.

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

**Catchwords:**

Migration – Refugee and humanitarian visas – Definition of refugee – Fear of persecution – Serious harm – Whether under s 91R of the *Migration Act* 1958 (Cth) a refugee claimant will suffer “serious harm” if detained for a reason mentioned in the *Convention Relating to the Status of Refugees* 1951 as amended by the *Protocol Relating to the Status of Refugees* 1967 without any need to assess the severity of that detention – Where respondent is a stateless Faili Kurd – Where respondent claimed a fear of persecution if he was returned to Iran due to his Kurdish ethnicity and stateless personhood – Where the refugee status assessment officer concluded that the applicant was not a refugee within the meaning of the Convention – Where the officer found that whilst

respondent would face arbitrary questioning and detention due to his lack of documentation this did not amount to a serious harm within the meaning of the *Migration Act 1958 (Cth)* – Federal Court found that the assessment officer had erred by undertaking a qualitative assessment of the detention that was likely to occur if respondent was returned to Iran – Whether a qualitative assessment of the seriousness of the harm suffered by respondent was required pursuant to s 91R of the *Migration Act 1958 (Cth)*.

**Appealed from FCA:** [\[2014\] FCA 947](#).

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*WZARV v Minister for Immigration and Border Protection & Anor*  
**P10/2015:** [\[2015\] HCATrans 80](#).

**Date heard:** 15 April 2015.

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

**Catchwords:**

Migration – Refugee and humanitarian visas – Definition of refugee – Fear of persecution – Serious harm – Where appellant is a Sri Lankan citizen and applied for a Refugee Status Assessment – Where appellant is of Tamil ethnicity – Where the Independent Merits Reviewer accepted that it was likely that appellant would be questioned by the Sri Lankan authorities upon his return to Sri Lanka but that questioning would not amount to a serious harm to appellant - Whether a qualitative assessment of the seriousness of the harm suffered by the appellant was required pursuant to s 91R of the *Migration Act 1958 (Cth)*.

**Appealed from FCA:** [\[2014\] FCA 894](#).

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## Native Title

*State of Queensland v Congoo & Ors*  
**B39/2014:** [\[2014\] HCATrans 271](#); [\[2014\] HCATrans 273](#).

**Date heard:** 2 and 3 December 2014.

**Coram:** French CJ, Hayne, Kiefel, Bell, Gageler and Keane JJ.

**Catchwords:**

Native title – Extinguishment – *National Security Act 1939* (Cth) (“NSA”), s 5(1) – *National Security (General) Regulations*, reg 54 – NSA enacted shortly after Australia’s entry into World War II authorising Governor-General to make regulations for securing public safety and defence of Commonwealth – Between 1943 and 1945 five orders were made under reg 54 over land over which native title determination sought – Whether orders made under reg 54 have effect of extinguishing all native title rights and interests on land – Whether reg 54 enabled Commonwealth to take possession of land simply by making orders purporting to take possession of land.

**Appealed from FCA (FC):** [\[2014\] FCAFC 9](#).

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## Procedure

*Construction, Forestry, Mining and Energy Union v Boral Resources (Vic) Pty Ltd & Ors*  
**M18/2015:** [\[2015\] HCATrans 75](#).

**Date heard:** 8 April 2015.

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

### Catchwords:

Procedure – Contempt – Disobedience of court orders – Where first to sixth respondents sought orders in the Supreme Court of Victoria that appellant be punished for contempt of Court constituted by alleged disobedience in relation to orders made by the Supreme Court of Victoria on 5 April 2013 – Where first to sixth respondents obtained orders requiring appellant to make discovery of documents in accordance with r 29.07 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) for the purpose of proving appellant’s liability – Whether the Victorian Court of Appeal erred by refusing leave to appeal against the decision to order discovery because of the criminal nature of contempt proceedings – Whether a plaintiff in contempt proceedings can invoke court processes to compel the production of documents by a corporate defendant.

