



HIGH COURT BULLETIN

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

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1: SUMMARY OF NEW ENTRIES

2: Cases Handed Down

Case	Title
<i>Coughlan v The Queen</i>	Criminal Law
<i>Pell v The Queen</i>	Criminal Law
<i>Commonwealth of Australia v Helicopter Resources Pty Ltd</i>	Criminal Practice
<i>Moore v Scenic Tours Pty Ltd</i>	Damages
<i>Smethurst v Commissioner of Police</i>	Police

3: Cases Reserved

Case	Title
<i>Cumberland v The Queen</i>	Criminal Law

[4: Original Jurisdiction](#)[5: Section 40 Removal](#)[6: Special Leave Granted](#)

Case	Title
<u>Wigmans v AMP Limited & Ors</u>	Civil Procedure
<u>Westpac Securities Administration Ltd & Anor v Australian Securities and Investments Commission</u>	Corporations
<u>GBF v The Queen</u>	Criminal Law
<u>Clayton v Bant</u>	Family Law
<u>AUS17 v Minister for Immigration and Border Protection & Anor</u>	Migration Law
<u>DVO16 v Minister for Immigration and Border Protection & Anor</u>	Migration Law

[7: Cases Not Proceeding or Vacated](#)[8: Special Leave Refused](#)

2: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the April 2020 sittings.

Criminal Law

Coughlan v The Queen

B60/2019: [\[2020\] HCA 15](#)

Publication of reasons: 24 April 2020

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

Catchwords:

Criminal law – Arson and attempted fraud – Appeal against conviction – Where prosecution case based on circumstantial evidence – Where appellant's house destroyed by explosion and resulting fire – Where appellant present at and seen running away from scene – Where appellant gave version of events to police consistent with innocence – Where appellant made insurance claim on house and contents in connection with fire – Where no apparent financial motive to commit offences – Where expert evidence that explosion caused by build-up of gaseous vapours – Where petrol residues found on appellant's clothes – Where no evidence of petrol residues in house – Whether open to jury to be satisfied of appellant's guilt beyond reasonable doubt – Whether prosecution excluded reasonable possibility that explosion caused by build-up of gas ignited by electrical fire.

Words and phrases – "absence of apparent financial motive", "arson", "attempted fraud", "beyond reasonable doubt", "circumstantial case", "consciousness of guilt", "inference consistent with innocence", "lack of motive", "reasonable possibility", "scientific evidence".

Criminal Code (Qld) – ss 408C(1)(c), 459, 461(1)(a).

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

Held: Appeal allowed (orders made allowing the appeal on 12 February 2020).

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Pell v The Queen

M112/2019: [\[2020\] HCA 12](#)

Judgment delivered: 7 April 2020

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

Catchwords:

Criminal law – Sexual offences against children – Appeal against conviction by jury on ground that verdict unreasonable or cannot be supported having regard to whole of evidence – Where prosecution case wholly dependent upon acceptance of truthfulness and reliability of complainant's account – Where jury assessed complainant's evidence as credible and reliable – Where witnesses gave unchallenged evidence of specific recollections, practices and routines inconsistent with acceptance of complainant's account ("unchallenged inconsistent evidence") – Where Court of Appeal required to take into account forensic disadvantage experienced by applicant – Whether prosecution negated reasonable possibility that applicant did not commit offences – Whether Court of Appeal required applicant to establish offending impossible to raise reasonable doubt – Whether unchallenged inconsistent evidence required jury, acting rationally, to have entertained doubt as to applicant's guilt.

Criminal practice – Appeal – Video evidence – Where evidence of complainant and other witnesses recorded – Where Court of Appeal viewed recorded witness testimony – Whether proper discharge of appellate court's function necessitated review of recorded witness testimony.

Words and phrases – "beyond reasonable doubt", "compounding improbabilities", "credibility and reliability", "function of the appellate court", "function of the jury", "impossibility", "improbability of events", "invariable practice", "jury's advantage in seeing and hearing the witnesses", "negated the reasonable possibility", "opportunity witnesses", "realistic opportunity for the offending to have occurred", "religious ritual", "routines and practices", "significant forensic disadvantage", "significant possibility that an innocent person has been convicted", "solid obstacles to conviction", "standard and burden of proof", "unchallenged evidence", "uncorroborated", "video-recordings of the witnesses at trial".

