



HIGH COURT BULLETIN

Produced by the Legal Research Officer,
High Court of Australia Library
[2019] HCAB 9 (22 November 2019)

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

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| <i>Fennell v The Queen</i> | Criminal Law |
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3: Cases Reserved

| Case | Title |
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| | |
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| <i>BHP Billiton Limited (now named BHP Group Limited) v Commissioner of Taxation</i> | Taxation |
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| Case | Title |
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2: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the November 2019 sittings.

Constitutional Law

Vella & Ors v Commissioner of Police (NSW) & Anor

S30/2019: [\[2019\] HCA 38](#)

Judgment delivered: 6 November 2019

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

Catchwords:

Constitutional law (Cth) – Judicial power – *Constitution* – Ch III – State Parliament – Institutional integrity of State courts – Where s 5(1) of *Crimes (Serious Crime Prevention Orders) Act 2016* (NSW) provides that State court may make order if satisfied that specified person has been convicted of serious criminal offence or involved in serious crime related activity and satisfied that reasonable grounds to believe that making of order would protect public by preventing, restricting or disrupting involvement by that person in serious crime related activities – Where s 6(1) of Act provides that order against that specified person may contain such prohibitions, restrictions, requirements and other provisions as court considers appropriate for purpose of protecting public by preventing, restricting or disrupting involvement by that person in serious crime related activities – Where proceedings under Act are civil proceedings – Whether making order exercise of judicial power – Whether powers conferred by Act incompatible with State court's role as repository of federal judicial power – Whether powers conferred by Act substantially impair institutional integrity of State court.

Words and phrases – "appropriate", "balancing", "facilitates or is likely to facilitate", "future risk", "institutional integrity", "judicial power", "*Kable v Director of Public Prosecutions (NSW)*", "open-textured", "preventing, restricting or disrupting", "preventive orders", "real or significant risk", "reasonable grounds to believe", "risk assessment", "serious crime related activities", "serious criminal offence".

Constitution – Ch III.

Crimes (Serious Crime Prevention Orders) Act 2016 (NSW) – ss 3, 5, 6.

Special Case referred to Full Court on 3 June 2019

Held: Questions answered.

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Criminal Law

Fennell v The Queen

B20/2019: [\[2019\] HCA 37](#)

Judgment delivered: 6 November 2019

Coram: Kiefel CJ, Keane, Nettle, Gordon, Edelman JJ

Catchwords:

Criminal law – Murder – Appeal – Appeal against conviction – Where appellant convicted by jury – Where Crown case based entirely on circumstantial evidence – Where circumstantial evidence related to opportunity and motive and miscellany of other inculpatory matters – Where evidence of opportunity and motive extremely weak – Where evidence connecting accused to alleged murder weapon based on glaringly improbable identification evidence – Whether verdict unreasonable or cannot be supported having regard to evidence.

Words and phrases – "basis for an inference", "circumstantial case", "contamination of recollection", "credibility and reliability", "glaringly improbable", "identification evidence", "identification of object", "motive", "murder weapon", "opportunity", "unreasonable verdict".

Criminal Code (Qld) – s 668E(1).

Appealed from QSC (CA): [\[2017\] QCA 154](#)

Held: Appeal allowed (order on 11 September 2019).

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Criminal Practice

HT v The Queen & Anor

S123/2019: [\[2019\] HCA 40](#)

Judgment delivered: 13 November 2019

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

Catchwords:

Criminal practice – Appeal – Crown appeal against sentence – Procedural fairness – Where appellant provided assistance to law enforcement authorities – Where court required by statute to take assistance into account in sentencing – Where evidence of assistance kept confidential from appellant and appellant's legal representatives in sentencing proceedings – Where evidence contained highly sensitive criminal intelligence – Where appellant sought access to confidential evidence on appeal – Where Court of Criminal Appeal denied appellant access to confidential evidence on basis of public interest immunity – Where Court of Criminal Appeal exercised discretion under s 5D(1) of *Criminal Appeal Act 1912* (NSW) to re-sentence – Whether appellant denied procedural fairness – Whether Court of Criminal Appeal had power to deny appellant access to the confidential evidence – Whether Court of Criminal Appeal should have declined to exercise discretion to re-sentence.

Words and phrases – "access to evidence", "assistance to law enforcement authorities", "confidential information", "Crown appeal against sentence", "discount in sentence", "evidence of assistance", "mitigating factor", "non-disclosure", "open justice", "procedural fairness", "public interest immunity", "residual discretion", "tailored order".

Court Suppression and Non-publication Orders Act 2010 (NSW), ss 7, 8.

Crimes (Sentencing Procedure) Act 1999 (NSW) – ss 21A, 23.

Criminal Appeal Act 1912 (NSW) – ss 5D(1), 12.

Evidence Act 1995 (NSW) – s 130.

Appealed from NSWSC (CCA): *R v HT* (unreported, New South Wales Court of Criminal Appeal, 17 July 2017)

Held: Appeal allowed.

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Lordianto & Anor v Commissioner of the Australian Federal Police; Kalimuthu & Anor v Commissioner of the Australian Federal Police
S110/2019; P17/2019: [\[2019\] HCA 39](#)

Judgment delivered: 13 November 2019

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

Catchwords:

Criminal practice – Forfeiture of tainted property – Where appellants remitted money to Australia using money remitters or money changers in foreign country – Where large number of cash deposits, usually each less than \$10,000, made into appellants' bank accounts in Australia in process known as "cuckoo smurfing" – Where deposits proceeds or instrument of structuring offence under s 142 of *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) – Where Commissioner of Australian Federal Police successfully applied for restraining orders over appellants' bank accounts under s 19 of *Proceeds of Crime Act 2002* (Cth) ("POCA") – Where appellants applied under ss 29 and 31 of POCA to have property excluded from orders – Whether property "ceased" to be proceeds or instrument of offence under s 330(4) of POCA – Whether property acquired by third party for sufficient consideration without third party knowing, and in circumstances that would not arouse reasonable suspicion, that property proceeds or instrument under s 330(4)(a) of POCA.

Words and phrases – "acquisition of property", "cuckoo smurfing", "for sufficient consideration", "in circumstances that would not have aroused a reasonable suspicion", "instrument of a serious offence", "money changers", "money laundering", "money remitters", "proceeds of an indictable offence", "proceeds of crime", "reporting threshold", "structuring offence", "third party", "volunteer".

Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth), ss 5, 142.

Proceeds of Crime Act 2002 (Cth) – ss 19, 29, 31, 317, 329, 330, 338.

S110/2019 appealed from NSWSC (CA): [\[2018\] NSWCA 199](#); (2018) 337 FLR 17; (2018) 274 A Crim R 149

P17/2019 appealed from WASC (CA): [\[2018\] WASCA 192](#); (2018) 340 FLR 1

Held: Appeals 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

BMW Australia Ltd v Brewster & Anor

S152/2019: [\[2019\] HCATrans 153](#); [\[2019\] HCATrans 158](#)

Date heard: 13, 14 August 2019

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

Catchwords:

Constitutional law – Separation of powers – Acquisition of property on just terms – “Common fund order” in class action proceeding – Where Brewster is representative plaintiff in class action against BMW Australia Ltd – Whether Court of Appeal erred in concluding s 183 of *Civil Procedure Act 2005* (NSW) (“CPA”) empowered Supreme Court of New South Wales to make common fund order – Whether Court of Appeal erred in failing to conclude that insofar as s 183 of CPA empowered making of common fund order it was not picked up by s 79 of *Judiciary Act 1903* (Cth) because that would infringe Chapter III and/or s 51(xxxi) of *Constitution*.

Appealed from NSWSC (CA): [\[2019\] NSWCA 35](#); (2019) 343 FLR 176; (2019) 366 ALR 171

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Smethurst & Anor v Commissioner of Police & Anor

S196/2019: [\[2019\] HCATrans 216](#); [\[2019\] HCATrans 223](#)

Date heard: 12, 13 November 2019

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

Catchwords:

Constitutional law – Warrant – Validity of warrant – Form of relief – Implied freedom of political communication – Where members of Australian Federal Police executed search warrant issued under s 3E of *Crimes Act 1914* (Cth) at residential premises of journalist – Where warrant specified contravention of s 79(3) of Act by journalist – Where order made under s 3LA of Act directed to

journalist requiring information and assistance to be provided – Where plaintiffs seek to have warrant and s 3LA order quashed – Whether s 79(3), as it stood on 29 April 2018, invalid on ground that it infringed implied freedom of political communication in *Constitution* (Cth) – Whether warrant invalid because misstates substance of s 79(3), does not state offence with sufficient precision, and/or s 79(3) was invalid – Whether s 3LA order invalid.

Special Case referred to Full Court on 6 September 2019

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Westpac Banking Corporation & Anor v Lenthall & Ors

S154/2019: [\[2019\] HCATrans 153](#); [\[2019\] HCATrans 158](#)

Date heard: 13, 14 August 2019

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

Catchwords:

Constitutional law – Separation of powers – Principle of legality – Acquisition on just terms – Where representative proceeding under Part IVA of *Federal Court of Australia Act 1976* (Cth) (“the Act”) – Where primary judge determined making of common fund order appropriate to do justice in proceedings – Whether Full Court erred in holding that properly construed s 33ZF of the Act empowers court to make common fund order – Whether Full Court erred in holding that s 33ZF permitted creation of right in litigation funder to share of any settlement or judgment in favour of a group member – Whether Full Court erred in holding principle of legality does not apply because common fund order “supports and fructifies” rather than diminishes rights of group members – Whether Full Court erred in holding s 33ZF conferred judicial power or power incidental to exercise of judicial power on court – Whether Full Court erred in holding neither s 33ZF nor common fund order resulted in acquisition of property for purposes of s 51(xxxi) of *Constitution* (Cth) – Whether Full Court erred in holding, if s 33ZF is law with respect to acquisition of property, it is not invalid because appellants failed to demonstrate group members would not receive pecuniary equivalent of property acquired.

Appealed from FCA (FC): [\[2019\] FCAFC 34](#); (2019) 265 FCR 21; (2019) 366 ALR 136

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Corporations Law

Australian Securities and Investments Commission v King & Anor
B29/2019: [\[2019\] HCATrans 195](#)

Date heard: 9 October 2019

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

Catchwords:

Corporations law – Officers of corporation – Where Australian Securities and Investments Commission (“ASIC”) commenced civil penalty case against MFS Investment Management Ltd (“MFSIM”) and various directors, officers and employees of MFS Group of companies – Where proceedings against MFSIM resolved by consent but trial proceeded against individuals – Whether Court of Appeal erred by concluding that it was necessary for ASIC to prove that first respondent acted in an “office” of MFSIM in order for him to be an “officer” of MFSIM for purposes of ss 601FD and 9(b)(ii) of *Corporations Act 2001* (Cth).

Appealed from QSC (CA): [\[2018\] QCA 352](#); (2018) 134 ACSR 105

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Criminal Law

De Silva v The Queen
B24/2019: [\[2019\] HCATrans 176](#)

Date heard: 4 September 2019

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

Catchwords:

Criminal law – Misdirection or non-direction – Where appellant acquitted of one count of rape and convicted of another count of rape – Where appellant neither gave nor called evidence at trial – Where appellant’s account of events contained in recording of police interview was tendered by prosecution – Where, in summing up, trial judge addressed evidence of appellant’s interview with police – Whether trial judge’s failure to tell jury that, even if they did not positively believe appellant’s account, they could not find against him if his answers gave rise to reasonable doubt, amounted to a miscarriage of justice – Whether Court of Appeal erred in finding

that a *Liberato* direction not required if defendant not give evidence.

Appealed from QSC (CA): [\[2018\] QCA 274](#)

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The Queen v Guode

M75/2019: [\[2019\] HCATrans 224](#)

Date heard: 14 November 2019

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

Catchwords:

Criminal law – Sentencing — Manifest excess – Infanticide, murder and attempted murder — Where mother caused death of three children and attempted to kill fourth — Where mother pled guilty — Where mother had had traumatic life and suffered a major depressive disorder as consequence of giving birth to youngest child — Whether mother suffering from post-traumatic stress disorder – Whether Court of Appeal erred in taking into account as relevant consideration in making its determination as to manifest excess fact that prosecution had accepted plea to infanticide in respect of Charge 1 on the indictment.