**Appealed from VSC(CA):** [\[2014\] VSCA 261](#).

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## Taxation

*Ausnet Transmission Group Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia*

**M35/2014:** [\[2015\] HCATrans 76](#).

**Date heard:** 9 April 2015.

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

**Catchwords:**

Taxation – Income Tax – *Income Tax Assessment Act* 1997 (Cth) (“ITAA”) – Appellant paid three imposts to State of Victoria under s 163AA(1) of *Electricity Industry Act* 1993 (Vic) on purchase of transmission licence – Whether three imposts deductible pursuant to s 8-1 of ITAA – Whether observations of Fullagar J in *Colonial Mutual Life Assurance Society Ltd v Federal Commissioner of Taxation* were qualified by Court’s decision in *Cliffs International Inc v FCT* – Whether practical and business advantage secured by payment of compulsory exaction to State can be capital in nature.

**Appealed from FCA (FC):** (2014) 22 FCR 355; [\[2014\] FCAFC 36](#).

**Note:** *Ausnet Transmission Group Pty Ltd* formally *SPI Powernet Pty Ltd*.

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## Torts

*King v Philcox*

**A26/2014:** [\[2015\] HCATrans 50](#) and [\[2015\] HCATrans 51](#).

**Date heard:** 10 and 11 March 2015.

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

**Catchwords:**

Tort law – Negligence – Duty of care – Mental harm – Respondent’s brother (victim) was passenger in car driven by appellant which was involved in collision killing victim – Respondent drove past the accident scene five times, each time unaware that victim was his brother – Respondent later developed psychiatric illness upon realising scene of accident was where victim died – Whether appellant owes duty of care to sibling of victim to avoid causing

mental harm caused by learning about death of victim in motor accident – Whether existence of duty of care determined solely by reference to s 33(1), *Civil Liability Act 1936* (SA) (“CLA”) – Whether respondent’s psychiatric illness reasonably foreseeable – Whether respondent was “present at the scene of the accident when the accident occurred” as required by s 51(1)(a) of CLA.

**Appealed from SASC (FC):** (2014) 119 SASR 71; [\[2014\] SASCF 38](#); (2014) MVR 356.

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## 3: ORIGINAL JURISDICTION

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

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### Constitutional Law

See also **Native Title**: *Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland*

See also **Statutes**: *McCloy & Ors v State of New South Wales & Anor*

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### Native Title

*Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland*

**B26/2014**: *Special case.*

#### Catchwords:

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

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

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## Statutes

*McCloy & Ors v State of New South Wales & Anor*

[S211/2014](#): *Special case.*

### Catchwords:

Statutes – Acts of Parliament – Validity of legislation – *Election Funding Expenditure and Disclosure Act 1981 (NSW)* – Where the first plaintiff was subjected to compulsory examination pursuant to s 30 of the *Independent Commissioner Against Corruption Act 1988 (NSW)* by the second defendant concerning the circumstances of a donation made for the benefit of persons including a candidate in connection with the 2011 New South Wales election in breach of the *Funding Expenditure and Disclosure Act 1981 (NSW)* – Where the plaintiffs claim the provisions that they purportedly breached, Divs 2A and 4A of Pt 6, and s 96E in Div 4 of Pt 6 of the Act infringe the implied freedom of communication regarding political or governmental matters.

Constitutional Law – Operation and Effect of Commonwealth Constitution – Restrictions on Commonwealth and State Legislation – Rights and freedoms implied in Commonwealth Constitution – Freedom of Political Communication – Whether Divs 2A and 4A of Pt 6, and s 96E in Div 4 of Pt 6 of the *Funding Expenditure and Disclosure Act 1981 (NSW)* infringe the implied freedom of communication regarding political or governmental matters.

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## 4: SPECIAL LEAVE GRANTED

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

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### Constitutional Law

See also **Procedure:** *PT Bayan Resources TBK v BCBC Singapore Pte Ltd & Ors.*

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### Criminal Law

*Filippou v The Queen*

**S59/2015:** [\[2015\] HCATrans 61.](#)

**Date heard:** 13 March 2015 – *Special leave granted on limited grounds.*

**Catchwords:**

Criminal law – Appeal against conviction and sentence – s 23 *Crimes Act* 1900 (NSW) – Where the appellant was convicted of murder by a judge sitting alone – Where it was not determined beyond reasonable doubt whether the appellant or one of the deceased brought the murder weapon to the scene – Whether the judge at first instance erred in the application of the test of provocation – Whether as a consequence of this error the Court of Criminal Appeal should have held this to be an error of law requiring the convictions to be quashed – Whether the Court of Criminal Appeal erred in failing to take into account matters mitigating the sentence imposed in respect of the fact that it was not reasonably possible to conclude who brought the murder weapon to the scene.

