



HIGH COURT BULLETIN

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High Court of Australia Library
[2022] HCAB 6 (19 August 2022)

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

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1: SUMMARY OF NEW ENTRIES

2: Cases Handed Down

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<i>Nathanson v Minister for Home Affairs & Anor</i>	Administrative Law
<i>Farm Transparency International Ltd & Anor v State of New South Wales</i>	Constitutional Law
<i>O'Dea v The State of Western Australia</i>	Criminal Law
<i>Dansie v The Queen</i>	Criminal Practice
<i>Google LLC v Defteros</i>	Defamation
<i>Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor</i>	Immigration
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3: Cases Reserved

Case	Title
<i>Bosanac v Commissioner of Taxation & Anor</i>	Equity
<i>TL v The Queen</i>	Evidence
<i>Allianz Australia Insurance Limited v Delor Vue Apartments CTS 39788</i>	Insurance
<i>BHP Group Limited v Impiombato & Anor</i>	Representative Proceedings

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Case	Title
<i>Stanley v Director of Public Prosecutions (NSW) (Sydney) & Anor</i>	Administrative Law
<i>Laundy Hotels (Quarry) Pty Limited v Dyco Hotels Pty Limited atf The Parras Family Trust & Ors</i>	Contract
<i>QYFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor</i>	Courts and Judges

7: Cases Not Proceeding or Vacated

Case	Title
<i>Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor v Montgomery</i>	Constitutional Law

8: Special Leave Refused

2: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the August 2022 sittings.

Administrative Law

Nathanson v Minister for Home Affairs & Anor

M73/2021: [\[2022\] HCA 26](#)

Judgment: 17 August 2022

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

Catchwords:

Administrative law – Judicial review – Jurisdictional error – Requirement that error must be material – When error will be material – Where appellant's visa cancelled under s 501(3A) of *Migration Act 1958* (Cth) – Where delegate of Minister for Home Affairs decided not to revoke cancellation – Where appellant sought review of non-revocation decision by Administrative Appeals Tribunal ("AAT") – Where AAT denied appellant procedural fairness by not giving opportunity to address relevance of incidents of domestic violence to primary consideration prescribed by direction made under s 499 of *Migration Act* – Whether denial of procedural fairness material – Whether, in discharging onus, appellant required to establish nature of evidence or submissions that might have been presented had AAT hearing been procedurally fair.

Words and phrases – "judicial review", "jurisdictional error", "material", "materiality", "natural justice", "onus of proof", "practical injustice", "procedural fairness", "realistic possibility of a different outcome", "reasonable conjecture".

Appealed from FCA (FC): [\[2020\] FCAFC 172](#); (2020) 281 FCR 23; (2020) 171 ALD 497

Held: Appeal allowed with costs.

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Constitutional Law

Farm Transparency International Ltd & Anor v State of New South Wales

S83/2021: [\[2022\] HCA 23](#)

Judgment: 10 August 2022

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

Catchwords:

Constitutional law (Cth) – Implied freedom of communication about governmental or political matters – Where s 8 of *Surveillance Devices Act 2007* (NSW) ("SD Act") relevantly prohibited knowing installation, use or maintenance of optical surveillance device on or within premises to record visually or observe carrying on of activity if installation, use or maintenance of device involved trespass – Where ss 11 and 12 of SD Act prohibited, respectively, publication or communication of record or report, and possession of record, obtained in contravention of, relevantly, s 8 of SD Act – Whether ss 11 and 12 burdened implied freedom – Whether provisions for legitimate purpose – Whether provisions suitable, necessary and adequate in balance.

Words and phrases – "adequate in its balance", "breach of confidence", "burden", "complicit in trespass", "implied freedom of political communication", "incremental burden", "lawful activity", "legitimate purpose", "mens rea", "optical surveillance device", "partially disappplied", "privacy", "public interest", "reasonably necessary", "structured proportionality", "suitable", "surveillance devices", "trespass".

Surveillance Devices Act 2007 (NSW), ss 8, 11, 12.

Special case referred to the Full Court on 27 September 2021.

Held: Special case answered.