Appealed from VSC (CA): [\[2018\] VSCA 205](#)

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Evidence

Grech v The Queen; Kadir v The Queen

S163/2019; S160/2019: [\[2019\] HCATrans 199](#)

Date heard: 15 October 2019

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

Catchwords:

Evidence – Discretionary exclusion – Where evidence obtained improperly or illegally – *Evidence Act 1995* (NSW) – Whether New South Wales Court of Criminal Appeal (“CCA”) erred in finding appealable error in trial judge’s decision on basis that trial judge did not assess each item of evidence individually – Whether CCA erred in finding error in trial judge’s finding that s 138 factors governing

exclusion of recordings “directly applicable” to other evidence obtained as consequence of illegally obtained recordings – Whether CCA erred in its application of s 138 by failing to apply correctly onus of proof and taking into account considerations contrary to evidence and failing to take into account material consideration.

Appealed from NSWSC (CCA): [\[2017\] NSWCCA 288](#)

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Migration Law

CNY17 v Minister for Immigration and Border Protection & Anor
M72/2019: [\[2019\] HCATrans 202](#)

Date heard: 16 October 2019

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

Catchwords:

Migration law – Fast track review process – Apprehended bias – Where Secretary of Department of Immigration and Border Protection provided documents to Immigration Assessment Authority (“IAA”) – Where documents contained information about criminal conviction, charges, and appellant’s conduct while in immigration detention – Whether in considering apprehended bias Full Court erred in finding that materials not prejudicial – Whether Full Court erred in failing to find decision of IAA vitiated by apprehended bias – Whether Full Court erred in failing to find IAA obliged to afford opportunity to appellant to comment on materials before it in circumstances where their existence not known to appellant – Whether Full Court erred in finding it was open to delegate to lawfully form view documents relevant to task of IAA – Whether Full Court erred in failing to find review conducted by IAA led to a decision made in excess of jurisdiction.

Appealed from FCA (FC): [\[2018\] FCAFC 159](#); (2018) 264 FCR 87

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Taxation

BHP Billiton Limited (now named BHP Group Limited) v Commissioner of Taxation
B28/2019: [\[2019\] HCATrans 211](#)

Date heard: 5 November 2019

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

Catchwords:

Taxation – Where appellant is part of dual-listed company arrangement with non-resident company – Where third company (BMAG) indirectly owned by appellant and non-resident company – Where BMAG derived income from sale of commodities purchased from non-resident company’s Australian subsidiaries – Whether non-resident company’s Australian subsidiaries were “associates” of BMAG within meaning of s 318 of *Income Tax Assessment Act 1936* (Cth) – Whether BMAG, appellant and/or non-resident company were “sufficiently influenced” by appellant and/or non-resident company within meaning of s 318(6) – Whether Full Court erred in concluding that a person or entity acts “in accordance with” directions, instructions or wishes of another entity for purposes of s 318(6)(b) if person or entity merely acts “in harmonious correspondence, agreement or conformity with” those directions, instructions or wishes – Whether Full Court should have found that, in order to act “in accordance with” directions, instructions or wishes of another entity for purposes of s 318(6)(b) a person or entity must treat that other entity’s directions, instructions or wishes as themselves being a sufficient reason so to act – Whether Full Court erred in finding that at a minimum appellant and BHP Billiton Plc each acted “in accordance with” the “directions, instructions or wishes” of the other for purposes of s 318(6)(b) – Whether Full Court should have concluded that such actions were not done “in accordance with” the “directions, instructions or wishes” of the other for purposes of s 318(6)(b).

Appealed from FCA (FC): [\[2019\] FCAFC 4](#); (2019) 263 FCR 334; (2019) 366 ALR 206; (2019) 134 ACSR 550

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Commissioner of State Revenue v Rojoda Pty Ltd
P26/2019: [\[2019\] HCATrans 213](#); [\[2019\] HCATrans 214](#)

Date heard: 6, 7 November 2019

Coram: Bell, Gageler, Keane, Nettle, Edelman JJ

Catchwords:

Taxation – Stamp duty assessment - Partnership – Winding up of partnership – Nature of partners’ proprietary rights in partnership assets – Whether Court of Appeal erred in holding that after dissolution of partnership but prior to completion of its winding up

where surplus of assets each former partner has specific and fixed beneficial or equitable interest in assets comprising a surplus – Whether cl 3 of two deeds each constituted declarations of trust for the purposes of s 11(1)(c) of *Duties Act 2008* (WA).

Appealed from WASC (CA): [\[2018\] WASCA 224](#); (2018) 368 ALR 734

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Comptroller-General of Customs v Pharm-A-Care Laboratories Pty Ltd

S161/2019: [\[2019\] HCATrans 203](#)

Date heard: 17 October 2019

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

Catchwords:

Taxation – Customs and Excise – Tariff classification – Classifying vitamin preparations and garcinia preparations – Medicaments – Whether Full Court erred in holding Administrative Appeals Tribunal (“Tribunal”) had not erred in construing Note 1(a) to Chapter 30 of Sch 3 of *Customs Tariff Act 1995* (Cth) (“Act”) – Whether Full Court erred in holding that Tribunal had not erred in construing heading 2106 of Act.

Appealed from FCA (FC): [\[2018\] FCAFC 237](#); (2018) 262 FCR 449

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Tort Law

State of New South Wales v Robinson

S119/2019: [\[2019\] HCATrans 175](#)

Date heard: 3 September 2019

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

Catchwords:

Tort law – False imprisonment and wrongful arrest – Where respondent suspected of breach of apprehended violence order by police officer – Where respondent was arrested under s 99 of *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) – Where no decision to charge made at time of arrest – Whether Court of Appeal erred in concluding that for an arrest to be lawful

under s 99 there is implied requirement that arresting officer intend to charge arrested person with offence.