**Appealed from NSWSC(CCA):** [\[2013\] NSWCCA 92.](#)

**Listed:** 12 May 2015.

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*Police v Dunstall*

**A5/2015:** [\[2015\] HCATrans 63.](#)

**Date heard:** 13 March 2015 – *Special leave granted.*



**Catchwords:**

Criminal law – Evidence – Judicial discretion to admit or exclude evidence – Evidence unfair to admit or improperly obtained – Generally – Where the respondent was charged with driving a motor vehicle while there was present in his blood the prescribed concentration of alcohol in contravention of s 47K(5) of the *Road Traffic Act 1961* (SA) – Where the respondent was subject to a breath analysis test and two blood samples were taken – Where the blood samples were denatured and unsuitable for analysis – Where the breath analysis evidence was excluded on the basis of unfairness – Whether there is a general judicial discretion to excluded lawfully obtained, non-confessional evidence for reasons of unfairness – If there is a general judicial discretion, what amounts to unfairness to enliven the discretion.

**Appealed from SASC(FC):** (2014) 120 SASR 88; [\[2014\] SASCFC 85](#).

**Listed:** 6 May 2015.

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## Foreign Judgments

*Firebird Global Master Fund II Ltd v Republic of Nauru & Anor*  
**S29/2015:** [\[2015\] HCATrans 15](#).

**Date heard:** 13 February 2015 - *Special leave granted*.

**Catchwords:**

Recognition, effect and enforcement of foreign judgments – Enforcement of foreign judgments – Foreign States immunity – Where appellant is the holder of bonds issued by an entity which was guaranteed by the government of Nauru – where the bond issuer and guarantor defaulted – Where appellant recovered a judgment in Japan equivalent to 31 million Australian dollars – Whether s 9 of the *Foreign States Immunities Act 1985* (Cth) renders first respondent immune to an application to the Court for an order for the registration of the foreign judgment under s 6 of the *Foreign Judgments Act 1991* (Cth).

**Appealed from NSWSC (CA):** (2014) 316 ALR 497; (2014) 289 FLR 398; [\[2014\] NSWCA 360](#).

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## Juries

*Smith v The Queen*

**B50/2014:** [\[2015\] HCATrans 84.](#)

**Date Heard:** 17 April 2015 – *Special leave granted.*

**Catchwords:**

Jury – Verdicts and findings – Majority verdict – s 59A *Jury Act* 1995 (Q) - Where the appellant was convicted of one count of rape on a majority verdict – Where the jury had disclosed its voting pattern to the judge before the judge exercised the discretionary power pursuant to s 59A – Where the judge did not disclose the voting pattern to counsel – Whether a trial judge can elect not to disclose a jury communication which discloses the numerical state of its deliberations and still exercise further discretions concerning the jury in the trial.

**Appealed from QSC(CA):** [\[2014\] QCA 277.](#)

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## Migration

*Minister for Immigration and Border Protection v WZARH & Anor*

**S285/2014:** [\[2015\] HCA Trans 92.](#)

**Date Heard:** 15 April 2015 – *Special leave granted.*

**Catchwords:**

Migration – Refugee and humanitarian visas – Procedural fairness – Where a department officer determined that the respondent was not a refugee – Where the respondent sought a review of this decision – Where the respondent was interviewed by a merits reviewer – Where the merits reviewer told the respondent that they would be the person to determine the application – Where the merits reviewer was unable to conclude the review and the review was concluded by another reviewer – Whether there is a breach of procedural fairness where an alternate reviewer makes a decision based on the documentary materials, submissions and an audio recording of the interview but does not inform the applicant of the change in decision-making, ask for submissions on how to proceed, or allow for an additional face-to-face interview.

