



HIGH COURT BULLETIN

Produced by the Legal Research Officer,
High Court of Australia Library
[2020] HCAB 10 (11 December 2020)

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

1: Summary of New Entries	1
2: Cases Handed Down	4
3: Cases Reserved	10
4: Original Jurisdiction	17
5: Section 40 Removal	19
6: Special Leave Granted.....	20
7: Cases Not Proceeding or Vacated.....	33
8: Special Leave Refused.....	34

1: SUMMARY OF NEW ENTRIES

2: Cases Handed Down

Case	Title
<i>Gerner & Anor v The State of Victoria</i>	Constitutional Law
<i>Peniamina v The Queen</i>	Criminal Law
<i>Roy v O'Neill</i>	Evidence
<i>Clayton v Bant</i>	Family Law
<i>Minister for Home Affairs v DUA16 & Anor;</i> <i>Minister for Home Affairs v CHK16 & Anor</i>	Immigration Law

<u>Minister for Home Affairs & Ors v DMA18 as Litigation Guardian for DLZ18 & Anor; Minister for Home Affairs & Anor v Marie Theresa Arthur as Litigation Representative for BXD18; Minister for Home Affairs & Anor v FRX17 as Litigation Representative for FRM17; Minister for Home Affairs & Anor v DJA18 as Litigation Representative for DIZ18</u>	Immigration Law
--	-----------------

3: Cases Reserved

Case	Title
<u>Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v AAM17 & Anor</u>	Administrative Law
<u>Minister for Home Affairs v Benbrika</u>	Constitutional Law
<u>Minister for Immigration and Border Protection v EFX17</u>	Migration Law
<u>The Commissioner of Taxation for the Commonwealth of Australia v Travelex Limited</u>	Taxation

4: Original Jurisdiction

5: Section 40 Removal

Case	Title
<u>Commonwealth of Australia v AJL20</u>	Constitutional Law

6: Special Leave Granted

Case	Title
<u>Chetcuti v Commonwealth of Australia</u>	Constitutional Law
<u>Edwards v The Queen</u>	Criminal Law

<i>Director of Public Prosecutions Reference No 1 of 2019</i>	Criminal Law
<i>Fairfax Media Publications Pty Ltd v Voller; Nationwide News Pty Limited v Voller; Australian News Channel Pty Ltd v Voller</i>	Defamation
<i>WorkPac Pty Ltd v Rossato & Ors</i>	Industrial Law

7: Cases Not Proceeding or Vacated

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

8: Special Leave Refused

2: CASES HANDED DOWN

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

Constitutional Law

Gerner & Anor v The State of Victoria

[M104/2020](#): [\[2020\] HCA 48](#)

Pronouncement of orders: 6 November 2020

Reasons published: 10 December 2020

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

Catchwords:

Constitutional law (Cth) – Implications from *Constitution* – Where directions made under s 200(1)(b) and (d) of *Public Health and Wellbeing Act 2008* (Vic) restricted movement of persons within Victoria – Where plaintiffs sought declarations that directions and s 200(1)(b) and (d) of *Public Health and Wellbeing Act* were invalid as an infringement of a freedom to move wherever one wishes for whatever reason ("freedom of movement") said to be implicit in *Constitution* – Where defendant demurred on ground that *Constitution* did not imply freedom of movement – Whether freedom of movement implicit in federal structure of *Constitution* – Whether freedom of movement protected by implied freedom of political communication – Whether freedom of movement implicit in s 92 of *Constitution*.

Words and phrases – "constitutional implication", "constitutional interpretation", "COVID-19", "federal structure", "federation", "freedom of movement", "implied freedom of movement", "implied freedom of political communication", "interstate intercourse", "intrastate intercourse", "political communication", "quarantine", "terms and structure", "text and structure".

Constitution – ss 51(ix), 92.

Held: Demurrer allowed with costs.

[Return to Top](#)

Criminal Law

Peniamina v The Queen

B32/2020: [\[2020\] HCA 47](#)

Judgment delivered: 9 December 2020

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

Catchwords:

Criminal law – Defences – Provocation – Where appellant killed his wife in circumstances that left it open to find he was angered by belief she had been unfaithful and planned to leave him – Where appellant pleaded not guilty to murder on basis that killing resulted from loss of self-control caused by provocation by deceased – Where appellant contended at trial that state of loss of self-control excited by deceased's conduct in grabbing knife, threatening him with it and cutting his right palm – Where s 304(3) of *Criminal Code* (Qld) excluded defence of provocation (save in circumstances of most extreme and exceptional character) in case of unlawful killing of accused's domestic partner where sudden provocation "based on" anything done, or believed to have been done, by deceased to end or change nature of relationship or indicate in any way that relationship may, should or will end or change ("to change relationship") – Whether exclusion of defence in s 304(3) confined (save in circumstances of most extreme and exceptional character) to cases where conduct of deceased relied upon as causative of accused's loss of self-control consists of thing done, or believed to have been done, by deceased to change relationship – Whether operation of s 304(3) to exclude defence question of law.

Words and phrases – "based on", "causation simpliciter", "causative potency", "caused by", "domestic killing", "domestic relationship", "elements of the defence", "loss of self-control", "nominated conduct", "partial defence", "provocation", "provocative conduct", "question of law", "sudden provocation", "to change the nature of the relationship", "true defence", "wider connection".

Criminal Code (Qld) – s 304(1), (2), (3), (7).

Appealed from QSC (CA): [\[2019\] QCA 273](#); (2019) 2 QR 658

Held: Appeal allowed.

[Return to Top](#)

Evidence

Roy v O'Neill

D2/2020: [\[2020\] HCA 45](#)

Judgment delivered: 9 December 2020

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

Catchwords:

Evidence – Admissibility – Trespass – Where appellant charged with breach of Domestic Violence Order ("DVO") – Where DVO included condition that appellant not remain in her partner's presence while intoxicated – Where police attended unit occupied by appellant and her partner for purpose of DVO check – Where police engaged in wider proactive policing operation – Where police knocked on front door and asked appellant to come to door for DVO check – Where police observed signs of intoxication and requested appellant submit to breath test – Where breath test positive for alcohol – Whether evidence of breath test lawfully obtained – Whether police trespassed – Whether common law implied licence permitted police to approach unit and knock – Whether lawful purpose to attend unit.

Words and phrases – "breath test", "coercive powers", "common law implied licence", "Domestic Violence Order", "implied licence to enter private property", "interference with an occupier's possession", "lawful communication with an occupier", "lawful purpose", "police", "proactive policing", "trespass".

Police Administration Act (NT) – s 126(2A).

Domestic and Family Violence Regulations (NT) – reg 6.

Appealed from NTSC (CA): [\[2019\] NTCA 8](#); 281 A Crim R 30; (2019) 345 FLR 29

Held: Appeal dismissed.