Appealed from NSWSC (CA): [\[2018\] NSWCA 231](#)

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Trusts

Franz Boensch as trustee of the Boensch Trust v Pascoe

S216/2019: [\[2019\] HCATrans 198](#)

Date heard: 11 October 2019

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

Catchwords:

Trusts – Bankruptcy – Where respondent trustee in bankruptcy found to hold caveatable interest in real property held by bankrupt on trust by operation of s 58(1) of *Bankruptcy Act 1966* (Cth) – Whether Full Court erred in concluding any caveatable interest vested in respondent – Where claim under s 74P of *Real Property Act 1900* (NSW) for compensation in relation to lodging and maintenance of caveat over piece of real property against trustee in bankruptcy – Whether permissible for trustee in bankruptcy to claim in his caveat under s 74P(1) of *Real Property Act* inconsistent interests in Rydalmere property – Whether existence of caveatable interest rendered it unnecessary for Court to embark upon enquiry of whether trustee in bankruptcy lodged caveat, or failed or refused to remove it, “without reasonable cause”.

Appealed from FCA (FC): [\[2018\] FCAFC 234](#); (2018) 264 FCR 25; (2018) 365 ALR 24; (2018) 133 ACSR 268; (2018) 16 ABC(NS) 365

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4: ORIGINAL JURISDICTION

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

Migration Law

Love v Commonwealth of Australia; Thoms v Commonwealth of Australia

[B43/2018](#); [B64/2018](#): [\[2019\] HCATrans 90](#)

Date part heard: 8 May 2019

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

Catchwords:

Migration law – Where Love born in Papua New Guinea to Australian father – Where Love identifies as descendant of Kamilaroi tribe – Where Love has five Australian children – Where Love was sentenced for an offence of assault occasioning bodily harm against s 339 of *Criminal Code 1899* (Qld) and sentenced to imprisonment of 12 months – Where Love’s Class BF Transitional (permanent) Visa cancelled under s 501(3A) of *Migration Act 1958* (Cth) – Where Love detained under s 189 of *Migration Act 1958* (Cth) on suspicion of being an “unlawful non-citizen” – Where cancellation of Love’s visa revoked under s 501CA(4) of *Migration Act* and Love released from immigration detention – Where Thoms born in New Zealand to Australian mother – Where Thoms identifies as member of Gunggari People – Where Thoms has one Australian child – Where Thoms sentenced to imprisonment of 18 months for assault occasioning bodily harm contrary to ss 339(1) and 47(9) of *Criminal Code* – Where Thoms’ Subclass 444 Special Category (temporary) Visa cancelled under s 501(3A) of *Migration Act* – Where Thoms was and remains detained purportedly under s 189 of *Migration Act* on suspicion of being an “unlawful non-citizen” – Whether each of Love and/or Thoms an “alien” within meaning of s 51(xix) of *Constitution* (Cth).

Special Cases referred to Full Court on 5 March 2019

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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

KMC v Director of Public Prosecutions (SA)

[A20/2019](#): *Removed into the High Court under s 40 of the Judiciary Act 1903 (Cth) on 30 August 2019*

Catchwords:

Constitutional law – Ch III of *Constitution* (Cth) – Invalidity – Where appellant convicted of one count of persistent sexual exploitation of child contrary to s 50 of *Criminal Law Consolidation Act 1935* (SA) (“CLCA”) – Where CLCA repealed on 24 October 2017 and *Statutes Amendment (Attorney-General’s Portfolio) (No 2) Act 2017* (SA) (“Amendment Act”) commenced – Whether s 9(1) of Amendment Act invalid because it impermissibly directs manner or outcome of exercise of appellate jurisdiction, impermissibly impairs institutional integrity of appellate court and/or sentencing court, and/or amounts to or involves an exercise of part of judicial power by Parliament of South Australia in manner contrary to scheme of Ch III of *Constitution*.

Removed from Full Court of the Supreme Court of South Australia (Court of Criminal Appeal)

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6: SPECIAL LEAVE GRANTED

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

Administrative Law

CXXXVIII v Commonwealth of Australia & Ors

A30/2019: [\[2019\] HCATrans 206](#)

Date heard: 18 October 2019 – *Special leave granted.*

Catchwords:

Administrative law – Criminal investigation – Where summonses and notices to produce issued pursuant to determinations made by Board of Australian Criminal Intelligence Commission under *Australian Crime Commission Act 2002* (Cth) (“Act”) – Whether first and second determinations validly made within scope of power in s 7C of Act – Whether second summons to appear before Examiner and second notice to produce validly issued pursuant to determinations – Whether second notice to attend and produce valid and not in excess of power in s 21A of Act – Whether Board of Commission can validly make determination which creates as a “special investigation” an “investigation” yet to be identified or undertaken.

Appealed from FCA (FC): [\[2019\] FCAFC 54](#); (2019) 366 ALR 436; (2019) 164 ALD 33

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Hocking v Director-General of the National Archives of Australia

S262/2019: [\[2019\] HCATrans 160](#)

Date heard: 16 August 2019 – *Special leave granted.*

Catchwords:

Administrative law – Where access sought under *Archives Act 1983* (Cth) to records, being correspondence (original or copies) received and sent by former Governor-General or Official Secretary to and from Queen – Whether correspondence is “Commonwealth record” within meaning of Act, or is excluded as personal or private – Whether records created or received in corresponding with Monarch in performance of office of Governor-General are property of Commonwealth or personal property of Governor-General.

Appealed from FCA (FC): [\[2019\] FCAFC 12](#); (2019) 264 FCR 1; (2019) 366 ALR 247

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Northern Land Council & Anor v Quall & Anor
D9/2019: [\[2019\] HCATrans 232](#)

Date heard: 15 November 2019 – *Special leave granted.*

Catchwords:

Administrative law – Delegation of statutory functions and powers – Administrative necessity – Statutory interpretation – Where proceedings at first instance challenged certification of application to register Kenbi Indigenous Land Use Agreement on ground that it had been done without “delegated authority” – Where Full Court held Pt 11 of *Native Title Act 1993* (Cth) evinced intention that certification functions could not be delegated – Whether Northern Land Council had power to delegate its certification functions under s 203BE(1)(b) of *Native Title Act 1993* (Cth) to its Chief Executive Officer.