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Criminal Law

O'Dea v The State of Western Australia

P53/2021: [\[2022\] HCA 24](#)

Judgment: 10 August 2022

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

Catchwords:

Criminal law – Parties to offence – Principal offenders – Where appellant and another charged jointly with offence of unlawfully doing

grievous bodily harm with intent under s 294(1)(a) of *Criminal Code* (WA) – Where prosecution relied on s 7(a) of *Criminal Code*, which deems "[e]very person who actually does the act ... which constitutes the offence" to be guilty of offence – Where uncertainty as to which act or acts of appellant or co-accused, or combination of their acts, caused grievous bodily harm – Where trial judge relevantly directed jury they could convict appellant under s 7(a) if satisfied beyond reasonable doubt that appellant and co-accused were "acting in concert, each of them doing one or more of the acts which caused" grievous bodily harm and that "[t]he relevant accused's acts were unlawful" – Whether s 7(a) permits acts of person to be attributed to another – Whether jury direction occasioned miscarriage of justice.

Words and phrases – "acting in concert", "actually does the act", "attribution", "criminal responsibility", "deemed to have taken part in committing the offence", "parties to offence", "principal in the first degree", "principal offender", "unlawful common purpose".

Criminal Code (WA), s 7(a).

Appealed from WASC (CA): [\[2021\] WASCA 61](#); (2021) 57 WAR 229; (2021) 288 A Crim R 451

Held: Appeal allowed.

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Criminal Practice

Dansie v The Queen

A4/2022: [\[2022\] HCA 25](#)

Judgment: 10 August 2022

Coram: Gageler, Keane, Gordon, Steward and Gleeson JJ

Catchwords:

Criminal practice – Appeal – Where appellant tried and convicted of murder of wife by judge alone in Supreme Court of South Australia – Where appellant appealed conviction on ground that verdict unreasonable or could not be supported having regard to whole of evidence – Whether Full Court of Supreme Court of South Australia sitting as Court of Criminal Appeal misapplied test in *M v The Queen* (1994) 181 CLR 487 – Function of court of criminal appeal determining appeal against conviction on unreasonableness ground following trial by judge alone.

Words and phrases – "advantage in seeing and hearing the evidence", "circumstantial case", "function of a court of criminal

appeal", "independent assessment of the evidence", "inference of guilt", "jury questions", "pathway to proof of guilt", "unreasonable verdict", "unreasonableness ground".

Criminal Procedure Act 1921 (SA), s 158(1)(a).

Appealed from SASC (CCA): [\[2020\] SASCF 103](#)

Held: Appeal allowed.

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Defamation

Google LLC v Defteros

M86/2021: [\[2022\] HCA 27](#)

Judgment: 17 August 2022

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

Catchwords:

Defamation – Publication – Where appellant operated internet search engine – Where search engine produced search results to users in response to user-designed search queries through use of computer programs and algorithms – Where each search result relevantly comprised title of webpage, snippet of content, and hyperlink to another webpage on World Wide Web – Where inputting respondent's name into search engine returned search result ("Search Result"), which included hyperlink to article published on newspaper's website containing matter defamatory of respondent – Where defamatory matter not reproduced in Search Result – Whether appellant "publisher" of defamatory matter – Whether providing Search Result amounted to act of participation in communication of defamatory matter to third party.

Words and phrases – "act of participation in the communication of defamatory matter to a third party", "content-neutral", "defamation", "Google search engine", "googling", "hyperlink", "incorporation", "incorporation by reference", "instrumental in, or contributes to any extent to, the publication of defamatory matter", "internet search engine", "lends assistance to the publication", "mere reference", "navigate information on the World Wide Web", "publication", "publisher", "search engine", "search query", "search result", "search terms".

Appealed from VSC (CA): [\[2021\] VSCA 167](#)

Held: Appeal allowed; appellant to pay the respondent's costs.

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Immigration

Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor

S135/2021: [\[2022\] HCA 28](#)

Judgment: 17 August 2022

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

Catchwords:

Immigration – Visas – Review of cancellation decision – Application for extension of time – Where then Minister for Home Affairs cancelled plaintiff's visa pursuant to s 501(3)(b) of *Migration Act 1958* (Cth) – Where plaintiff applied pursuant to s 477A(2) for extension of time to file application for review of Minister's decision – Where primary judge heard application for extension of time concurrently with underlying substantive application – Where primary judge refused application for extension of time on basis that proposed ground of review had no merit – Whether primary judge misapprehended or misconceived nature of statutory power in s 477A(2) – Whether primary judge committed jurisdictional error – Whether exercise of discretion in s 477A(2) may involve more than impressionistic assessment of merits of proposed grounds of review.