[Return to Top](#)

Family Law

Clayton v Bant

B21/2020: [\[2020\] HCA 44](#)

Judgment delivered: 2 December 2020

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

Catchwords:

Family law – Foreign divorce – Property settlements – Spousal maintenance – Res judicata – Where appellant wife and respondent

husband married in Dubai in 2007 and lived partly in Australia and partly in United Arab Emirates – Where wife and husband separated in 2013 with wife and child remaining in Australia – Where wife commenced proceedings in Family Court of Australia seeking parenting orders under *Family Law Act 1975* (Cth) ("Act") – Where proceedings later amended to also seek orders for spousal maintenance and property settlement under ss 74 and 79 of Act – Where husband commenced divorce proceedings in Personal Status Court of Dubai ("Dubai Court") – Where ruling of Dubai Court granted husband "irrevocable fault-based divorce" and ordered wife to repay amount of advanced dowry and costs – Where husband sought permanent stay of property settlement and spousal maintenance proceedings on basis of *res judicata*, cause of action estoppel and/or principle in *Henderson v Henderson* (also known as "Anshun estoppel") – Where primary judge dismissed application for stay – Where Full Court of Family Court permanently stayed property settlement and spousal maintenance proceedings – Whether ruling of Dubai Court had effect of precluding wife from pursuing property settlement and spousal maintenance proceedings against husband in Family Court by reason of *res judicata*, cause of action estoppel and/or Anshun estoppel.

Words and phrases – "advanced dowry", "alimony", "Anshun estoppel", "cause of action", "cause of action estoppel", "claim", "claim estoppel", "divorce", "estoppel", "Henderson extension", "irrevocable fault-based divorce", "issue estoppel", "merger", "permanent stay", "Personal Status Court of Dubai", "Personal Status Law", "preclusion", "property settlement", "res judicata", "spousal maintenance".

Family Law Act 1975 (Cth) – ss 74, 79.

Appealed from FamCA (FC): [\[2019\] FamCAFC 200](#); (2019) 60 Fam LR 152; [2019] FLC 93-925

Held: Appeal allowed with costs.

[Return to Top](#)

Immigration

Minister for Home Affairs v DUA16 & Anor; Minister for Home Affairs v CHK16 & Anor

[M57/2020](#); [M58/2020](#): [\[2020\] HCA 46](#)

Judgment delivered: 9 December 2020

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

Catchwords:

Immigration – Refugees – Application for protection visa – Immigration Assessment Authority ("Authority") – Review by Authority under Pt 7AA of *Migration Act 1958* (Cth) – Where applicants engaged registered migration agent to provide submissions to Authority – Where agent fraudulently provided pro forma submissions – Where fraudulent submissions contained personal information relevant to a different person – Where Authority unaware of fraud but aware that submissions erroneously related to another individual – Where Authority disregarded information relating to another individual – Whether agent's fraud stultified Authority's review – Whether Authority's decision was vitiated by agent's fraud – Whether agent's fraud contributed in adverse way to exercise of any duty, function, or power by Authority – Whether Authority's failure to seek corrected submissions containing potentially new information legally unreasonable.

Words and phrases – "agent", "fraud", "fraudulent submissions", "legal unreasonableness", "new information", "personal circumstances", "personal information", "practice direction", "statutory review function", "stultified", "submissions", "vitate".

Migration Act 1958 (Cth) – Pt 7AA.

Appealed from FCA (FC): [\[2019\] FCAFC 221](#); (2019) 273 FCR 213

Held: Appeal allowed in M57/2020; appeal dismissed in M58/2020.

[Return to Top](#)

Minister for Home Affairs & Ors v DMA18 as Litigation Guardian for DLZ18 & Anor; Minister for Home Affairs & Anor v Marie Theresa Arthur as Litigation Representative for BXD18; Minister for Home Affairs & Anor v FRX17 as Litigation Representative for FRM17; Minister for Home Affairs & Anor v DJA18 as Litigation Representative for DIZ18

[M27/2020](#); [M28/2020](#); [M29/2020](#); [M30/2020](#): [\[2020\] HCA 43](#)

Judgment delivered: 2 December 2020

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

Catchwords:

Immigration – Regional processing – Statutory bar on legal proceedings – Where s 494AB(1) of *Migration Act 1958* (Cth) provided that certain "proceedings against the Commonwealth may not be instituted or continued in any court" – Where those proceedings, listed in s 494AB(1)(a)-(d), were all "proceedings

relating to" a particular subject matter – Where proceedings in s 494AB(1)(b) further defined by reference to time period – Where s 494AB(3) provided that nothing in section intended to affect jurisdiction of High Court under s 75(v) of Constitution – Where respondents, while in regional processing country, instituted proceedings in Federal Court of Australia alleging Commonwealth breached duty of care to provide adequate medical treatment on Nauru – Where Commonwealth alleged Federal Court did not have jurisdiction by reason of s 494AB(1)(a), (ca) or (d) – Whether s 494AB(1) limited jurisdiction or barred remedy – Whether respondents' proceedings in Federal Court engaged s 494AB(1).

Words and phrases – "bars the remedy", "duty of care", "instituted or continued", "jurisdiction", "medical treatment", "model litigant", "model litigant obligations", "Nauru", "negligence", "plead as a defence", "proceedings against the Commonwealth", "proceedings relating to", "regional processing", "removal", "transitory person", "under".

Constitution – ss 75, 77.

Migration Act 1958 (Cth) – ss 198AB, 198AD, 198AH, 198AHA, 198B, 494AA, 494AB.

Appealed from FCA (FC): [\[2019\] FCAFC 148](#); (2019) 271 FCR 254

Held: Appeals allowed.

[Return to Top](#)

3: CASES RESERVED

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

Administrative Law

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v AAM17 & Anor

[P23/2020](#): [\[2020\] HCATrans 210](#)

Date heard: 3 December 2020

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

Catchwords:

Administrative law – Procedural fairness – Where first respondent unsuccessfully applied for protection visa and where Administrative Appeals Tribunal affirmed refusal decision – Where first respondent sought judicial review of Tribunal’s decision in Federal Circuit Court (“FCC”) – Where first respondent appeared in person before FCC with assistance of translator – Where at conclusion of hearing FCC made orders dismissing application and gave ex tempore reasons – Where reasons for judgment published two months later after first respondent had instituted appeal to Federal Court – Where Federal Court allowed appeal on basis that first respondent denied procedural fairness by FCC and that there had therefore been no real exercise of judicial power in the circumstances – Where Federal Court considered that FCC’s review of Tribunal’s decision otherwise unaffected by error warranting appellate attention – Whether requirement of procedural fairness, either generally or in relation to courts, includes duty to provide reasons – If yes, whether such requirement extends to requiring reasons to be provided in particular manner and/or time – What is appropriate form of order for court conducting appeal by way of rehearing to make in circumstances where appellate court finds court below denied appellant procedural fairness and also considers decision under appeal correct.