Appealed from FCA (FC): [\[2019\] FCAFC 77](#); (2019) 367 ALR 216; (2019) 164 ALD 63

Appealed from FCA (FC): [\[2019\] FCAFC 101](#)

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Consumer Protection

Moore v Scenic Tours Pty Ltd
S285/2019: [\[2019\] HCATrans 189](#)

Date heard: 13 September 2019 – *Special leave granted on limited grounds.*

Catchwords:

Consumer protection – Disappointment and distress damages – Where representative proceedings brought on behalf of passengers who paid for and travelled on European river cruises supplied by respondent – Where number of cruises seriously disrupted by high water levels on rivers – Where seeking compensation for loss of value and damages for disappointment and distress – Whether s 275 of Australian Consumer Law (“ACL”) operates to apply s 16 of *Civil Liability Act 2002* (NSW) as Commonwealth law to direct court

exercising federal jurisdiction in how to fix damages under s 267(4) of ACL for breach of statutory guarantees in ss 60 and 61 of ACL – Whether s 16 limited to cases where tort claim governed by NSW law or death or injury suffered in NSW – Whether claim under s 267(4) for damages for disappointment and distress constituted claim governed by s 16 – Whether Court of Appeal erred in finding that claim for damages under s 267(4) of ACL unrelated to bodily injury or psychiatric illness constituted claim for “personal injury” and “personal injury damages” and claim for “pain and suffering” or “loss of amenities of life” so as to be governed by s 16 of *Civil Liability Act*.

Appealed from NSWSC (CA): [\[2018\] NSWCA 238](#); (2018) 339 FLR 244; (2018) 361 ALR 456

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Criminal Law

Coughlan v The Queen

B60/2019: [\[2019\] HCATrans 205](#)

Date heard: 18 October 2019 – *Special leave granted on limited grounds.*

Catchwords:

Criminal law – Unsafe and unsatisfactory verdict – Arson and attempted fraud – Circumstantial evidence – Where house exploded as applicant was walking from back yard – Whether Court of Appeal misapplied *M v The Queen* (1994) 181 CLR 487 by merely identifying pathway to jury’s guilty verdict rather than weighing matters militating against guilty verdict to determine whether jury should have had reasonable doubt as to applicant’s guilt.

Appealed from QSC (CA): [\[2019\] QCA 65](#)

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Pell v The Queen

M112/2019: [\[2019\] HCATrans 217](#)

Date determined: 13 November 2019 – *Application referred to Full Court for argument as on an appeal.*

Catchwords:

Criminal law – Unreasonable verdicts – Where applicant convicted of sexual offences against two child complainants – Where Crown

case relied on evidence of one complainant and the other complainant deceased – Whether Court of Appeal majority erred by finding that their belief in complainant required applicant to establish that offending was impossible to raise and leave reasonable doubt – Whether majority erred in concluding that verdicts not unreasonable as, in light of findings made by them, there remained reasonable doubt as to existence of any opportunity for offending to have occurred.

Appealed from VSC (CA): [\[2019\] VSCA 186](#)

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Pickett v The State of Western Australia; Mead v The State of Western Australia; Mead v The State of Western Australia; Anthony v The State of Western Australia; TSM (A Child) v The State of Western Australia

[P45/2019; P46/2019; P47/2019; P48/2019; P49/2019](#): [\[2019\] HCATrans 181](#)

Date determined: 11 September 2019 – *Special leave granted.*

Catchwords:

Criminal law – Derivative criminal liability – Where victim killed by stab wound to chest inflicted in course of attack by group of eight males – Where eight males ranged in age from 11 years to 29 years – Where State unable to prove beyond reasonable doubt which of them inflicted fatal stab wound – Where State did not prove that 11 year old had capacity under s 29 of *Criminal Code* (WA) – Whether appellants could be guilty by operation of ss 7(b), 7(c), or 8 of *Criminal Code* (WA) of offence founded upon act of 11 year old alleged co-offender when act of that child did not constitute offence because prosecution had not proved that child was criminally responsible for act.

Appealed from WASC (CCA): [\[2019\] WASCA 79](#)

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Singh v The Queen; Nguyen v The Queen

[D16/2019; D15/2019](#): [\[2019\] HCATrans 159](#)

Date heard: 16 August 2019 – *Special leave granted.*

Catchwords:

Criminal law – Prosecutor’s duties regarding “mixed statement” records of interview containing both inculpatory and exculpatory material – Where Crown chose not to adduce applicant’s record of interview of 8 June 2017 – Whether Crown’s decision not to adduce record of interview deprived applicant of reasonable chance of acquittal – Whether prosecution ordinarily required by duty of fairness to tender “mixed statement” record of interview at trial of accused when it is admissible – Whether prosecution permitted to decline to tender “mixed statement” records of interview for purely tactical reasons.

D16/2019 appealed from NTSC (CCA): [\[2019\] NTCCA 8](#)

D15/2019 appealed from NTSC (FC): [\[2019\] NTSC 37](#)

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Strbak v The Queen

B55/2019: [\[2019\] HCATrans 180](#)

Date determined: 11 September 2019 – *Special leave granted.*

Catchwords:

Criminal law – Sentencing – Right to silence – Where appellant pleaded guilty to manslaughter of four year old son but contested factual basis of conviction – Where sentencing judge applied *R v Miller* [2004] 1 Qd R 548 which held that sentencing judge may more readily accept or draw inferences from prosecution evidence which is uncontradicted – Where contended before Queensland Court of Appeal that *Miller* is wrong and should be revisited because it impermissibly infringes on right to silence – Whether refusing to reconsider *Miller* was constructive failure by Queensland Court of Appeal to exercise its jurisdiction.

Appealed from QSC (CA): [\[2019\] QCA 42](#)

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Swan v The Queen

S291/2019: [\[2019\] HCATrans 193](#)

Date heard: 13 September 2019 – *Special leave granted.*

Catchwords:

Criminal law – Causation – Where accused and another tried and convicted for murder – Where victim died almost eight months after assault – Where assault caused victim serious injuries amounting to grievous bodily harm – Where victim died due to complications from

fractured hip not sustained during assault – Whether Crown case theory on cause of death not supported by evidence and should not have been left to jury – Whether miscarriage of justice resulted from crown prosecutor’s closing address about causation.