Crimes Act 1958 (Vic) – ss 45(1), 47(1).

Criminal Procedure Act 2009 (Vic) – ss 276(1)(a), 378, 379(b)(i).

Judiciary Act 1903 (Cth) – s 37.

Jury Directions Act 2015 (Vic) – ss 4A, 39.

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

Held: Special leave granted; appeal allowed; acquittal entered.

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Criminal Practice

Commonwealth of Australia v Helicopter Resources Pty Ltd & Ors
S217/2019: [\[2020\] HCA 16](#)

Judgment delivered: 24 April 2020

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

Catchwords:

Criminal practice – Accusatorial system of criminal justice – Companion rule – Where subpoena issued for employee to attend to give evidence at coronial inquest into manner and cause of another employee's death – Where employer and Commonwealth of Australia prosecuted for alleged failures to comply with duty to ensure worker health and safety – Where s 87(1)(b) of *Evidence Act 2011* (ACT) relevantly entailed that representation by employee of party relating to matter within scope of employment taken as admission by that party – Whether invocation of investigative power to compel employee to give evidence about matter with respect to which employer stands charged amounts to compelling employer to give evidence contrary to rule that accused not required to assist Crown in proving its case.

High Court – Appellate jurisdiction – Practice – Extension of time – Where first respondent sought leave to file notice of contention out of time alleging that compulsion of its employee to give evidence at coronial inquest would constitute contempt of court in parallel criminal proceedings by creating real risk of interference with justice according to law – Where criminal proceedings concluded and first respondent acquitted of offences – Whether extension of time should be granted to resolve question of whether compulsory examination of potential witness other than accused can amount to contempt of court.

Words and phrases – "accusatorial system of criminal justice", "admissions made with authority", "attribution", "companion rule", "compulsory investigative powers", "compulsory pre-trial examination", "contempt of court", "coronial inquest", "extension of time", "hypothetical circumstances", "practical reality", "real risk of improper interference with criminal proceedings".

Coroners Act 1997 (ACT) – ss 36, 43, 58(6).

Evidence Act 2011 (ACT) – s 87(1)(b).

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

Held: Appeal allowed.

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Damages

Moore v Scenic Tours Pty Ltd

S285/2019: [\[2020\] HCA 17](#)

Judgment delivered: 24 April 2020

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

Catchwords:

Damages – Consumer guarantees – Personal injury – Where appellant booked holiday cruise tour supplied by respondent – Where holiday cruise tour severely disrupted by adverse weather conditions – Where respondent breached consumer guarantees in ss 60 and 61 of Australian Consumer Law ("ACL") – Where appellant claimed damages for disappointment and distress – Where s 275 of ACL provided that where failure to comply with consumer guarantee that applies to supply of services and State law proper law of contract, that law applies to limit or preclude liability for failure and recovery of liability as it would for breach of contract – Where New South Wales proper law of contract – Where s 16(1) of *Civil Liability Act 2002* (NSW) ("CLA") precluded damages for non-economic loss in relation to personal injury cases unless non-economic loss at least 15% of most extreme case – Where threshold in s 16(1) not reached – Whether s 275 of ACL picked up and applied s 16 of CLA as surrogate federal law – Whether s 16 of CLA applied to preclude damages for disappointment and distress not consequential upon physical or psychiatric injury.

Words and phrases – "breach of contract", "damages", "disappointment and distress", "enjoyment", "head of loss", "holiday cases", "impairment of a person's physical or mental condition", "loss of amenities of life", "non-economic loss", "pain and suffering", "peace of mind", "personal injury", "quantification of damages", "recovery", "recovery of that liability", "recreation", "surrogate federal law".

Competition and Consumer Act 2010 (Cth) – Sch 2, ss 60, 61, 267, 275.

Civil Liability Act 2002 (NSW) – ss 3, 11, 11A, 16.

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

Held: Appeal allowed.

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Police

Smethurst & Anor v Commissioner of Police & Anor
S196/2019: [\[2020\] HCA 14](#)

Judgment delivered: 15 April 2020

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

Catchwords:

Police – Search warrants – Validity of warrant – Where police searched premises in reliance on warrant – Where police retained material copied from first plaintiff's mobile phone in reliance on warrant – Where warrant relied upon reasonable grounds for suspecting commission of Commonwealth offence – Where warrant purported to set out offence against s 79(3) of *Crimes Act 1914* (Cth) – Whether warrant misstated substance of s 79(3) of *Crimes Act* – Whether warrant failed to state offence to which it related with sufficient precision.