**Appealed from FCA(FC):** [\[2014\] FCAFC 137.](#)

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## Patents

*D'Arcy v Myriad Genetics & Anor*

**S28/2015**; [\[2015\] HCATrans 12](#).

**Date Heard:** 13 February 2015 – *Special leave granted*.

**Catchwords:**

Intellectual property – Patents – Requirements for a valid patent – Human beings and their biological processes – s 18(1)(a) of the *Patents Act* 1990 (Cth) – Where appellant submitted that the Full Court of the Federal Court erred in holding that each of claims 1 -3 of Australian Patent No 686004 claimed a patentable invention being a manner of manufacture – Australian Patent No 686004 is described as the identification of “a human breast and ovarian cancer disposing gene (BRCA1)” – Whether claims 1 – 3, which relate to isolated nucleic acid, are claims for a manner of manufacture for the purposes of s 18(1)(a) of the *Patents Act* 1990 (Cth).

**Appealed from FCA(FC):** (2014) 224 FCR 479; (2014) 313 ALR 627; (2014) 107 IPR 478; [\[2014\] FCAFC 115](#).

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*AstraZeneca AB & Anor v Apotex Pty Ltd; AstraZeneca AB & Anor v Watson Pharma Pty Ltd; AstraZeneca AB & Anor v Ascent Pharma Pty Ltd*

**S54/2015**; **S55/2015**; **S56/2015**: [\[2015\] HCATrans 58](#).

**Date heard:** 13 March 2015 – *Special leave granted*.

**Catchwords:**

Intellectual property – Patents – Requirements for a valid patent - Novelty – Prior art information – Inventive step – Common general knowledge – ss 7(2), 7(3), 22A and 138(3)(a) of the *Patents Act* 1990 (Cth) (“Act”) – Where the applicants are the patentees and exclusive licensees of Australian Patent No 051 which relates to a method of treating high cholesterol – Whether the patent was successfully assigned to the appellants - Where there was an order for the revocation of the patent on the basis that the claimed invention lacked an inventive step pursuant to ss 7(2) and 7(3) as the invention was obvious in light of common general knowledge

and available prior art information – Whether prior art information and common general knowledge can be considered together pursuant to s 7(3) of the Act – Whether when assessing whether an invention is obvious in light of common general knowledge and any s 7(3) information, can sources of prior art information that teach towards an invention as the only avenues available to a skilled person be considered in disregard of any consideration of alternative sources – Whether there can be an order for revocation pursuant to s 138(3)(a) of the Act – Whether s 22A of the Act was applicable in the current case.

**Appealed from FCA(FC):** (2014) 312 ALR 1; (2014) 107 IPR 177; [\[2014\] FCAFC 99](#).

**Listed:** 13 May 2015.

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## Procedure

*PT Bayan Resources TBK v BCBC Singapore Pte Ltd & Ors*  
**P14/2015:** [\[2015\] HCATrans 57](#).

**Date heard:** 13 March 2015 – *Special leave granted*.

### Catchwords:

Procedure – Judgments and orders – Freezing orders – Jurisdiction of the Supreme Court to make freezing orders – Order 52A *Rules of the Supreme Court of Western Australia* 1971 (WA) ('Rules') – Where the first respondent commenced proceedings against the appellant in the High Court of Singapore – Where no decision has been handed down by the High Court of Singapore in respect of the matter – Where the first respondent commenced proceedings in Western Australia against the appellant for an order to freeze the appellant's assets in Western Australia – Where no other proceedings aside from the application for freezing orders have been commenced or will be commenced unless the first respondent is successful in its action in the High Court of Singapore – Whether order 52A of the Rules is inconsistent with Pt 2 of the *Foreign Judgments Act* 1991 (Cth) ('Act') for the purpose of s 109 of the *Constitution* in circumstances where no substantive proceedings apart from the application for the freezing order have been or are to be commenced – Whether order 52A is *ultra vires* pursuant to s 17 of the Act – Whether freezing orders with respect to a prospective foreign judgment are within the inherent or implied jurisdiction of Australian superior courts.

**Appealed from WASC(CA):** (2014) 288 FLR 299; [\[2014\] WASCA 178](#).

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## Property

*Gnych & Anor v Polish Club Limited*  
**S58/2015:** [\[2015\] HCATrans 62](#).