Appealed from NSWSC (CCA): [\[2018\] NSWCCA 260](#)

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Evidence

Commonwealth of Australia v Helicopter Resources Pty Ltd & Ors
S217/2019: [\[2019\] HCATrans 197](#)

Date part heard: 10 October 2019

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

Catchwords:

Evidence – Admissions made with authority – Where coronial inquest commenced and summary criminal proceedings brought against company and Commonwealth of Australia – Where subpoena issued to company’s employee to give evidence at hearing in inquest, with proposed topics relating to matters required to be proved in criminal prosecution – Whether s 87(1)(b) of *Evidence Act 2011* (ACT) has effect that, by reason of any answers given by employee, company is itself being compelled to provide that information – Whether s 87(1)(b) dictates that employee answers will be admitted into evidence in prosecution if adduced by prosecutor or co-accused – Whether s 87(1)(b) has effect that exercise of compulsory power with respect to employee will compromise protections afforded to accused company by accusatorial process – Whether accusatorial principle require accused company to be protected by precluding employees from being subject to such compulsory power or preventing prosecution or co-accused from learning how accused company may defend charge – Whether compulsory attendance of employee for questioning is inconsistent with accusatorial process.

Appealed from FCA (FC): [\[2019\] FCAFC 25](#); (2019) 264 FCR 174; (2019) 365 ALR 233

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Family Law

Hsiao v Fazarri

M137/2019: [\[2019\] HCATrans 196](#)

Date determined: 10 October 2019 – *Special leave granted.*

Catchwords:

Family law – Property proceedings – Order under s 79 of *Family Law Act 1975* (Cth) – Where agreement between parties intended to apply to property settlement proceedings but does not fall within Pt VIIIA or Div 4 of Pt VIIIAB of Act – Whether circumstances in which additional 40% legal interest in property obtained and Deed of Gift were distractions in disposition of Full Court appeal – Whether admission of further evidence would have produced different result in Full Court and would not be against interests of justice – Whether trial judge failed to take Deed of Gift into account in making property settlement order – Whether finding of contributions failed to take into account legal interest in property prior to marriage.

Appealed from FamCA (FC): [\[2019\] FamCAFC 37](#)

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Intellectual Property

Calidad Pty Ltd & Ors v Seiko Epson Corporation & Anor

S239/2019: [\[2019\] HCATrans 225](#)

Date heard: 15 November 2019 – *Special leave granted.*

Catchwords:

Intellectual property – Patents – Implied licence – Where Calidad imports and sells printer cartridges modified by third party – Where Seiko Epson claims its two patents infringed by Calidad's conduct – Whether Full Court erred in finding infringement – Whether modifications made to printer cartridges resulted in making of "new" printer cartridges embodying invention as claimed in claim 1 of each patent – Whether Full Court erred in failing to have regard to substance of invention claimed in claim 1 of each patent or to direct attention to whether modifications constituted material changes to claimed features of invention – Whether conduct was within scope of any implied licence arising upon unrestricted first sale by patentee of printer cartridges or otherwise involved permissible repair or modification of those printer cartridges – Whether patentee's rights under s 13 of *Patents Act 1990* (Cth) exhausted in respect of printer cartridges at time of first sale.

Appealed from FCA (FC): [\[2019\] FCAFC 115](#); (2019) 370 ALR 563; (2019) 142 IPR 381

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Migration Law

ABT17 v Minister for Immigration and Border Protection & Anor
M140/2019: [\[2019\] HCATrans 207](#)

Date heard: 18 October 2019 – *Special leave granted on limited grounds.*

Catchwords:

Migration law – Protection visa – Where delegate accepted as plausible that applicant had been sexually tortured – Where such claim not accepted by Immigration Assessment Authority (“IAA”) – Whether IAA decision tainted by jurisdictional error due to failure to exercise discretion under s 473DC of *Migration Act 1958* (Cth) to invite applicant to give new information in form of interview – Whether failure of IAA to exercise its s 473DC discretion was material to decision and constituted jurisdictional error.

Appealed from FCA: [\[2019\] FCA 613](#)

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Native Title

State of Western Australia v Manado & Ors; State of Western Australia v Augustine & Ors; Commonwealth of Australia v Augustine & Ors; Commonwealth of Australia v Manado & Ors
P34/2019; P35/2019; P36/2019; P37/2019: [\[2019\] HCATrans 132](#)

Date heard: 21 June 2019 – *Special leave granted on condition.*

Catchwords:

Native title – Native title interest – Determinations of native title – Whether Full Federal Court erred in holding that existing public access to and enjoyment of waterways, beds and banks or foreshores of waterways, coastal waters or beaches located upon Crown land below high water mark, confirmed by s 14 of *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) in accordance with s 212(2) of *Native Title Act 1993* (Cth), was not a right or privilege in connection with land or waters within definition of "interest" in s 253 of *Native Title Act* – Whether, to be included in

determination of native title, is it necessary for public access and enjoyment to be an "interest", as defined in s 253 of *Native Title Act* – Whether existing public access to and enjoyment of waterways, beds and banks or foreshores of waterways, coastal waters or beaches located on unallocated Crown land should be stated in a determination of native title made in accordance with s 225 of *Native Title Act*.

Appealed from FCA (FC): [\[2018\] FCAFC 238](#); (2018) 265 FCR 68; (2018) 364 ALR 337

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Statutory Interpretation

Binsaris v Northern Territory of Australia; Webster v Northern Territory of Australia; O’Shea v Northern Territory of Australia; Austral v Northern Territory of Australia

[D11/2019; D12/2019; D13/2019; D14/2019](#): [\[2019\] HCATrans 163](#)

Date heard: 16 August 2019 – *Special leave granted*.

Catchwords:

Statutory interpretation – Power of superintendent of youth detention centre – Use of CS gas (form of tear gas) in youth detention centre – Where prison officers called upon to assist at youth detention centre – Where CS gas was deployed – Whether exemption in s 12(2) of *Weapons Control Act* (NT) applied to deployment of CS gas by prison officer at youth detention centre – Whether superintendent’s general power under s 152(1) of *Youth Justice Act* (NT) limited by s 153(3).

Appealed from NTSC (CA): [\[2019\] NTCA 1](#); (2019) 343 FLR 41

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Private International Law

Mackellar Mining Equipment Pty Ltd and Dramatic Investments Pty Ltd t/as Partnership 818 & Anor v Thornton & Ors

[B56/2019](#): [\[2019\] HCATrans 188](#)

Date heard: 13 September 2019 – *Special leave granted on limited grounds*.