Injunctions – Mandatory injunction – Principles applicable – Where plaintiffs sought mandatory injunction requiring destruction or delivery up of material obtained under invalid warrant – Where plaintiffs sought injunction restraining police from making information available to prosecuting authorities – Whether statutory basis for injunction – Whether plaintiffs identified legal right to support injunction in auxiliary jurisdiction – Whether consequences of trespass provide basis for injunction – Whether s 75(v) of *Constitution* provides basis for injunction – Whether damages inadequate – Whether injunctive relief should be refused on discretionary grounds.

Words and phrases – "adequacy of damages", "auxiliary jurisdiction", "basis for injunction", "certiorari", "computer or data storage device", "constitutional injunction", "constitutional remedies", "constitutional writs", "description of the offence", "discretionary considerations", "entry, search and seizure", "equity", "evidential material", "injunction", "injunctive relief", "juridical basis", "legal right or interest", "mandatory injunction", "misstatement", "mobile phone", "nature of the offence", "official

secrets", "privacy", "relief", "remedy", "right to privacy", "search warrants", "statement of offence", "substance of the offence", "sufficient interest", "sufficient particularity", "sufficient precision", "trespass".

Constitution – s 75(v).

Australian Federal Police Act 1979 (Cth) – s 8.

Crimes Act 1914 (Cth) – Pts IAA, VII; ss 3C, 3E, 3F, 3H, 3LA, 3ZQU, 79(3).

Judiciary Act 1903 (Cth) – s 32.

Special Case referred to Full Court on 6 September 2019.

Held: Questions answered.

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3: CASES RESERVED

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

Administrative Law

Hocking v Director-General of the National Archives of Australia

S262/2019: [\[2020\] HCATrans 3](#); [\[2020\] HCATrans 4](#)

Date heard: 4, 5 February 2020

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

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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Criminal Law

Cumberland v The Queen

D23/2019: [\[2020\] HCATrans 49](#)

Date heard: 15 April 2020.

Coram: Bell, Gageler, Nettle JJ

Catchwords:

Criminal law – Crown appeal – Re-sentencing – Where appellant pled guilty to six counts relating to selling cannabis and MDMA – Whether Court of Criminal Appeal (“CCA”) erred when re-sentencing in failing to take into account delay and its effect on appellant, submissions of prosecution at sentencing, appellant’s age

and prospects of rehabilitation, and relevant developments since sentencing – Whether CCA erred in separately determining that appeal should be allowed when principles to be applied and circumstances applicable at time of any re-sentencing unknown – Whether CCA failed to accord appellant procedural fairness.

Appealed from NT (CCA): [\[2019\] NTCCA 13](#); (2019) 344 FLR 227
Appealed from NT (CCA): [\[2019\] NTCCA 14](#)

Orders made on 15 April 2020 allowing the appeal. Written reasons of the Court to be published at a future date.

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Nguyen v The Queen; Singh v The Queen
D15/2019; D16/2019: [\[2020\] HCATrans 29](#)

Date heard: 17 March 2020

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

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.

D15/2019 appealed from NTSC (FC): [\[2019\] NTSC 37](#); (2019) 345 FLR 40

D16/2019 appealed from NTSC (CCA): [\[2019\] NTCCA 8](#); (2019) 344 FLR 137

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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: [\[2020\] HCATrans 28](#)

Date heard: 13 March 2020

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

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](#); (2019) 54 WAR 418

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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](#): [\[2020\] HCATrans 35](#)

Date heard: 18 March 2020

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

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) 170 NTR 11; (2019) 343 FLR 41

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4: ORIGINAL JURISDICTION

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

Constitutional Law

Private R v Cowen & Anor

S272/2019: [\[2020\] HCATrans 23](#)

Date referred: 3 March 2020 – *application for constitutional or other writ.*

Catchwords:

Constitutional law – Where member of defence forces charged with assault occasioning bodily harm pursuant to s 24 of *Crimes Act 1900* (ACT) as purportedly applied to defence members and defence civilians by s 61(3) of *Defence Force Discipline Act 1982* (Cth) – Where person charged objected to jurisdiction of Defence Force Magistrate to hear and determine charge on basis that prosecution could not reasonably be regarded as substantially serving purpose of maintaining or enforcing service discipline – Where objection to jurisdiction dismissed – Whether writ of prohibition should issue to prohibit Defence Force Magistrate from hearing and determining charge – Whether certain provisions of *Defence Force Discipline Act 1982* (Cth), insofar as they purport to confer jurisdiction on “service tribunal” to hear and determine charge against “defence member” for offence against *Crimes Act 1900* (ACT) solely on basis of person’s status as “defence member”, are beyond Commonwealth legislative power in circumstances where alleged offence committed in Australia but not on “service land” or “service property”, where persons involved were off duty, in time of peace and civil order, and where civil courts said to be reasonably available.

Application for writ of prohibition referred to Full Court on 3 March 2020.

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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.

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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) 266 FCR 339; (2019) 366 ALR 436; (2019) 164 ALD 33

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Northern Land Council & Anor v Quall & Anor

D21/2019: [\[2019\] 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) 268 FCR 228; (2019) 367 ALR 216; (2019) 164 ALD 63

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

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Civil Procedure

Wigmans v AMP Limited & Ors

S64/2020: [\[2020\] HCATrans 52](#)

Date heard: 17 April 2020 – *Special leave granted.*

Catchwords:

Civil procedure – Representative proceedings – Where multiple representative proceedings on foot against respondent in single forum – Where each plaintiff sought stay of proceedings commenced by other plaintiffs – Where primary judge applied multifactorial analysis to determine which proceeding should progress – Where NSW Court of Appeal dismissed appeal from primary judge’s decision – Whether Pt 10 of *Civil Procedure Act 2005* (NSW) authorised approach taken by primary judge – Whether permissible for court faced with multiple open class actions conducted on basis of different funding models and with different incentives, disincentives and risk profiles to assume, without findings in evidence, that different proceedings equally likely to achieve possible settlement or judgment outcome within range of possible outcomes.

Appealed from NSWSC (CA): [\[2019\] NSWCA 243](#); (2019) 373 ALR 323

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Corporations

Westpac Securities Administration Ltd & Anor v Australian Securities and Investments Commission

S326/2019: [\[2020\] HCATrans 57](#)

Date heard: 24 April 2020 – *Special leave granted.*

Catchwords:

Corporations – Financial product advice – *Corporations Act 2001* (Cth) s 766B(3)(b) – Distinction between personal advice and general advice – Where bank customers received letters or emails highlighting benefits of consolidating superannuation and offering to conduct free search to identify superannuation accounts that customers may have held with other providers – Where representative of bank then called customers, providing them with any relevant search results and offering to roll over superannuation accounts into their account with bank – Where Full Court of Federal Court held that bank provided financial product advice (within meaning of s 766B(1) of *Corporations Act*) to customers – Whether that financial product advice was personal advice – Whether objective limb of definition of “personal advice” in s 766B(3)(b) depends on whether reasonable person might expect that advice provider had *in fact* considered recipient’s personal circumstances or that advice provider *should* have considered those circumstances – Whether consideration of recipient’s personal circumstances (within meaning of s 766B(3)(b)) requires advice provider to engage with and evaluate those circumstances in formulating advice – Extent to which a recipient’s “objectives, financial situation and needs” must be considered by advice provider for advice to be personal advice.

Appealed from FCA (FC): [\[2019\] FCAFC 187](#); (2019) 373 ALR 455; (2019) 141 ACSR 1

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Criminal Law

GBF v The Queen

B18/2020: [\[2020\] HCATrans 47](#)

Date determined: 15 April 2020 – *Special leave granted.*

Catchwords:

Criminal law – Right to silence – Presumption of innocence – Where trial judge said to jury that lack of sworn evidence from appellant contradicting complainant’s evidence might “make it easier” to assess complainant’s credibility – Where appellant subsequently convicted – Where Queensland Court of Appeal held that trial judge’s statement was error but did not occasion miscarriage of justice where no redirection sought and where other contrary directions given – Whether statement to jury that undermines right to silence and presumption of innocence can be held to not amount to miscarriage of justice.