Appealed from FCA: [\[2019\] FCA 1951](#)

[Return to Top](#)

Oakey Coal Action Alliance Inc v New Acland Coal Pty Ltd & Ors

[B34/2020](#): [\[2020\] HCATrans 154](#)

Date heard: 6 October 2020

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

Catchwords:

Administrative law – Apprehended bias – Relief – Jurisdiction of inferior courts – Where first respondent applied for two mining leases and to amend existing environmental authority – Where appellant lodged objections to applications – Where Land Court of Queensland rejected applications – Where first respondent sought judicial review of Land Court’s decision, urging grounds that included apprehended bias and errors in relation to groundwater issues – Where Queensland Supreme Court rejected bias grounds but accepted groundwater grounds and remitted issues relating to groundwater to Land Court for redetermination, holding that Land Court bound by original findings and conclusions on questions other than groundwater issues – Where appellant appealed against remittal orders and first respondent cross-appealed on apprehended bias issue – Where Land Court, differently constituted, proceeded with hearing in accordance with remittal orders despite pending appeal, and recommended that applications should be approved – Where Court of Appeal subsequently dismissed appeal on groundwater issues but allowed cross-appeal on apprehended bias – Where despite allowing cross-appeal and making declaration that Land Court’s original decision affected by want of procedural fairness, Court of Appeal did not set aside remittal orders – Whether in circumstances where reviewing court concludes decision of inferior court affected by reasonable apprehension of bias, reviewing court can refuse to set aside decision below and order new trial either at all, in the absence of exceptional circumstances, or on the basis of futility – Whether order of superior court requiring inferior court to proceed in certain way can augment jurisdiction of inferior court so as to validate decision of inferior court that would otherwise be nullity.

Appealed from QSC (CA): [\[2019\] QCA 184](#); (2019) 2 QR 271; (2019) 242 LGERA 309

[Return to Top](#)

Civil Procedure

Wigmans v AMP Limited & Ors
S67/2020: [\[2020\] HCATrans 182](#)

Date heard: 10 November 2020

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

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

[Return to Top](#)

Constitutional Law

Minister for Home Affairs v Benbrika

M112/2020: [\[2020\] HCATrans 218](#)

Date heard: 10 December 2020

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

Catchwords:

Constitutional law – Question reserved – Validity of legislation – *Criminal Code* (Cth) Div 105A – Continuing detention orders – Where Minister for Home Affairs applied to Supreme Court of Victoria for continuing detention order against respondent pursuant to s 105A.7 of *Criminal Code*, and for interim detention order pursuant to s 105A.9 – Where on respondent’s application, question of constitutional validity of Div 105A referred to Court of Appeal – Where Commonwealth Attorney-General intervened and applied to have proceeding pending in Court of Appeal removed into High Court under s 40 *Judiciary Act 1903* (Cth) – Whether s 105A.7 purports to confer non-judicial power on courts exercising federal jurisdiction contrary to Ch III of Constitution – Whether s 105A.7 severable from balance of Div 105A.

Removed from Supreme Court of Victoria; question reserved.

[Return to Top](#)

Palmer & Anor v The State of Western Australia & Anor

B26/2020: [\[2020\] HCATrans 178](#); [\[2020\] HCATrans 179](#); [\[2020\] HCATrans 180](#)

Dates heard: 3-4 November 2020

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

Catchwords:

Constitutional law – Section 92 – *Quarantine (Closing the Border) Directions* (WA) (“Directions”) – *Emergency Management Act 2005* (WA) (“Act”) – Where on 15 March 2020, pursuant to s 56 of Act, WA Minister for Emergency Services declared state of emergency over whole State of WA to address pandemic caused by COVID-19 – Where state of emergency continued and extended – Where on 5 April 2020, State Emergency Coordinator (second defendant) issued Directions, purportedly pursuant to ss 61, 67, 70 and 72A of Act – Where Directions prohibited entry to WA with limited exceptions for “exempt travellers” – Where Directions subsequently amended, but no change made to broad aim of implementing “hard border” policy – Where first plaintiff Chairman and Managing Director of second plaintiff – Where second plaintiff corporation holds interests in mining projects in WA, and has offices and staff in Brisbane and Perth – Where first plaintiff ordinarily resides in Queensland, but travels to WA often for business, social, charitable, and political purposes – Where first plaintiff unsuccessfully applied for “exempt traveller” status – Whether Directions and/or Act wholly or partly invalid on basis that they impermissibly infringe s 92 *Constitution* (Cth).

Orders made on 6 November 2020 answering questions in special case. Written reasons of the Court to be published at a future date.

[Return to Top](#)

Corporations

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

S69/2020: [\[2020\] HCATrans 155](#); [\[2020\] HCATrans 157](#)

Dates heard: 7-8 October 2020

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

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) 272 FCR 170; (2019) 373 ALR 455; (2019) 141 ACSR 1

[Return to Top](#)

Migration Law

Minister for Immigration and Border Protection v EFX17

B43/2020: [\[2020\] HCATrans 211](#)

Date heard: 4 December 2020

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

Catchwords:

Migration law – Visa cancellation – Character test – *Migration Act 1958* (Cth) ss 496, 501, 501CA – Notice of cancellation – Where Minister’s delegate made decision under s 501(3A) to cancel respondent’s protection visa while respondent serving sentence of imprisonment – Where pursuant to duties in s 501CA(3) Minister caused to be given to respondent written notice containing notification of cancellation decision, relevant information as to reason for decision, and invitation to make representations about

revocation of cancellation decision – Where notice given to respondent by officer of Queensland Corrective Services – Where respondent commenced proceedings in Federal Circuit Court challenging validity of notice – Where Circuit Court dismissed challenge – Where appeal to Full Court of Federal Court allowed by majority – Whether Minister, in performing duties under s 501CA(3), must have regard to matters relating to former visa holder’s capacity, including literacy, capacity to understand English, mental capacity and health, and facilities available to them in custody – Whether fulfilment of duties in s 501CA(3) dependent on former visa holder’s ability to comprehend notice, particulars, and invitation to make representations – Whether valid performance of duties in s 501CA(3) conditional on person performing them holding delegated authority under s 496(1) or whether s 497 applicable.

Appealed from FCA (FC): [\[2019\] FCAFC 230](#); (2019) 273 FCR 508; (2019) 374 ALR 272; (2019) 167 ALD 225

[Return to Top](#)

Minister for Immigration and Border Protection v Makasa
S103/2020: [\[2020\] HCATrans 190](#)

Date heard: 12 November 2020

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

Catchwords:

Migration law – Visa cancellation – Character test – Substantial criminal record – Where Minister’s delegate cancelled respondent’s visa on character grounds – Where Administrative Appeals Tribunal (“AAT”) set aside delegate’s decision and decided not to cancel visa – Where Minister subsequently personally purported to cancel respondent’s visa – Whether the Minister can re-exercise discretion conferred by s 501(2) of *Migration Act 1958* (Cth) to cancel person’s visa where AAT has previously set aside Minister’s delegate’s earlier decision to cancel visa under s 501(2) – If yes, whether Minister can rely on same offences (going to whether person has substantial criminal record for purposes of character test) to enliven discretion in s 501(2) as AAT relied upon when reviewing delegate’s decision.

Appealed from FCA (FC): [\[2020\] FCAFC 22](#); (2020) 376 ALR 191

Orders made on 12 November 2020 dismissing the appeal with costs. Written reasons of the Court to be published at a future date.