**Date Heard:** 13 March 2015 – *Special leave granted*.

**Catchwords:**

Real Property – Lease of the core property of a registered club – Where the respondent is a registered club under the *Registered Club Act* 1976 (NSW) – Where the appellants operated a restaurant from the respondent’s premises – Where a dispute arose and the respondent excluded the appellants from the premises – Where the respondent argued that the lease should not be upheld due to a contravention of s 92(1)(c) of the *Liquor Act* 2007 (NSW) which provides that a licensee must not lease or sub-lease premises except with the approval of the Authority – Whether a lease granted without approval of the Authority should be considered ipso jure void – Whether the *Liquor Act* excludes the principle that where a person acquires a title by way of a transaction prohibited by statute, the Court will not deprive that person of their title unless that person has to rely upon their own illegal conduct.

**Appealed from NSWSC(CA):** (2015) 17 BPR 33; [\[2014\] NSWCA 321](#).

**Listed:** 5 May 2015.

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## Taxation

*Commissioner of Taxation v Australian Building Systems Pty Ltd (In Liq); Commissioner of Taxation v Muller & Anor as Liquidators of Australian Building Systems Pty Ltd (In Liq)*  
**B48/2014; B49/2014:** [\[2015\] HCATrans 82](#).

**Date Heard:** 17 April 2015 – *Special leave granted*.

**Catchwords:**

Taxes and duties – Income tax and related legislation – *Income Tax Assessment Act* 1936 (Cth) ss 6 and 254 – Where administrators were appointed to Australia Building Systems under Pt 5.3A of the

*Corporations Act 2001 (Cth)* – Where it was resolved that Australian Building Systems would be wound up and the respondents in B49/2014 were appointed liquidators – Where the liquidators caused Australian Building Systems to enter into a contract for sale of a property which gave rise to a capital gains tax event pursuant to s 104-10 of the *Income Tax Assessment Act 1997 (Cth)* – Whether under the 1936 Act a trustee is subject to the requirements and authorisations in s 254 only in relation to income, profits or gains for which they are assessable to tax under Part III Div 6 of the 1936 Act – Whether a trustee is subject to authorisations and requirements in s 254 of the 1936 Act only in relation to income, profits or gains for which they have liability to tax under some other provision of the Act or whether ancillary liabilities are created by s 254 – Whether, following the receipt of money in a representative capacity by a trustee but prior to an assessment for tax, the retention authorisation and requirement in s 254(1)(d) of the 1936 Act requires the trustee to retain out of moneys then in or coming to them in their representative capacity so much as is significant to pay the tax of the income, profits or gains or whether it only authorises and requires a trustee to retain such moneys after an assessment is made for tax on the income, profits or gains.

**Appealed from FCA (FC):** [\[2014\] FCAFC 133](#).

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## Torts

*Correy Fuller-Lyons by his tutor Nita Lyons v State of New South Wales*

**S319/2014:** [\[2015\] HCATrans 96](#).

**Date Heard:** 17 April 2015 – *Special leave granted*.

### Catchwords:

Torts - Negligence – Where the appellant was injured after falling from a moving train which was operated by the respondent – Where the trial judge found that the appellant had fallen from the doors of the train as a consequence of the respondent’s negligence – Where the Court of Appeal reversed this finding based on the possibility of other hypothetical occurrences – Whether the Court of Appeal was entitled reject the findings of the trial judge based on these other possibilities.

**Appealed from NSWSC(CA):** [\[2014\] NSWCA 424](#).

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**5: CASES NOT PROCEEDING OR  
VACATED**