Appealed from QCA: [\[2019\] QCA 4](#)

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The Queen v Abdirahman-Khalif

A5/2020: [\[2020\] HCATrans 38](#)

Date heard: 20 March 2020 – *Special leave granted.*

Catchwords:

Criminal law – Terrorism – Where respondent charged with offence of membership of terrorist organisation contrary to s 102.3(1) of *Criminal Code* (Cth) – Where respondent convicted at trial – Where respondent successfully appealed against conviction – Whether prosecution must adduce evidence of terrorist organisation's admission practices in order to prove that accused person has taken steps to become member of that organisation – Whether majority of CCA erred in construing "organisation" for purposes of Div 102 of *Criminal Code* (Cth).

Appealed from SASC (CCA): [\[2019\] SASCF 133](#)

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Employment Law

Mondelez Australia Pty Ltd v AMWU & Ors; Minister for Jobs and Industrial Relations v AMWU & Ors

M160/2019; M165/2019: [\[2019\] HCATrans 250](#)

Date determined: 13 December 2019 – *Special leave granted.*

Catchwords:

Employment law – Where Mondelez operates food manufacturing plants – Where certain employees work in 12-hour shifts – Where entitlement to paid personal/carer's leave under Enterprise Agreement – Where Mondelez deducts 12 hours from accrued paid personal/carer's leave balance when such leave taken for single 12-hour shift – Whether majority of Full Court erred by holding that "day" in s 96(1) of *Fair Work Act 2009* (Cth) means "the portion of a 24 hour period that would otherwise be allotted to work" rather than an average working day calculated as employee's average daily ordinary hours of work based on standard five-day working week – Whether Full Court erred in construing s 96(1) as entitling national system employees (other than casuals) to paid personal/carer's leave equivalent to 10 'working' days (of whatever

duration would have been worked on day in question) per year of service.

Appealed from FCA (FC): [\[2019\] FCAFC 138](#); (2019) 289 IR 29

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Evidence

Roy v O'Neill

D2/2020: [\[2020\] HCATrans 43](#)

Date heard: 20 March 2020 – *Special leave granted.*

Catchwords:

Evidence – Admissibility of evidence obtained in course of “pro-active” policing of compliance with Domestic Violence Order – Whether common law recognises implied licence permitting all people, including police, to attend upon unobstructed private property as far as front door and to knock on front door for purpose of lawful communication, such licence only being excluded where attendee otherwise has unlawful purpose – How to ascertain existence and scope of any implied licence at common law in favour of person who attends on unobstructed private property only so far as front door – Nature of relationship between common law doctrines of implied licence and police powers to prevent breach of peace.

Appealed from NTSC (CA): [\[2019\] NTCA 8](#); (2019) 345 FLR 29

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Family Law

Clayton v Bant

B21/2020: [\[2020\] HCATrans 50](#)

Date heard: 17 April 2020 – *Special leave granted.*

Catchwords:

Family law – Foreign divorce – *Res judicata* – Where respondent obtained fault-based divorce from Dubai court with orders that appellant repay him marriage dowry – Where appellant sought orders in Australia concerning property interests and spousal maintenance under *Family Law Act 1975* (Cth) – Whether foreign

divorce precluded prosecution of those proceedings on basis that Dubai court finally determined relevant causes of action between the parties.

Appealed from FamCA (FC): [\[2019\] FamCAFC 200](#); (2019) 60 Fam LR 152

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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

S329/2019: [\[2019\] 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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Applicant S270/2019 v Minister for Immigration and Border Protection
S47/2020: [\[2020\] HCATrans 44](#)

Date heard: 20 March 2020 – *Special leave granted on limited grounds.*

Catchwords:

Migration law – Non-refoulement – Where appellant’s visa was cancelled on character grounds pursuant to s 501(3A) of *Migration Act 1958* (Cth) – Where appellant sought to have cancellation

decision revoked pursuant to s 501CA(4) of Act – Whether Minister for Immigration and Border Protection, when determining whether to exercise power under s 501CA(4) to revoke decision to cancel visa made pursuant to s 501(3A), must consider whether person seeking revocation is owed non-refoulement obligations by Australia.

Appealed from FCA (FC).