Words and phrases – "extension of time", "impressionistic assessment", "jurisdictional error", "misapprehended or misconceived", "necessary in the interests of the administration of justice", "reasonable prospects of success", "reasonably arguable".

Migration Act 1958 (Cth), ss 476A, 477A.

Application for constitutional writs referred to the Full Court on 9 December 2021.

Held: Application dismissed with costs.

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Patents

Aristocrat Technologies Australia Pty Ltd v Commissioner of Patents

S40/2022: [\[2022\] HCA 29](#)

Judgment: 17 August 2022

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

Catchwords:

Patents – Invention – Manner of manufacture – Where appellant manufactured electronic gaming machines ("EGMs") – Where appellant owned four innovation patents concerning various embodiments of EGM – Where specification described claimed invention as combination of player interface, being physical features of EGM, and game controller, being computerised components interacting with player interface to implement base game and feature game – Where player interface and game controller part of common general knowledge – Where delegate of respondent revoked innovation patents on ground that claim in each not "manner of manufacture" within meaning of s 18(1A)(a) of *Patents Act 1990* (Cth) – Whether claimed invention "manner of manufacture" within meaning of s 18(1A)(a) of *Patents Act*.

Words and phrases – "abstract idea", "artificially created state of affairs", "characterisation", "common general knowledge", "computer implemented invention", "electronic gaming machine", "generic computer technology", "improvement in computer technology", "innovation patent", "invention", "manner of manufacture", "mere scheme or plan", "patent", "patentable subject matter", "proper subject of letters patent", "Statute of Monopolies", "useful result".

Patents Act 1990 (Cth), s 18, Sch 1.

Appealed from FCA (FC): [\[2021\] FCAFC 202](#); (2021) 286 FCR 572; (2021) 396 ALR 380; (2021) 163 IPR 231

Held: Appeal dismissed with costs.

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3: CASES RESERVED

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

Constitutional Law

Garlett v The State of Western Australia & Anor

P56/2021: [\[2022\] HCATrans 27](#); [\[2022\] HCATrans 28](#)

Date heard: 10 and 11 March 2022

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

Catchwords:

Constitutional law – Chapter III – Where appellant was sentenced to imprisonment after pleading guilty to two charges – Where appellant's previous offending included robbery – Where appellant referred to State Solicitor's Office to consider whether application should be made under s 35 of *High Risk Serious Offenders Act 2020* (WA) ("HRSO Act"), which provided for State to apply for restriction order in relation to "serious offender under custodial sentence who is not a serious offender under restriction" – Where application was made for restriction order under s 48 of HRSO Act – Where appellant argued parts of HRSO Act were incompatible with Chapter III of *Constitution* – Whether provisions of HRSO Act contravene any requirement of Chapter III as they apply to serious offender under custodial sentence who has been convicted of robbery, referred to in item 34 of Schedule 1 Division 1 of HRSO Act.

Removed from the Court of Appeal of the Supreme Court of Western Australia.

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SDCV v Director-General of Security & Anor

S27/2022: [\[2022\] HCATrans 100](#); [\[2022\] HCATrans 102](#)

Date heard: 7 and 8 June 2022

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

Catchwords:

Constitutional law – Judicial power of Commonwealth – Ch III of *Constitution* – Validity of s 46(2) of *Administrative Appeals Tribunal Act 1975* (Cth) ("AAT Act") – Where appellant subject to adverse security assessment (ASA) by Australian Security Intelligence Office (ASIO) – Where appellant sought review of ASA by Administrative Appeal Tribunal ("AAT") – Where s 39A(8) of AAT Act provided ASIO Minister may certify evidence proposed to be adduced or submissions proposed to be made by Director-General of Security are of such nature that disclosure be contrary to public interest – Where s 39B(2)(a) of AAT Act provided ASIO Minister may certify disclosure of information in certificate, or disclosure of contents of document, would be contrary to public interest – Where ASIO Minister issued certificates under ss 39A(8) and 39B(2)(a) of AAT Act – Where AAT affirmed ASA decision – Where, when appealed to Federal Court, AAT obliged under s 46(1) of AAT Act to send documents before AAT to Court – Where, because certificates in force in respect of certain documents, Federal Court required by s 46(2) of AAT Act to do all things necessary to ensure matter not disclosed to person other than a member of Court – Where Federal Court determined s 46(2) of AAT Act valid and proceeded to determine appeal grounds adversely to appellant while having regard to submissions and evidence to which appellant did not have access by reason of s 46(2) – Whether s 46(2) of AAT Act denies appellant procedural fairness – Whether s 46(2) is invalid by reason of Ch III of Constitution in that it requires Federal Court to act in procedurally unfair manner – Whether decisions in *Gypsy Jokers Motorcycle Club Inc v Commissioner of Police* (2008) 234 CLR 532; *Assistant Commissioner Pompano v Condon Pty Ltd* (2013) 252 CLR 38; or *Graham v Minister for Immigration and Border Protection* (2017) 263 CLR 1 should be qualified or overruled.