[Return to Top](#)

Taxation

The Commissioner of Taxation for the Commonwealth of Australia v Travelex Limited

[S116/2020](#): [\[2020\] HCATrans 209](#)

Date heard: 2 December 2020

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

Catchwords:

Taxation – Overpayments – Interest – Where supplies which were GST-free wrongly included in Business Activity Statement – Where on 28 June 2012 Commissioner allocated credit of \$149,020 to respondent’s Running Balance Account (“RBA”) and recorded “effective date” of allocation as 16 December 2009 – Whether Commissioner’s actions on 28 June 2012, even if made in error and unreflective of any entitlement under a taxation law on part of respondent, created obligation on part of Commissioner to refund “RBA surplus” within meaning of Pt IIB of *Taxation Administration Act 1953* (Cth) and entitlement on part of respondent to interest under *Taxation (Interest on Overpayments and Early Payments) Act 1983* (Cth).

Appealed from FCA (FC): [\[2020\] FCAFC 10](#); (2019) 275 FCR 239

[Return to Top](#)

4: ORIGINAL JURISDICTION

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

Constitutional Law

LibertyWorks Inc v Commonwealth of Australia

[S10/2020: \[2020\] HCATrans 116](#)

Catchwords:

Constitutional law – Validity of legislation – *Foreign Influence Transparency Scheme Act 2018* (Cth) ("*FITS Act*") – Where plaintiff is a not-for-profit think-tank incorporated in Queensland – Where in August 2019, plaintiff organised and held Conservative Political Action Conference in Sydney – Where US corporation, American Conservative Union ("*ACU*"), runs conference with same name in US, where ACU board members spoke at Sydney conference, and where ACU was advertised as "Think Tank Host Partners" for Sydney conference – Where plaintiff not registered under *FITS Act* – Where in October 2019, notice under s 45 of *FITS Act* issued to President of plaintiff, requiring plaintiff to provide certain information within specified period – Where s 59 of *FITS Act* provides for offence of failing to comply with s 45 notice within time – Where in November 2019, President of plaintiff replied to notice, refusing to provide requested information and disputing validity of notice – Whether terms, operation, or effect of *FITS Act* impermissibly burdened implied freedom of political communication – Whether *FITS Act* contravenes s 92 of *Constitution* (Cth) by impermissibly burdening freedom of intercourse – Whether *FITS Act* supported by head of power in s 51 *Constitution*.

Special case referred for consideration by Full Court on 20 August 2020.

[Return to Top](#)

Zhang v Commissioner of Police & Ors

[S129/2020](#)

Catchwords:

Constitutional law – Validity of legislation – Validity of warrants – Where plaintiff under investigation for alleged foreign interference offences, contrary to *Criminal Code* (Cth) sub-ss 92.3(1), (2) – Where plaintiff formerly employed part-time in office of member of New South Wales Parliament – Where magistrate, purporting to

exercise power in s 3E of *Crimes Act 1914* (Cth), issued search warrant authorising AFP officers to enter and search plaintiff's residential premises – Where magistrate also purported to make order under s 3LA, requiring plaintiff to provide information or assistance to officers enabling them to access, copy, or convert data held on computers or devices found in execution of warrant – Where searches took place, and pursuant to s 3K, certain items removed for examination – Where magistrate purported to exercise s 3E power and issued warrant authorising search of warehouse premises from which plaintiff and his wife conducted business – Where searches took place, material seized pursuant to s 3F, and electronic devices removed for examination pursuant to s 3K – Where registrar purported to exercise s 3E power and issued warrant authorising AFP officers to enter and search premises within NSW Parliament House – Where searches took place, and data copied to USB thumb drives pursuant to s 3F – Where magistrate made s 3LA order requiring plaintiff to provide information and assistance to police that would allow them to access data held in or accessible from phones moved to another place for examination after search of residential premises – Whether either or both of sub-ss 92.3(1), (2) invalid for impermissibly burdening implied freedom of political communication – Whether some or all of warrants are wholly or partly invalid on basis that they misstate substance of s 92.3(2) of *Criminal Code*, that they fail to state offences to which they relate with sufficient precision, or that either or both of sub-ss 92.3(1), (2) are invalid – If some or all of warrants are wholly or partly invalid, whether one or both of s 3LA orders are invalid.

Special case referred for consideration by Full Court on 12 November 2020.

[Return to Top](#)

5: SECTION 40 REMOVAL

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

Commonwealth of Australia v AJL20

C16/2020; C17/2020: [\[2020\] HCATrans 244](#)

Removed into the High Court under s 40 of the Judiciary Act 1903 (Cth) on 17 December 2020.

Catchwords:

Constitutional law – Chapter III – Immigration detention – Where second respondent citizen of Syria and granted visa in 2005 – Where Minister for Immigration and Border Protection cancelled visa on character grounds in 2014 under s 501(2) *Migration Act 1958* (Cth) (“Act”) – Where second respondent detained by officer of Commonwealth from 8 October 2014 under s 189(1) of Act – Where Minister accepted Australia has non-refoulement obligations to second respondent – Where Minister refused to grant protection visa and declined to consider granting visa under s 195A of Act on 25 July 2019 – Where detention of unlawful non-citizen lawful if for permissible purpose – Where removal from Australia permissible purpose – Where, from 26 July 2019, officer of Commonwealth obliged to remove second respondent from Australia “as soon as reasonably practicable” under s 198 of Act – Where primary judge held detention unlawful since 26 July 2019 and ordered second respondent be released from detention – Whether second respondent’s removal from Australia “reasonably practicable” – Whether second respondent’s detention for purpose of removal from Australia – Whether second respondent’s detention lawful – Whether ss 189 and 196 require detention of unlawful non-citizen until removal from Australia despite non-compliance with duty of removal consistently with Ch III of *Constitution*.

Torts – False imprisonment – Whether second respondent falsely imprisoned.

Removed from Full Court of the Federal Court of Australia.

[Return to Top](#)

6: SPECIAL LEAVE GRANTED

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

Administrative Law

Sunland Group Limited & Anor v Gold Coast City Council

B64/2020: [\[2020\] HCATrans 160](#)

Date heard: 13 October 2020 – *Special leave granted.*

Catchwords:

Administrative law – Planning and environment – Development approvals – Where in 2015 second applicant bought parcel of undeveloped land which carried with it benefit of preliminary development approval granted in 2007 – Where preliminary approval approved multi-stage residential development subject to 56 conditions – Where some conditions provided for payment of infrastructure contributions to respondent – Where preliminary approval made under *Integrated Planning Act 1997* (Qld) – Where *Integrated Planning Act* replaced by other legislation – Whether conditions concerning infrastructure contributions, properly construed, should be read as binding on applicant or landowner, or merely as statements as to scope of future possible conditions – Whether, in construction of conditions, *contra proferentem* rule applies so that ambiguities are to be resolved against approving authority.