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AUS17 v Minister for Immigration and Border Protection & Anor
S322/2019: [\[2020\] HCATrans 55](#)

Date heard: 24 April 2020 – *Special leave granted on limited ground.*

Catchwords:

Migration law – *Migration Act 1958* (Cth) s 473DD – Circumstances in which Immigration Assessment Authority (“IAA”) can consider new information when reviewing a fast track reviewable decision – Where appellant applied for Safe Haven Enterprise Visa and application refused by Minister’s delegate – Where appellant’s representative supplied IAA with further materials including letter of support by third party written after date of delegate’s decision – Where IAA considered that new information in letter could have been provided to the delegate, and so concluded, on basis of s 473DD(b)(i), that exceptional circumstances did not exist such that it could consider new information in letter – Whether failure to satisfy condition in s 473DD(b)(i) sufficient basis for IAA to conclude exceptional circumstances did not exist within meaning of s 473DD(a) where s 473DD(b)(ii) satisfied.

Appealed from FCA: [\[2019\] FCA 1686](#)

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DVO16 v Minister for Immigration and Border Protection & Anor
S66/2020: [\[2020\] HCATrans 51](#)

Date heard: 17 April 2020 – *Special leave granted.*

Catchwords:

Migration law – Fast track review process – *Migration Act 1958* (Cth) Pt 7AA – Where appellant applied for temporary protection visa – Where Minister’s delegate conducted interview with appellant – Where translation errors and omissions occurred in interview – Where Minister’s delegate refused application – Where, relying on

material obtained in interview, Immigration Assessment Authority ("IAA") reviewed delegate's decision – Where IAA affirmed delegate's decision – Whether, in circumstances where material translation error occurred in delegate's interview and IAA relies on material obtained in interview in reviewing delegate's decision under Pt 7AA, IAA needs to have actual or constructive knowledge of translation error for jurisdictional error to arise.

Appealed from FCA (FC): [\[2019\] FCAFC 157](#)

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Minister for Home Affairs & Anor v FRX17 as Litigation Representative for FRM17; Minister for Home Affairs & Anor v Marie Theresa Arthur as Litigation Representative for BXD18; Minister for Home Affairs & Anor v DJA18 as Litigation Representative for DIZ18; Minister for Home Affairs & Ors v DLZ18 & Anor

M29/2020; M28/2020; M30/2020; M27/2020: [\[2020\] HCATrans 39](#)

Date heard: 20 March 2020 – *Special leave granted.*

Catchwords:

Migration law – Regional processing – Jurisdiction of Federal Court of Australia – Where respondents commenced proceedings against Commonwealth – Where s 494AB of *Migration Act 1958* (Cth) barred certain proceedings relating to "transitory persons" from being instituted or continued in any court other than High Court – Whether proceedings were, for purposes of s 494AB(1)(ca), proceedings "relating to the performance or exercise of a function" under s 198AHA(2) in relation to a transitory person – Whether proceedings were, for purposes of s 494AB(1)(a), proceedings relating to exercise of powers under s 198B of Act – Whether proceedings were, for purposes of s 494AB(1)(d), proceedings relating to removal of a transitory person from Australia under the Act.

Appealed from FCA (FC): [\[2019\] FCAFC 148](#)

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Minister for Immigration and Border Protection v CED16 & Anor
S347/2019: [\[2019\] HCATrans 246](#)

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

Catchwords:

Migration law – Protection visa – Where first respondent’s application for Safe Haven Enterprise Visa (Class XE Subclass 790) refused and Minister for Immigration and Border Protection (“Minister”) purported to certify that disclosure of information in Identity Assessment Form could form basis for claim of Public Interest Immunity by Crown – Whether certificate issued by Minister purportedly pursuant to s 473GB(5) of *Migration Act 1958* (Cth) comprised ‘new information’ as defined in s 473DC(1) of Act – Whether Immigration Assessment Authority (“IAA”) was required to turn its mind, or show that it had turned its mind, to whether it was required to give particulars of information in certificate itself to first respondent pursuant to s 473DE(1) of Act.