Appealed from FCA (FC): [\[2021\] FCAFC 51](#); (2021) 284 FCR 357; (2021) 389 ALR 372; (2021) 173 ALD 450

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Criminal Law

Stephens v The Queen

S53/2022: [\[2022\] HCATrans 108](#)

Date heard: 16 June 2022

Coram: Keane, Gordon, Edelman, Steward and Gleeson JJ.

Catchwords:

Criminal law – Presumption against retrospectivity – Where, on 8 June 1984, *Crimes Act 1900* (NSW) amended to repeal s 81, which proscribed indecent assault on male person, and inserted s 78K,

which proscribed homosexual intercourse with male person between ages of 10 and 18 years – Where appellant prosecuted for alleged sexual offences committed against complainant between January 1982 and December 1987 – Where complainant turned 16 years old on 6 July 1987 – Where, on 29 November 2018, appellant arraigned on indictment containing 18 counts – Where date range for alleged offences extended across 8 June 1984, with indictment drafted so that one count alleged offence against s 81, and another count, pleaded in alternative, alleged offence against s 78K, with dates commensurate with dates provisions were in force – Where, on 1 December 2018, s 80AF of *Crimes Act* came into effect – Where s 80AF applied if: (a) uncertainty as to when during period conduct alleged to have occurred; (b) victim of alleged conduct child (under age of 16 years) for whole of period; (c) no time during that period that alleged conduct, if proven, would not have constituted sexual offence; and (d) because of change in law or change in age of child during that period, alleged conduct, if proven, would have constituted more than one sexual offence during that period – Where s 80AF provided that prosecution could rely on offence carrying lesser maximum penalty for entirety of charged period – Where indictment amended on 5 February 2019 to take benefit of s 80AF, with s 81 carrying lesser maximum penalty – Whether s 80AF of *Crimes Act*, which came into effect on 1 December 2018, had retrospective application to appellant's trial, which commenced no later than 29 November 2018 upon arraignment – Whether principles against retrospectivity infringed – Whether s 80AF procedural or substantive.

Appealed from NSWSC (CCA): [\[2021\] NSWCCA 152](#); (2021) 290 A Crim R 303

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Equity

Bosanac v Commissioner of Taxation & Anor

P9/2022: [\[2022\] HCATrans 133](#)

Date heard: 16 August 2022

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

Catchwords:

Equity – Presumption of advancement – Beneficial ownership – Matrimonial home – Where Mr and Ms Bosanac ("Bosanacs") married in 1998 – Where Ms Bosanac offered to purchase matrimonial home for \$4.5 million ("Property") – Where Bosanacs applied for two joint loans to purchase Property – Where Property transferred into sole name of Ms Bosanac – Where Commissioner applied for declaration

that Ms Bosanac held 50% of her interest in Property on trust for Mr Bosanac – Where primary judge held presumption of advancement not rebutted – Where Full Court relied on fact Mr Bosanac borrowed money with Ms Bosanac to purchase Property to found rebuttal of presumption of advancement – Where Full Court relied on statement in *The Trustees of the Property of Cummins (a bankrupt) v Cummins* (2006) 227 CLR 278 at [71] that where husband and wife purchase matrimonial home, each contributing to purchase price and title is taken by one spouse, it be inferred each spouse intended to have one-half interest, regardless of amounts contributed – Whether rebuttal of presumption of advancement, applying to purchase by spouses of matrimonial home, can be founded on same facts giving rise to presumption of advancement – Whether, in considering whether presumption of advancement rebutted, court should consider spouses' intentions or any joint intention – Proper approach to rebuttal of presumption of advancement.