Catchwords:

Private international law – Restraint of foreign proceedings – Where plane crash in Queensland killed two pilots and 13 passengers – Where respondents, relatives of deceased, commenced proceedings against appellants in Missouri in May 2008 – Where appellants brought application in March 2017 in Queensland Supreme Court for permanent anti-suit injunction in respect of Missouri proceedings – Whether complete relief was available in Queensland proceedings and nothing additional could be gained in Missouri proceedings – Whether continuation of Missouri proceeding, after all foreign parties removed, was vexatious or oppressive or otherwise unconscionable within *CSR Ltd v Cigna Insurance Australia Ltd* (1997) 189 CLR 345.

Appealed from QSC (CA): [\[2019\] QCA 77](#); (2019) 367 ALR 171

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Tort Law

Lewis v The Australian Capital Territory

C14/2019: [\[2019\] HCATrans 200](#)

Date determined: 16 October 2019 – *Special leave granted.*

Catchwords:

Torts – False imprisonment – Compensatory damages – Vindictory damages – Principle of inevitability – Where offender sentenced to 12 months’ imprisonment to be served by periodic detention – Where Sentence Administration Board (“Board”) cancelled periodic detention without giving offender opportunity to decide whether to attend before Board – Where offender arrested and imprisoned for 82 days – Where Board’s decision a nullity and imprisonment held to be unlawful – Where offender awarded nominal damages of \$1 – Whether offender would have been lawfully imprisoned if had not been unlawfully imprisoned and therefore not entitled to substantial compensatory damages – Whether entitled to vindictory damages.

Appealed from ACTSC (CA): [\[2019\] ACTCA 16](#)

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State of Queensland v The Estate of the Late Jennifer Leanne Masson

B31/2019: [\[2019\] HCATrans 233](#)

Date heard: 15 November 2019 – *Special leave granted.*

Catchwords:

Torts – Negligence – Where appellant suffered severe asthma attack – Where ambulance officer treated appellant initially with salbutamol and later with adrenaline – Where appellant suffered hypoxic brain damage and died without regaining consciousness 13 years later – Where ambulance officer’s manual instructed officer to “consider adrenaline”, not salbutamol – Whether Court of Appeal erred in overturning trial judge’s conclusions that ambulance officer had considered administration of adrenaline in accordance with manual, and that responsible body of opinion in medical profession supported administration of salbutamol – Whether Court of Appeal erred in holding that ambulance officer immediately rejected use of adrenaline because he misunderstood guideline, and that following responsible body of medical opinion would nonetheless involve failure to take reasonable care because manual referred to adrenaline.

Appealed from QSC (CA): [\[2019\] QCA 80](#)

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Trade Practices

Berry & Anor v CCL Secure Pty Ltd

S315/2019: [\[2019\] HCATrans 204](#)

Date heard: 18 October 2019 – *Special leave granted.*

Catchwords:

Trade practices – Misleading and deceptive conduct and fraud – Measuring damages – Where misleading, deceptive and fraudulent conduct used to obtain signature terminating Agency Agreement – Whether damages to be assessed pursuant to s 82 of *Trade Practices Act 1974* (Cth) – Whether person guilty of misleading and deceptive conduct and fraud cannot be heard to say that lawful means were available for inflicting same harm – Whether, for purposes of reducing damages, respondent failed to discharge onus of proving possibility or probability of lawful means being used to end Agency Agreement.

Appealed from FCA (FC): [\[2019\] FCAFC 81](#)

Appealed from FCA (FC): [\[2019\] FCAFC 92](#)

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7: CASES NOT PROCEEDING OR VACATED

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8: SPECIAL LEAVE REFUSED

Publication of Reasons: 6 November 2019

| <i>No.</i> | <i>Applicant</i> | <i>Respondent</i> | <i>Court appealed from</i> | <i>Result</i> |
|------------|------------------|---|--|--|
| 1. | BGQ18 | Minister for Home Affairs & Anor (B50/2019) | Federal Court of Australia [2019] FCA 1001 | Application Dismissed [2019] HCASL 349 |
| 2. | AOL16 | Minister for Immigration, Citizenship and Multicultural Affairs & Anor (M79/2019) | Federal Court of Australia [2019] FCA 756 | Application Dismissed [2019] HCASL 350 |
| 3. | BTN16 | Minister for Immigration and Border Protection & Anor (M108/2019) | Federal Court of Australia [2019] FCA 1354 | Application Dismissed [2019] HCASL 351 |
| 4. | Ali | Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (S250/2019) | Federal Court of Australia [2019] FCA 1166 | Application Dismissed [2019] HCASL 352 |
| 5. | Aktar & Anor | Minister for Immigration and Border Protection & Anor (S271/2019) | Federal Court of Australia [2019] FCA 1288 | Application Dismissed [2019] HCASL 353 |
| 6. | GGV18 | Minister for Home Affairs & Anor (S275/2019) | Federal Court of Australia [2019] FCA 1221 | Application Dismissed [2019] HCASL 354 |
| 7. | Lamont | Deputy Commissioner of Taxation (S296/2019) | Supreme Court of New South Wales (Court of Appeal) [2019] NSWCA 221 | Application Dismissed [2019] HCASL 355 |
| 8. | Potts | The Queen (C10/2019) | Supreme Court of the Australian Capital Territory (Court of Appeal) [2019] ACTCA 17 | Application Dismissed [2019] HCASL 356 |
| 9. | CSM17 | Minister for Immigration and Border Protection (S199/2019) | Federal Court of Australia <i>No MNC</i> | Application Dismissed with costs [2019] HCASL 357 |
| 10. | AXP16 | Minister for Immigration and Border Protection & Anor (S200/2019) | Federal Court of Australia <i>No MNC</i> | Application Dismissed with costs [2019] HCASL 358 |
| 11. | DWO16 | Minister for Immigration and Border Protection (S201/2019) | Federal Court of Australia <i>No MNC</i> | Application Dismissed with costs [2019] HCASL 359 |