Appealed from FCA: [\[2018\] FCA 1451](#); (2019) 265 FCR 115

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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.*

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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Real Property

Deguisa & Anor v Lynn & Ors

A4/2020: [\[2020\] HCATrans 37](#)

Date heard: 20 March 2020 – *Special leave granted.*

Catchwords:

Real property – Torrens title – Restrictive covenants – Where appellants registered proprietors of Lot 3 and have planning development approval to demolish house on Lot 3, subdivide lot, and build two single story dwellings – Where respondents executors of estate of Mrs Fielder who was party to original Memorandum of Encumbrance containing restrictive covenants subject of proceedings – Where third respondent owns two properties near Lot 3 – Where respondents contended that Lot 3 and 53 other lots were created from earlier subdivision and sold in accordance with building scheme such that restrictive covenants are enforceable to prevent appellants from developing Lot 3 as they wish to – Whether there exists “governing principle” to effect that what is “notified” to prospective purchaser by vendor’s certificate of title is everything that would have come to their knowledge if prudent conveyancer had made such searches as ought reasonably to have been made based on what appears on certificate of title – Whether approach taken by majority of Full Court of Supreme Court of South Australia in decision under appeal to ascertaining whether subsequent purchaser of Torrens system land is bound by restrictive covenant conflicts with approach taken in *Burke v Yurilla* (1991) 56 SASR 382 – Whether purchaser of land under Torrens system obliged to search other titles for evidence of land being subject of building scheme if note is made on encumbrance form that the “encumbrance forms portion of a common building scheme” but where land or lots involved in building scheme not indicated.

Appealed from SASC (FC): [\[2019\] SASCF 107](#)

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Torts

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

B63/2019: [\[2019\] 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: 16 April 2020 (Brisbane)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Thompson	Cavalier King Charles Spaniel Rescue (Qld) Inc (B10/2020)	Supreme Court of Queensland (Court of Appeal) [2020] QCA 2	Application dismissed [2020] HCASL 91
2.	Kourosh Jafari (on his own behalf and as Trustee of the Essence Unit Trust)	23 Developments Pty Ltd & Ors (M149/2019)	Supreme Court of Victoria (Court of Appeal) [2019] VSCA 201	Application dismissed [2020] HCASL 92
3.	Michos	Eastbrooke Medical Centre Pty Ltd (M3/20200)	Supreme Court of Victoria (Court of Appeal) [2019] VSCA 282	Application dismissed [2020] HCASL 93
4.	Armet	CFC Consolidated Pty Ltd (P58/2019)	Supreme Court of Western Australia (Court of Appeal) [2019] WASCA 165	Application dismissed [2020] HCASL 94
5.	DME16	Minister for Immigration and Border Protection & Anor (S3/2020)	Federal Court of Australia [2019] FCA 2135	Application dismissed [2020] HCASL 95
6.	DRM18	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (S15/2020)	Federal Court of Australia [2020] FCA 101	Application dismissed [2020] HCASL 96
7.	DSW16	Minister for Immigration and Border Protection & Anor (S17/2020)	Federal Court of Australia [2020] FCA 107	Application dismissed [2020] HCASL 97

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Publication of Reasons: 17 April 2020 (Melbourne)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Thompson	Body Corporate for Arila Lodge CTS 14327 & Ors (B8/2020)	Supreme Court of Queensland (Court of Appeal) [2019 QCA 267 [2019] QCA 296	Application dismissed [2020] HCASL 98
2.	Davies	The Queen (M148/2019)	Supreme Court of Victoria (Court of Appeal) [2019] VSCA 66	Application dismissed [2020] HCASL 99
3.	Harrison	Harrison (M7/2020)	Full Court of the Family Court of Australia	Application dismissed [2020] HCASL 100
4.	Cristovao	Tan and Tan Lawyers Pty Ltd (P63/2019)	Full Court of the Federal Court of Australia [2018] FCAFC 41	Application dismissed [2020] HCASL 101
5.	Waite	Alcoa of Australia Limited (P11/2020)	Supreme Court of Western Australia (Court of Appeal) [2020] WASCA 1	Application dismissed [2020] HCASL 102
6.	F,RPJ	The Queen (A37/2019)	Full Court of the Supreme Court of South Australia (Court of Criminal Appeal) [2019] SASCF 68	Application dismissed [2020] HCASL 103
7.	CRS18	Minister for Home Affairs & Anor (B1/2020)	Federal Court of Australia [2019] FCA 2019	Application dismissed with costs [2020] HCASL 104
8.	Crump	The Queen (S328/2019)	Supreme Court of New South Wales (Court of Criminal Appeal) [2016] NSWCCA 2	Application dismissed [2020] HCASL 105