Appealed from QSC (CA): [\[2020\] QCA 89](#)

[Return to Top](#)

Civil Procedure

Victoria International Container Terminal Limited v Lunt & Ors

M96/2020: [\[2020\] HCATrans 143](#)

Date heard: 11 September 2020 – *Special leave granted on limited ground.*

Catchwords:

Civil procedure – Dismissal of proceedings – Abuse of process – Where Fair Work Commission approved enterprise agreement – Where first respondent sought order in nature of certiorari to quash Commission’s approval – Where applicant applied for dismissal of that proceeding on basis it was abuse of process – Where applicant contended that Construction, Forestry, Maritime, Mining and Energy Union (“CFMMEU”) was true moving party and proceeding had been brought in first respondent’s name to sidestep fact that CFMMEU’s predecessor union had acquiesced in enterprise agreement – Where primary judge acceded to applicant’s application and dismissed proceeding, finding CFMMEU was true moving party and first respondent was “front man” – Where appeal to Full Court of Federal Court allowed, and applicant’s application to have proceeding dismissed as abuse of process dismissed – Whether it would bring administration of justice into disrepute to allow CFMMEU, using “front man”, to challenge Commission’s approval of enterprise agreement while avoiding scrutiny of predecessor union’s acquiescence in that agreement.

Appealed from FCA (FC): [\[2020\] FCAFC 40](#)

[Return to Top](#)

Constitutional Law

Chetcuti v Commonwealth of Australia

[M122/2020](#)

Notice of appeal from judgment of a single Justice exercising original jurisdiction filed on 10 December 2020.

Catchwords:

Constitutional law – Legislative power – Naturalisation and aliens – Where appellant entered Australia in 1948 – Where appellant was born in Malta and entered Australia as British subject – Where appellant became citizen of United Kingdom and Colonies in 1949 and citizen of Malta on 1961 – Whether within power of Commonwealth Parliament to treat appellant as alien within s 51(xix) of *Constitution* – Whether within power of Parliament to specify criteria for alienage – Whether appellant entered Australia as alien.

Appealed from HCA (Single Justice): [\[2020\] HCA 42](#)

[Return to Top](#)

Contracts

Matthew Ward Price as Executor of the Estate of Alan Leslie Price (Deceased) & Ors v Christine Claire Spoor as Trustee & Ors
[B55/2020](#): [\[2020\] HCATrans 142](#)

Date heard: 11 September 2020 – *Special leave granted.*

Catchwords:

Contracts – Statutory limitation periods – Exclusion by agreement – Where in 1998, two mortgages executed by deceased Mr A Price and second applicant, and deceased Mr J Price and third applicant in favour of Law Partners Mortgages Pty Ltd (“LPM”), securing \$320,000 loan advanced by LPM to mortgagors – Where respondents are trustees of pension fund successor in title as mortgagee to LPM – Where by 30 April 2001, only \$50,000 of principal repaid and where no repayments made after that date – Where respondents commenced proceedings in 2017, claiming \$4,014,969.22 and recovery of possession of mortgaged land – Where proceedings commenced outside of statutory bars in *Limitation of Actions Act 1974* (Qld) – Where cl 24 of mortgages provided that “[t]he Mortgagor covenants with the Mortgage[e] that the provisions of all statutes now or hereafter in force whereby or in consequence whereof any o[r] all of the powers rights and remedies of the Mortgagee and the obligations of the Mortgagor hereunder may be curtailed, suspended, postponed, defeated or extinguished shall not apply hereto and are expressly excluded insofar as this can lawfully done” – Whether agreement not to plead or to rely on provisions of *Limitation of Actions Act* made at time of entry into loan contract and before accrual of cause of action unenforceable on public policy grounds – Whether, on proper construction of cl 24, applicants entitled to plead defence under *Limitation of Actions Act* – Whether operation of s 24 of *Limitation of Actions Act* can be excluded by agreement – Whether, on proper construction, terms of cl 24 are ambiguous – If cl 24 enforceable, whether breach of cl 24 could sound in any remedy other than claim for damages for breach of warranty.

Appealed from QSC (CA): [\[2019\] QCA 297](#); (2019) 3 QR 176

[Return to Top](#)

Criminal Law

Bell v The Queen
[H2/2020](#): [\[2020\] HCATrans 77](#)

Date heard: 5 June 2020 – *Special leave granted.*

Catchwords:

Criminal law – Defences – Honest and reasonable mistake – Where applicant charged with one count of rape and one count of supply of controlled drug to child – Where trial judge left defence of honest and reasonable mistake as to age in relation to rape charge – Where counsel for applicant requested similar direction in respect of supply charge – Where trial judge refused to make such direction on basis that defence of honest and reasonable mistake as to age would not relieve applicant of criminal responsibility with respect to supply charge – Where jury convicted applicant of supply charge but could not reach verdict on rape or alternative charge of sexual intercourse with person under age of 17 – Where at retrial of sexual offence jury found applicant not guilty of rape but convicted on alternative charge – Where Court of Criminal Appeal upheld trial judge’s decision that defence of honest and reasonable mistake as to age not available in relation to supply charge – Whether defence of honest and reasonable mistake of fact only available where its successful use would lead to defendant not being guilty of any crime.

Appealed from TASSC (CCA): [\[2019\] TASCCA 19](#); (2019) 279 A Crim R 553

[Return to Top](#)

Edwards v The Queen

S235/2020: [\[2020\] HCATrans 216](#)

Date heard: 8 December 2020 – *Special leave granted on limited grounds.*

Catchwords:

Criminal law – Prosecution’s duty of disclosure – Where applicant charged with sexual offences against child – Where applicant’s mobile phone seized and contents downloaded – Where prosecution disclosed existence of download and offered to provide applicant with copy of downloaded data – Where data not provided to applicant – Where prosecution did not disclose relevance of download data – Where prosecution case on two counts relied on evidence of complainant – Where defence case on same counts relied on documentary evidence contradicting complainant’s evidence – Where NSW Court of Criminal Appeal (“CCA”) dismissed appeal against conviction – Whether prosecutor breached duty of disclosure by not providing download data to applicant, contrary to s 142 of *Criminal Procedure Act 1987* (NSW) – Whether CCA erred in concluding verdicts on two counts not unreasonable as there

remained reasonable doubt as to existence of opportunity for offending to have occurred.

Appealed from NSWSC (CCA): [\[2020\] NSWCCA 57](#)

[Return to Top](#)

Namoa v The Queen

S188/2020: [\[2020\] HCATrans 163](#)

Date heard: 13 October 2020 – *Special leave granted.*

Catchwords:

Criminal law – Conspiracy between married persons – Relationship between common law and Schedule (“*Criminal Code*”) to *Criminal Code Act 1995* (Cth) – Where applicant tried jointly with another on one count of conspiring to do acts in preparation for terrorist act or acts, contrary to ss 11.5 and 101.6 of *Criminal Code* – Where prior to trial, trial judge rejected application for permanent stay on basis that applicant and co-accused were married – Where applicant and co-accused convicted – Where NSW Court of Criminal Appeal (“CCA”) dismissed appeal against conviction – Whether immediately prior to enactment of *Criminal Code*, it was part of common law of Australia that married persons could not commit criminal conspiracy – If so, whether that principle remains part of common law – Whether CCA entitled to depart from Privy Council decisions on principles of common law which preceded passage of *Australia Acts* in 1986 – Whether *Criminal Code* expressly or impliedly ousts common law rule as to conspiracy between married persons.