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Publication of Reasons: 13 November 2019

| <i>No.</i> | <i>Applicant</i> | <i>Respondent</i> | <i>Court appealed from</i> | <i>Result</i> |
|------------|------------------|---|---|--|
| 1. | Sadyal & Ors | Minister for Home Affairs & Anor (C12/2019) | Federal Court of Australia [2019] FCA 1462 | Application Dismissed [2019] HCASL 360 |
| 2. | Kinkade | The Queen (D17/2019) | Supreme Court of the Northern Territory (Court of Criminal Appeal) [2018] NTCCA 4 | Application Dismissed [2019] HCASL 361 |
| 3. | CPX16 | Minister for Immigration and Border Protection & Anor (M105/2019) | Federal Court of Australia [2019] FCA 1164 | Application Dismissed [2019] HCASL 362 |
| 4. | Young | Roads and Maritime Services (S235/2019) | Application for removal | Application Dismissed with costs [2019] HCASL 363 |
| 5. | Young | Roads and Maritime Services & Anor (S293/2019) | Application for removal | Application Dismissed with costs [2019] HCASL 364 |
| 6. | CYM16 | Minister for Immigration and Border Protection & Anor (S258/2019) | Federal Court of Australia [2019] FCA 1230 | Application Dismissed [2019] HCASL 365 |
| 7. | DDF16 | Minister for Immigration and Border Protection & Anor (S266/2019) | Federal Court of Australia [2019] FCA 1256 | Application Dismissed [2019] HCASL 366 |
| 8. | BZV18 & Ors | Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (S274/2019) | Federal Court of Australia [2019] FCA 1406 | Application Dismissed [2019] HCASL 367 |
| 9. | BEV15 | Minister for Immigration and Border Protection & Anor (M101/2019) | Federal Court of Australia [2016] FCA 507 | Application Dismissed [2019] HCASL 368 |
| 10. | BEC17 | Minister for Immigration and Border Protection & Anor (S41/2019) | Federal Court of Australia [2018] FCA 1884 | Application Dismissed [2019] HCASL 369 |
| 11. | DJM17 | Minister for Home Affairs & Anor (S252/2019) | Federal Court of Australia [2019] FCA 1153 | Application Dismissed [2019] HCASL 370 |
| 12. | BA & Anor | Secretary of the Department of Family and Community Services & Ors (S269/2019) | Supreme Court of New South Wales (Court of Appeal) [2019] NSWCA 206 | Application Dismissed [2019] HCASL 371 |
| 13. | FMW17 & Ors | Minister for Home Affairs & Anor (S273/2019) | Federal Court of Australia [2019] FCA 1316 | Application Dismissed [2019] HCASL 372 |
| 14. | COE16 | Minister for Immigration and Border Protection & Anor (S278/2019) | Federal Court of Australia [2019] FCA 1370 | Application Dismissed [2019] HCASL 373 |

| <i>No.</i> | <i>Applicant</i> | <i>Respondent</i> | <i>Court appealed from</i> | <i>Result</i> |
|------------|---------------------------|--|--|--|
| 15. | CTG18 & Anor | Minister for Home Affairs & Anor (S283/2019) | Federal Court of Australia [2019] FCA 1470 | Application Dismissed [2019] HCASL 374 |
| 16. | Minister for Home Affairs | Ogawa (B45/2019) | Full Court of the Federal Court of Australia [2019] FCAFC 98 | Application Dismissed with costs [2019] HCASL 375 |
| 17. | McKinnin | The Queen (M90/2019) | Supreme Court of Victoria (Court of Appeal) [2019] VSCA 114 | Application Dismissed [2019] HCASL 376 |
| 18. | CHB16 | Minister for Immigration and Border Protection & Anor (M104/2019) | Federal Court of Australia [2019] FCA 1089 | Application Dismissed with costs [2019] HCASL 377 |
| 19. | ETV17 & Ors | Minister for Immigration, Citizenship and Multicultural Affairs & Anor (S218/2019) | Federal Court of Australia [2019] FCA 882 | Application Dismissed with costs [2019] HCASL 378 |
| 20. | DFS16 | Minister for Home Affairs & Anor (S231/2019) | Federal Court of Australia [2019] FCA 944 | Application Dismissed with costs [2019] HCASL 379 |
| 21. | CAH17 & Anor | Minister for Immigration and Border Protection & Anor (S251/2019) | Federal Court of Australia [2019] FCA 1129 | Application Dismissed with costs [2019] HCASL 380 |

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15 November 2019: Canberra

| <i>No.</i> | <i>Applicant</i> | <i>Respondent</i> | <i>Court appealed from</i> | <i>Results</i> |
|------------|------------------|----------------------|--|--|
| 1. | The Queen | Baxter (B36/2019) | Supreme Court of Queensland (Court of Appeal) [2019] QCA 87 | Application refused [2019] HCATrans 234 |

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15 November 2019: Sydney

| <i>No.</i> | <i>Applicant</i> | <i>Respondent</i> | <i>Court appealed from</i> | <i>Results</i> |
|------------|---------------------------|--|--|--|
| 1. | Kaur & Anor | Minister for Immigration and Border Protection & Anor (S69/2019) | Federal Court of Australia [2019] FCA 212 | Application refused with costs [2019] HCATrans 229 |
| 2. | Hong | Minister for Immigration and Border Protection & Anor (S134/2019) | Full Court of the Federal Court of Australia [2019] FCAFC 55 | Application refused with costs [2019] HCATrans 230 |
| 3. | Bandao | The Queen (S151/2019) | Supreme Court of New South Wales (Court of Criminal Appeal) [2018] NSWCCA 181 | Application refused [2019] HCATrans 228 |
| 4. | Parvin | Minister for Immigration and Border Protection & Anor (S190/2019) | Full Court of the Federal Court of Australia [2019] FCAFC 86 | Application refused with costs [2019] HCATrans 231 |
| 5. | Gujarat NRE India Pty Ltd | Wollongong Coal Limited ACN 111 244 896 (S222/2019) | Supreme Court of New South Wales (Court of Appeal) [2019] NSWCA 135 | Application refused with costs [2019] HCATrans 226 |
| 6. | El Ali | Royal & Ors (S224/2019) | Full Court of the Federal Court of Australia [2019] FCAFC 82 | Applications refused with costs [2019] HCATrans 227 |
| | Zreika | Royal & Ors (S225/2019) | Full Court of the Federal Court of Australia [2019] FCAFC 82 | |

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