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17 April 2020: Melbourne (and by video-link to Sydney)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Minister for Home Affairs & Anor	CLM18 (S318/2019)	Full Court of the Federal Court of Australia [2019] FCAFC 170 [2019] FCAFC 194	Application dismissed with costs [2020] HCATrans 53
2.	Gold Coast City Marina Pty Ltd & Ors	Wyzenbeek & Ors (S350/2019)	Full Court of the Federal Court of Australia [2019] FCAFC 205	Application dismissed with costs [2020] HCATrans 54

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Publication of Reasons: 22 April 2020 (Canberra)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	EER17 & Ors	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (B76/2019)	Federal Court of Australia [2019] FCA 1949	Application dismissed with costs [2020] HCASL 106
2.	Barbaro	Attorney-General of Queensland (B3/2020)	Supreme Court of Queensland (Court of Appeal) [2019] QCA 286	Application dismissed [2020] HCASL 107
3.	Queensland Phosphate Pty Ltd	Mark Anthony Korda and Craig Peter Shepard as Joint and Several Liquidators of Legend International Holdings Inc (In Liquidation) & Ors (M139/2019)	Supreme Court of Victoria (Court of Appeal) [2019] VSCA 215	Application dismissed with costs [2020] HCASL 108
4.	Jebb	Superior Lawns Australia Pty Ltd & Ors (P7/2020)	Supreme Court of Western Australia (Court of Appeal) [2019] WASCA 208	Application dismissed with costs [2020] HCASL 109
5.	Skepevski	The Queen (S344/2019)	Supreme Court of New South Wales (Court of Criminal Appeal) [2019] NSWCCA 278	Application dismissed [2020] HCASL 110

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Publication of Reasons: 24 April 2020 (Sydney)

No.	Applicant	Respondent	Court appealed from	Result
1.	CAQ17 & Ors	Minister for Immigration and Border Protection & Anor (M159/2019)	Full Court of the Federal Court of Australia [2019] FCAFC 203	Application dismissed [2020] HCASL 111
2.	Welter	Katz (M166/2019)	Family Court of Australia	Application dismissed [2020] HCASL 112
3.	Vainer & Anor	Ilana Melnikov and Anna Sirota as executors of the estate of Boris Rozenblit, deceased (M2/2020)	Supreme Court of Victoria (Court of Appeal) [2019] VSCA 283	Application dismissed [2020] HCASL 113
4.	Singh	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (M6/2020)	Federal Court of Australia [2019] FCA 2149	Application dismissed [2020] HCASL 114
5.	CCA17	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (S38/2020)	Federal Court of Australia [2019] FCA 179	Application dismissed [2020] HCASL 115
6.	Robinson	Robinson & Ors (S39/2020)	Supreme Court of New South Wales (Court of Appeal) [2020] NSWCA 4	Application dismissed [2020] HCASL 116
7.	King	Australian Securities and Investments Commission & Anor (B46/2019)	Supreme Court of Queensland (Court of Appeal) [2019] QCA 121	Application dismissed with costs [2020] HCASL 117
8.	Nelson Pate (A pseudonym)	The Queen (M152/2019)	Supreme Court of Victoria (Court of Appeal) [2019] VSCA 170	Application dismissed [2020] HCASL 118
9.	Bannon	Australian Securities and Investments Commission & Anor (M8/2020)	Supreme Court of Victoria (Court of Appeal) [2019] VSCA 303	Application dismissed with costs [2020] HCASL 119
10.	CTW17 (By his litigation guardian FFV17)	Minister for Immigration and Border Protection (S297/2019)	Full Court of the Federal Court of Australia [2019] FCAFC 156	Application dismissed with costs [2020] HCASL 120
11.	Issakidis	The Queen (S7/2020)	Supreme Court of New South Wales (Court of Criminal Appeal) [2019] NSWCCA 302	Application dismissed [2020] HCASL 121

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24 April 2020: Brisbane (and by video-link to Sydney)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	
1.	FYBR	Minister for Home Affairs & Anor (S325/2019)	Full Court of the Federal Court of Australia [2019] FCAFC 185	Application dismissed with costs [2020] HCATrans 56
2.	Certain Underwriters at Lloyd's of London Subscribing to Policy Number B105809GCOM0430	Allianz Australia Insurance Limited (S334/2019)	Supreme Court of New South Wales (Court of Appeal) [2019] NSWCA 271	Application dismissed with costs [2020] HCATrans 58

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