Appealed from NSWSC (CCA): [\[2020\] NSWCCA 62](#); (2020) 351 FLR 266

[Return to Top](#)

Director of Public Prosecutions Reference No 1 of 2019

M70/2020: [\[2020\] HCATrans 221](#)

Date heard: 11 December 2020 – *Special leave granted.*

Catchwords:

Criminal law – Mental element – Recklessness – Where Victorian Court of Appeal in *R v Campbell* [1997] 2 VR 585 held that “recklessness” requires foresight of probability of consequence – Where High Court in *Aubrey v The Queen* (2017) 260 CLR 305 held that “recklessness” for offences other than murder requires

foresight of possibility of consequence – Where reference arose from trial in which accused acquitted of recklessly causing serious injury, contrary to s 17 of *Crimes Act 1958* (Vic) – Where Court of Appeal concluded nothing in *Aubrey* compelled reconsideration of *Campbell* – Where Court of Appeal held correct interpretation of “recklessness” requires foresight of “probability” of serious injury – Whether, in Victoria, correct interpretation of “recklessness” for offences not resulting in death is foresight of the “possibility” of serious injury – Whether principle in *Campbell* should be followed.

Appealed from VSC (CA): [\[2020\] VSCA 181](#)

[Return to Top](#)

Defamation

Fairfax Media Publications Pty Ltd v Voller; Nationwide News Pty Limited v Voller; Australian News Channel Pty Ltd v Voller
S105/2020; S106/2020; S107/2020: [\[2020\] HCATrans 214](#)

Date heard: 8 December 2020 – *Special leave granted.*

Catchwords:

Defamation – Publication – Where applicants created and operated public Facebook pages on which Facebook users can view and comment on items posted – Where Facebook users posted comments on applicants’ Facebook posts – Where respondent commenced defamation proceedings against applicants – Where primary judge determined separate question – Where NSW Court of Appeal dismissed appeal from determination – Whether intention to communicate defamatory material is necessary for person to be “publisher” – Whether operators of Facebook pages “publish” third-party comments posted on page prior to being aware of comments.

Appealed from NSWSC (CA): [\[2020\] NSWCA 102](#); (2020) 380 ALR 700

[Return to Top](#)

Evidence

Davidson v The Queen
B6/2020: [\[2020\] HCATrans 141](#)

Date heard: 11 September 2020 – *Application for special leave and for extension of time referred to Full Court.*

Catchwords:

Evidence – Similar fact evidence – Common law approach – Where applicant was massage therapist – Where applicant charged with counts of sexual assault and rape committed against ten complainant clients – Where prosecution sought to lead similar fact evidence – Where applicant unsuccessfully sought to have separate trials ordered on rape counts on basis that evidence relied upon as similar fact evidence not cross-admissible on other counts – Where following jury trial, applicant convicted of 18 counts of sexual assault and one count of rape – Whether joint trial of sexual assault and rape counts occasioned miscarriage of justice – Whether majority of Court of Appeal effectively lowered threshold for admission of similar fact evidence at common law.

Appealed from QSC (CA): [\[2019\] QCA 120](#)

[Return to Top](#)

Deputy Commissioner of Taxation v Shi

S211/2020: [\[2020\] HCATrans 188](#)

Date heard: 11 November 2020 – *Special leave granted.*

Catchwords:

Evidence – Exceptions to privilege against self-incrimination – *Evidence Act 1995* (Cth) s 128A – Where applicant commenced proceedings against respondent and two others seeking satisfaction of tax liabilities – Where applicant sought freezing orders with respect to respondent's assets – Where Federal Court made ex parte freezing orders in relation to respondent's worldwide assets – Where respondent also ordered to file and serve affidavit disclosing his worldwide assets – Where respondent filed two affidavits, one which was served on applicant, and one which was delivered to Federal Court in sealed envelope – Where respondent claimed privilege against self-incrimination in respect of second affidavit, invoking s 128A – Where prior to hearing of privilege claim, judgment entered for applicant in sum of \$42,297,437.65 – Where primary judge accepted there were reasonable grounds for respondent's claim for privilege against self-incrimination, but considered not in interests of justice that certificate be granted pursuant to s 128A(7), with consequence that applicant did not get access to second affidavit – Where majority of Full Court of Federal Court held that primary judge had erred in certain respects, but dismissed appeal – Whether availability of mechanism to compulsorily examine respondent as judgment debtor relevant to determining whether it was in interests of justice to grant s 128A certificate – Whether risk of derivative use of privileged information in event that s 128A certificate was granted should have been taken

into account when determining whether it was in interests of justice to grant certificate.

Appealed from FCA (FC): [\[2020\] FCAFC 100](#); (2020) 380 ALR 226

[Return to Top](#)

Industrial Law

WorkPac Pty Ltd v Rossato & Ors

B73/2020: [\[2020\] HCATrans 200](#)

Date determined: 26 November 2020 – *Special leave granted.*

Catchwords:

Industrial law – Characterisation as “casual employee” – Restitution – Where *Fair Work Act 2009* (Cth) contains National Employment Standards (NES) – Where NES provide that permanent employees entitled to certain leave entitlements – Where first respondent employed under contract describing him as “casual employee” – Where first respondent employed for indefinite period with regular and predictable shifts – Where first respondent’s hours set far in advance and where he was not given option to elect not to work particular shifts – Where first respondent paid casual loading in lieu of leave entitlements – Where applicant sought declarations that respondent not entitled to leave – Where Full Court of Federal Court dismissed application – Whether respondent “casual employee” for the purposes of *Fair Work Act* or enterprise agreement – If not, whether applicant is entitled to apply casual loading paid to first respondent in satisfaction of his leave entitlements by way of set-off, restitution or by reg 2.03A of *Fair Work Regulations 2009* (Cth).

Appealed from FCA (FC): [\[2020\] FCAFC 84](#); (2020) 296 IR 38; (2020) 378 ALR 585

[Return to Top](#)

Migration Law

BNB17 v Minister for Immigration and Border Protection & Anor

M109/2020: [\[2020\] HCATrans 156](#)

Date determined: 8 October 2020 – *Special leave granted.*

Catchwords:

Migration law – Fast track review process – *Migration Act 1958* (Cth) Pt 7AA – Where applicant applied for Safe Haven Enterprise Visa on basis that he feared serious or significant harm due to imputed support for Liberation Tigers of Tamil Eelam – Where Minister’s delegate refused application – Where applicant contended interview conducted by delegate affected by material translation errors – Where, on review, Immigration Assessment Authority (“IAA”) affirmed delegate’s decision – Where Federal Circuit Court dismissed application for judicial review – Where appeal to Federal Court dismissed – Whether alleged translation errors in initial interview had consequence that IAA could not perform its function of considering “review material” – Whether, when on notice of alleged translation errors, it was legally unreasonable for IAA to fail to mould its procedures to cure effect of alleged errors by using power in s 473DC to get new information or taking any other step – Whether, when on notice of alleged translation errors, it was legally unreasonable for IAA to make adverse credibility findings relying on aspects of applicant’s evidence allegedly affected by errors.