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## 6: SPECIAL LEAVE REFUSED

### Publication of Reasons: 8 April 2015

No.	Applicant	Respondent	Court appealed from	Result
1.	Bali	Minister for Immigration and Border Protection & Anor (M97/2014)	Federal Court of Australia [2014] FCA 986	Application dismissed <a href="#">[2015] HCASL 21</a>
2.	Munday	Court (M115/2014)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 279	Application dismissed <a href="#">[2015] HCASL 22</a>
3.	MZYYU	Minister for Immigration and Border Protection & Anor (M120/2014)	High Court of Australia [2014] HCATrans 221	Application dismissed <a href="#">[2015] HCASL 23</a>
4.	MZZXL	Minister for Immigration and Border Protection & Anor (M123/2014)	Federal Court of Australia [2014] FCA 1211	Application dismissed <a href="#">[2015] HCASL 24</a>
5.	MZZVA	Minister for Immigration and Border Protection & Anor (M124/2014)	Federal Court of Australia [2014] FCA 1261	Application dismissed <a href="#">[2015] HCASL 25</a>
6.	MZZXJ & Anor	Minister for Immigration and Border Protection & Anor (M127/2014)	Federal Court of Australia [2014] FCA 1210	Application dismissed <a href="#">[2015] HCASL 26</a>
7.	Kaur	Minister for Immigration and Border Protection & Anor (M128/2014)	Federal Court of Australia [2014] FCA 1251	Application dismissed <a href="#">[2015] HCASL 27</a>
8.	SZSOG	Minister for Immigration and Border Protection & Anor (S234/2014)	Federal Court of Australia [2014] FCA 1053	Application dismissed <a href="#">[2015] HCASL 28</a>
9.	Lesianawai	Minister for Immigration and Border Protection & Anor (S288/2014)	Full Court of the Federal Court of Australia [2014] FCAFC 141	Application dismissed <a href="#">[2015] HCASL 29</a>
10.	SZTGX & Anor	Minister of Immigration and Border Protection & Anor (S307/2014)	Federal Court of Australia [2014] FCA 1201	Application dismissed <a href="#">[2015] HCASL 30</a>
11.	SZQQA	Minister for Immigration and Border Protection & Anor (S311/2014)	Federal Court of Australia [2014] FCA 1310	Application dismissed <a href="#">[2015] HCASL 31</a>
12.	Savsani & Anor	Minister for Immigration and Border Protection & Anor (S273/2014)	High Court of Australia [2014] HCATrans 217	Application dismissed <a href="#">[2015] HCASL 32</a>
13.	Update Pty Ltd	Commissioner of State Revenue (M108/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 218	Application dismissed with costs <a href="#">[2015] HCASL 33</a>
14.	Rich	Westpac Banking Corporation (S122/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] VSCA 218	Application dismissed with costs <a href="#">[2015] HCASL 34</a>



## 6: Special Leave Refused

15.	Fischer	Howe (S256/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 286	Application dismissed with costs <a href="#">[2015] HCASL 35</a>
16.	Rahman	Gregory Eugene Smith, Attorney-General, NSW (S217/2014)	Application for removal	Application dismissed with costs <a href="#">[2015] HCASL 36</a>
17.	Rahman	Moloney & Ors (S282/2014)	Application for removal	Application dismissed with costs <a href="#">[2015] HCASL 37</a>
18.	Afiouny	The Queen (S262/2014)	Supreme Court of New South Wales (Court of Criminal Appeal) [2014] NSWCCA	Application dismissed <a href="#">[2015] HCASL 38</a>

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## Publication of Reasons: 9 April 2015

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	McFarlane	Police (A22/2014)	Full Court of the Supreme Court of South Australia [2014] SASFC 111	Application dismissed <a href="#">[2015] HCASL 39</a>
2.	Barkla	Allianz Australia & Anor (P47/2014 and P52/2014)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 192	Application dismissed <a href="#">[2015] HCASL 40</a>
3.	WZATK	Minister for Immigration and Border Protection & Anor (P50/2014)	Federal Court of Australia [2014] FCA 1174	Application dismissed <a href="#">[2015] HCASL 41</a>
4.	Menzies & Anor	Paccar Financial Pty Ltd (S232/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 258 [2014] NSWCA 210	Application dismissed <a href="#">[2015] HCASL 42</a>
5.	Govind	Minister for Immigration and Border Protection & Anor (S245/2014)	Federal Court of Australia [2014] FCA 864	Application dismissed <a href="#">[2015] HCASL 43</a>
6.	Arifin	Secretary, Department of Families, Housing, Community Services and Indigenous Affairs (S281/2014)	Full Court of the Federal Court of Australia [2014] FCAFC 61	Application dismissed <a href="#">[2015] HCASL 44</a>
7.	Wang	State of New South Wales (S289/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 373	Application dismissed <a href="#">[2015] HCASL 45</a>
8.	SZTIL	Minister for Immigration and Border Protection & Anor (S292/2014)	Federal Court of Australia [2014] FCA 1226	Application dismissed <a href="#">[2015] HCASL 46</a>
9.	SZTHK	Minister for Immigration and Border Protection & Anor (S293/2014)	Federal Court of Australia [2014] FCA 1227	Application dismissed <a href="#">[2015] HCASL 47</a>
10.	Salam	Minister for Immigration and Border Protection & Anor (S295/2014)	Federal Court of Australia [2014] FCA 1263	Application dismissed <a href="#">[2015] HCASL 48</a>
11.	SZTRW	Minister for Immigration and Border Protection & Anor (S303/2014)	Federal Court of Australia [2014] FCA 1246	Application dismissed <a href="#">[2015] HCASL 49</a>
12.	SZTHQ & Anor	Minister for Immigration and Border Protection & Anor (S306/2014)	Federal Court of Australia [2014] FCA 1231	Application dismissed <a href="#">[2015] HCASL 50</a>
13.	SZTAT	Minister for Immigration and Border Protection & Anor (S308/2014)	Federal Court of Australia [2014] FCA 1264	Application dismissed with costs <a href="#">[2015] HCASL 51</a>
14.	Elston	Commonwealth of Australia (B38/2014)	Federal Court of Australia [2014] FCA 704	Application dismissed with costs <a href="#">[2015] HCASL 52</a>

## 6: Special Leave Refused

15.	Leiah Pty Ltd	The State of Tasmania (H3/2014)	Full Court of the Supreme Court of Tasmania [2014] TASFC 4	Application dismissed with costs <a href="#">[2015] HCASL 53</a>
16.	Hudson Investment Group Limited	Atanaskovic & Ors (S231/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 255	Application dismissed with costs <a href="#">[2015] HCASL 54</a>
17.	Leach	The Nominal Defendant (QBE Insurance Australia) Limited (S233/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 257	Application dismissed with costs <a href="#">[2015] HCASL 55</a>
18.	Dar Rin	Duffy & Anor (S246/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 270	Application dismissed with costs <a href="#">[2015] HCASL 56</a>
19.	Ohl	Acting Director of Public Prosecutions (H4/2014)	Supreme Court of Tasmania (Court of Criminal Appeal) [2014] TASCCA 4	Application dismissed <a href="#">[2015] HCASL 57</a>

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**17 April 2015: Canberra**

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	CBL	The Queen (B24/2014)	Supreme Court of Queensland (Court of Appeal) [2014] QCA 93	Application dismissed <a href="#">[2015] HCATrans 89</a>
2.	Tinworth	Insurance Australia Limited (B35/2014)	Supreme Court of Queensland (Court of Appeal) [2014] QCA 183	Application dismissed with costs <a href="#">[2015] HCATrans 87</a>
3.	Burke	State of Queensland & Ors (B40/2014)	Supreme Court of Queensland (Court of Appeal) [2014] QCA 200	Application dismissed <a href="#">[2015] HCATrans 85</a>
4.	Lawrence	Attorney-General for the State of Queensland (B41/2014)	Supreme Court of Queensland (Court of Appeal) [2014] QCA 220	Application dismissed <a href="#">[2015] HCATrans 83</a>
5.	Melisavon Pty Ltd	Springfield Land Development Corporation (B42/2014)	Supreme Court of Queensland (Court of Appeal) [2014] QCA 233	Application dismissed with costs <a href="#">[2015] HCATrans 86</a>
6.	Nguyen & Anor	Commissioner of the Australian Federal Police (B51/2014)	Supreme Court of Queensland (Court of Appeal) [2014] QCA 293	Application dismissed with costs <a href="#">[2015] HCATrans 88</a>
7.	Jacka	Australian Capital Territory & Anor (C7/2014)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2014] ACTCA 49	Application dismissed <a href="#">[2015] HCATrans 81</a>

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**17 April 2015: Sydney**

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Ivory	The Queen (S265/2014)	Supreme Court of New South Wales (Court of Criminal Appeal) [2014] NSWCCA 181	Application dismissed <a href="#">[2015] HCATrans 94</a>
2.	Wolford	AGD (S283/2014)	Full Court of the Family Court of Australia	Application dismissed <a href="#">[2015] HCATrans 95</a>
3.	Dansar Pty Ltd	Byron Shire Council (S290/2014)	Full Court of the Federal Court of Australia [2014] FCAFC 149	Application dismissed with costs <a href="#">[2015] HCATrans 93</a>
4.	Kong & Ors	Minister for Health & Ageing & Ors (S312/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 424	Application dismissed with costs <a href="#">[2015] HCATrans 91</a>

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