Appealed from FCA: [\[2020\] FCA 304](#)

[Return to Top](#)

DQU16 & Ors v Minister for Home Affairs & Anor

S169/2020: [\[2020\] HCATrans 136](#)

Date determined: 9 September 2020 – *Special leave granted.*

Catchwords:

Migration law – Complementary protection – Where first applicant had worked as alcohol distributor in Iraq and claimed he would be targeted for doing so if he returned to Iraq – Where applications for temporary protection visas refused by Minister’s delegate – Where Immigration Assessment Authority (“IAA”) affirmed delegate’s decision finding first applicant could take reasonable step of not selling alcohol to avoid real chance of persecution in Iraq – Whether principles in *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473 applicable in considering complementary protection criterion in s 36(2)(aa) of *Migration Act 1958* (Cth) – Whether, in determining complementary protection claims, IAA may rely on finding made in relation to claim for refugee status as to future changes in applicant’s behaviour without addressing reason for intended changed conduct.

Appealed from FCA: [\[2020\] FCA 518](#)

[Return to Top](#)

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](#); (2019) 271 FCR 342

[Return to Top](#)

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Moorcroft
[B66/2020](#): [\[2020\] HCATrans 166](#)

Date heard: 16 October 2020 – *Special leave granted.*

Catchwords:

Migration law – Removal and deportation – Where s 5(1) of *Migration Act 1958* (Cth) relevantly provided that person who had “been removed or deported from Australia or removed or deported from another country” was “behaviour concern non-citizen” – Where respondent held special category visa – Where that visa purportedly cancelled, and respondent detained and removed from Australia to New Zealand – Where, by consent, Federal Circuit Court quashed cancellation decision – Where respondent returned to Australia and was interviewed by Minister’s delegate at airport on arrival – Where delegate asked whether she had ever been removed, deported, or excluded from any country, including Australia – Where respondent answered yes, and explained circumstances of earlier removal – Where delegate refused to grant respondent special category visa, not being satisfied that the respondent had not been “removed ... from Australia” within meaning of definition of “behaviour concern non-citizen” – Where Federal Circuit Court dismissed respondent’s application for judicial

review of delegate's decision – Where Federal Court allowed appeal from Circuit Court's decision – Whether "removed or deported from" means taken out of some country by or on behalf of government of that country in fact, or whether it means being taken out of some country validly or lawfully, or whether it bears different meanings in same section, namely, valid or lawful removal or deportation in case of ejection from Australia, and removal or deportation in fact in case of other countries.

Appealed from FCA: [\[2020\] FCA 382](#); (2020) 275 FCR 276

[Return to Top](#)

MZAPC v Minister for Immigration and Border Protection & Anor
M77/2020: [\[2020\] HCATrans 113](#)

Date heard: 14 August 2020 – *Special leave granted.*

Catchwords:

Migration law – Procedural fairness – Materiality – Where appellant applied for protection visa – Where appellant's criminal record and related material provided to Administrative Appeals Tribunal ("AAT") by first respondent without appellant's knowledge – Where certificate under s 438 of *Migration Act 1958* (Cth) issued in relation to criminal record and related material and appellant not notified of certificate – Where criminal record disclosed history of serious traffic offences – Where AAT affirmed delegate's decision to refuse visa application – Where appeal to Federal Circuit Court dismissed – Where appeal to Federal Court dismissed – Where common ground that failure to notify appellant of certificate constituted denial of procedural fairness – Whether, when considering materiality of denial of procedural fairness occasioned by failure to notify appellant of s 438 certificate, appellant bore onus of rebutting presumption that AAT did not rely on documents subject to certificate and had to prove that documents had been taken into account by AAT – Whether Federal Court erred in finding that denial of procedural fairness immaterial on basis that offences disclosed in criminal record not rationally capable of impacting appellant's credibility before AAT.

Appealed from FCA: [\[2019\] FCA 2024](#)

[Return to Top](#)

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

[Return to Top](#)

Torts

Talacko v Talacko & Ors

M111/2020: [\[2020\] HCATrans 169](#); [\[2020\] HCATrans 175](#)

Dates determined: 16, 22 October 2020 – *Special leave granted.*

Catchwords:

Torts – Unlawful means conspiracy – Loss of chance – Where, in context of long dispute over properties in Prague, Slovakia, and Dresden, some of the respondents commenced proceedings in Supreme Court of Victoria alleging that applicant and members of her immediate family engaged in unlawful means conspiracy by executing donation agreements which purported to put certain interests in properties beyond reach of respondents – Where Supreme Court held that three of four elements of unlawful means conspiracy made out, but that pecuniary loss not established – Where Court of Appeal allowed appeal against that decision – Whether reduction in chance to recover judgment debt, where that debt may yet be recovered, can constitute pecuniary loss sufficient to complete cause of action – Whether expenses incurred by one party in foreign proceedings can constitute pecuniary loss sufficient to complete cause of action in circumstances where foreign

proceedings ongoing and where foreign court may order that party to bear its own expenses.

Appealed from VSC: [\[2018\] VSC 807](#)

Appealed from VSC (CA): [\[2017\] VSCA 163](#); [\[2020\] VSCA 99](#)

[Return to Top](#)

7: CASES NOT PROCEEDING OR VACATED

Criminal Law

Miller v The Queen

A19/2020: [\[2020\] HCATrans 217](#)

Date heard: 9 December 2020.

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

Catchwords:

Criminal law – Provocation – Where appellant charged with murder and tried before judge and jury – Where self-defence left to jury, but not provocation – Where appellant convicted of murder – Where on appeal to Court of Criminal Appeal (“CCA”), appellant contended provocation should have been left to jury – Where CCA dismissed appeal – Whether CCA erred by conflating question of whether there was evidence raising provocation with question of whether applicant should have been acquitted of murder on account of provocation – Whether there was evidence before jury which might reasonably have led jury to consider provocation established.

Appealed from SASCFC (CCA): [\[2019\] SASCFC 91](#); (2019) 134 SASR 155

Special leave revoked by Full Court on 9 December 2020.

[Return to Top](#)

8: SPECIAL LEAVE REFUSED

Publication of Reasons: 26 November 2020 (Sydney and Melbourne)

No.	Applicant	Respondent	Court appealed from	Result
1.	ANQ16	Minister for Immigration and Border Protection & Anor (M87/2020)	Federal Court of Australia [2019] FCA 693	Application dismissed [2020] HCASL 252
2.	Wilson	Chan & Naylor Parramatta Pty Ltd ATF Chan & Naylor Parramatta Trust & Anor (S173/2020)	Supreme Court of New South Wales (Court of Appeal) [2020] NSWCA 213	Application dismissed [2020] HCASL 253
3.	AUW18	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (S176/2020)	Federal Court of Australia [2020] FCA 1280	Application dismissed [2020] HCASL 254
4.	Chattaway	Minister for Health and Wellbeing & Ors (A17/2020)	Supreme Court of South Australia (Court of Appeal) [2020] SASCF 63	Application dismissed with costs [2020] HCASL 255
5.	C7A/2017 & Ors	Minister for Immigration and Border Protection & Anor (C9/2020)	Full Court of the Federal Court of Australia [2020] FCAFC 63	Application dismissed with costs [2020] HCASL 256
6.	Trevor Fox (a pseudonym)	Director of Public Prosecutions (M67/2020)	Supreme Court of Victoria (Court of Appeal) [2019] VSCA 89	Application dismissed [2020] HCASL 257
7.	CTF16 & Ors	Minister for Immigration and Border Protection & Anor (S91/2020)	Federal Court of Australia [2020] FCA 97	Application dismissed with costs [2020] HCASL 258
8.	Murray John Roberts, Reginald Leslie King, June Gordon, Michael Ryan, Jim Speeding, Queenie Speeding, Ashley Moran, Steven Roberts, Jenny Smith and Lois Johnson on behalf of the Widjabul Wia-bal People	Attorney General of New South Wales & Ors (S125/2020)	Full Court of the Federal Court of Australia [2020] FCAFC 103	Application dismissed with costs [2020] HCASL 259

26 November 2020: Melbourne and by video-link

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Yarran	South West Aboriginal Land & Sea Council Aboriginal Corporation & Ors (P1/2020)	Full Court of the Federal Court of Australia [2019] FCAFC 238	Application dismissed with costs [2020] HCATrans 202
2.	Yarran	South West Aboriginal Land & Sea Council Aboriginal Corporation & Ors (P2/2020)	Full Court of the Federal Court of Australia [2019] FCAFC 238	Application dismissed with costs [2020] HCATrans 202
3.	McGlade (formerly Wanjurri-Nungala) & Ors	South West Aboriginal Land & Sea Council Aboriginal Corporation & Ors (P3/2020)	Full Court of the Federal Court of Australia [2019] FCAFC 238	Application dismissed with costs [2020] HCATrans 202
4.	Smith & Anor	South West Aboriginal Land & Sea Council Aboriginal Corporation & Ors (P4/2020)	Full Court of the Federal Court of Australia [2019] FCAFC 238	Application dismissed with costs [2020] HCATrans 202
5.	Smith & Anor	South West Aboriginal Land & Sea Council Aboriginal Corporation & Ors (P5/2020)	Full Court of the Federal Court of Australia [2019] FCAFC 238	Application dismissed with costs [2020] HCATrans 202
6.	Culbong & Ors	South West Aboriginal Land & Sea Council Aboriginal Corporation & Ors (P6/2020)	Full Court of the Federal Court of Australia [2019] FCAFC 238	Application dismissed with costs [2020] HCATrans 202
7.	Mackay	South West Aboriginal Land & Sea Council Aboriginal Corporation & Ors (P12/2020)	Full Court of the Federal Court of Australia [2019] FCAFC 238	Application dismissed with costs [2020] HCATrans 202

Publication of Reasons: 3 December 2020 (Canberra)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Cumming	The Minister for Planning & Ors (M90/2020)	Supreme Court of Victoria (Court of Appeal) [2020] VSCA 208	Application dismissed with costs [2020] HCASL 260
2.	In the matter of an application by David William Kirby (S94/2020)		High Court of Australia [2020] HCASL 201	Application dismissed [2020] HCASL 261

8 December 2020: Canberra

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Petkos	The Queen (S56/2020)	Supreme Court of New South Wales (Court of Criminal Appeal) [2020] NSWCCA 55	Application dismissed [2020] HCATrans 212
2.	Australian Competition and Consumer Commission	Pacific National Pty Limited & Ors (M60/2020)	Full Court of Federal Court of Australia [2020] FCAFC 77 [2020] FCAFC 98	Application dismissed with costs [2020] HCATrans 213
3.	Pilbara Iron Ore Pty Ltd	Ammon & Anor (P32/2020)	Supreme Court of Western Australia (Court of Appeal) [2020] WASCA 92	Application dismissed with costs [2020] HCATrans 215

Publication of Reasons: 10 December 2020 (Canberra)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Shaw	The Official Trustee in Bankruptcy (M85/2020)	Full Court of the Federal Court of Australia [2020] FCAFC 142	Application dismissed [2020] HCASL 262
2.	Tandukar	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (M99/2020)	Federal Court of Australia [2020] FCA 1267	Application dismissed [2020] HCASL 263
3.	Batterham	Nauer (S174/2020)	Supreme Court of New South Wales (Court of Appeal) [2020] NSWCA 204	Application dismissed [2020] HCASL 264
4.	BOG16	Minister for Immigration and Border Protection & Anor (M86/2020)	Federal Court of Australia [2019] FCA 1087	Application dismissed [2020] HCASL 265
5.	Wang	State of New South Wales & Anor (S172/2020)	Supreme Court of New South Wales (Court of Appeal) [2020] NSWCA 171	Application dismissed [2020] HCASL 266
6.	Mohareb	Harbour Radio Pty Limited & Ors (S175/2020)	Supreme Court of New South Wales (Court of Appeal) [2020] NSWCA 231	Application dismissed [2020] HCASL 267
7.	DVO18 & Anor	Minister for Home Affairs & Anor (M73/2020)	Federal Court of Australia [2020] FCA 989	Application dismissed with costs [2020] HCASL 268
8.	DR	The Queen (S111/2020)	Supreme Court of New South Wales (Court of Criminal Appeal) [2020] NSWCCA 320	Application dismissed [2020] HCASL 269
9.	Macquarie International Health Clinic Pty Ltd	Sydney Local Health District (S152/2020)	Supreme Court of New South Wales (Court of Appeal) [2020] NSWCA 161	Application dismissed with costs [2020] HCASL 270
10.	Alexandria Landfill Pty Ltd	Transport for NSW (S156/2020)	Supreme Court of New South Wales (Court of Appeal) [2020] NSWCA 165	Application dismissed with costs [2020] HCASL 271

11 December 2020: Canberra and by video-link

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Berkeley Challenge Pty Limited	United Voice (B46/2020)	Full Court of the Federal Court of Australia [2020] FCAFC 113	Application dismissed with costs [2020] HCATrans 219
2.	Spotless Services Australia Limited	Fair Work Ombudsman (P37/2020)	Full Court of the Federal Court of Australia [2020] FCAFC 113	Application dismissed with costs [2020] HCATrans 219
3.	BHL19	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (M61/2020)	Full Court of the Federal Court of Australia [2020] FCAFC 94	Application dismissed with costs [2020] HCATrans 220
4.	Maguire	Parks Victoria (M66/2020)	Supreme Court of Victoria (Court of Appeal) [2020] VSCA 172	Discontinued
5.	Ban	The State of Western Australia (P34/2020)	Supreme Court of Western Australia (Court of Appeal) [2020] WASCA 91	Application dismissed [2020] HCATrans 222