Appealed from FCA (FC): [\[2021\] FCAFC 158](#)

Appealed from FCA (FC): [\[2022\] FCAFC 5](#)

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Evidence

TL v The Queen

S61/2022: [\[2022\] HCATrans 134](#)

Date heard: 17 August 2022

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

Catchwords:

Evidence – Tendency evidence – Proof of identity – Where appellant convicted of murder of partner's child – Where blunt force trauma to abdomen cause of death – Where, 10 days prior, child suffered burns after appellant placed child in hot water – Where evidence of burns admitted as tendency evidence pursuant to s 97 of *Evidence Act 1995* (NSW) to prove appellant's tendency to "deliberately inflict physical harm on child" – Where appellant convicted and appealed against conviction on grounds including that tendency evidence should not have been admitted – Where appellant relied on statement in *Hughes v The Queen* (2017) 263 CLR 388 concerning requirement for "close similarity" between tendency alleged and offence charged – Where Court of Criminal Appeal held requirement for "close similarity" should arise when tendency evidence only or predominant evidence that goes to identity – Whether, where tendency evidence adduced to prove identity of offender for known offence, probative value of tendency evidence will depend upon close similarity between conduct

evidencing tendency and offence – Proper approach to principle articulated in *Hughes*.

Appealed from NSW (CCA): [\[2020\] NSWCCA 265](#)

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Insurance

Allianz Australia Insurance Limited v Delor Vue Apartments CTS
39788

S42/2022: [\[2022\] HCATrans 126](#); [\[2022\] HCATrans 127](#)

Date heard: 10 and 11 August 2022

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

Catchwords:

Insurance – Insurance contracts – Indemnity – Election – Estoppel – Waiver – Duty of utmost good faith – Where s 28(3) of *Insurance Contracts Act 1984* (Cth) enables insurer to reduce liability in respect of claim where, relevantly, insured breached duty of disclosure – Where insured notified claim under insurance policy following cyclone damage – Where insurer agreed to indemnify despite non-disclosure of prior defects – Where insurer took steps consistent with providing indemnity – Where insurer emailed insured stating, despite non-disclosure, claim would be honoured – Where insurer subsequently sought to disclaim liability on basis of non-disclosure – Where majority of Full Court of Federal Court of Australia dismissed appeal, holding insurer had elected not to raise defence under s 28(3) – Whether insurer elected not to raise defence under s 28(3) – Whether, if doctrine of election did not apply, insurer waived entitlement to raise defence under s 28(3) – Whether insurer estopped from raising defence under s 28(3) – Whether insured suffered detriment – Whether insurer breached duty of utmost good faith and, if so, whether insured suffered loss justifying relief.

Appealed from FCA (FC): [\[2021\] FCAFC 121](#); (2021) 287 FCR 388; (2021) 396 ALR 27; (2021) 153 ACSR 522

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Representative Proceedings

BHP Group Limited v Impiombato & Anor

M12/2022: [\[2022\] HCATrans 124](#)

Date heard: 9 August 2022

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

Catchwords:

Representative proceedings – Shareholder class action – Non-resident shareholders – Pt IVA *Federal Court of Australia Act 1976* (Cth) ("FCA Act") – Presumption against extraterritoriality – Dual listed company structure – Where claims brought on behalf of non-resident shareholders of BHP Group Limited (Australian company) and BHP Group Plc (United Kingdom company) – Where claims brought in Federal Court of Australia under Pt IVA concerning representative proceedings – Whether Pt IVA of FCA Act applies to claims brought on behalf of non-resident group members – Whether presumption against extraterritorial operation of legislation applies to Pt IVA of FCA Act – Whether Part IVA of FCA Act confers on Federal Court jurisdiction or power to determine claims of group members outside territory.

Appealed from FCA (FC): [\[2021\] FCAFC 93](#); (2021) 286 FCR 625; (2021) 151 ACSR 634

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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

Vanderstock & Anor v State of Victoria

[M61/2021](#)

Catchwords:

Constitutional law – Duties of excise – Section 90 of *Constitution* – Exclusive power of Commonwealth Parliament – Where *Zero and Low Emission Vehicle Distance-based Charge Act 2021* (Vic) ("ZLEV Act") defines "ZLEV" to mean any of following not excluded vehicles: (a) electric vehicle; (b) hydrogen vehicle; and (c) plug-in hybrid electric vehicle – Where s 7(1) of ZLEV Act requires registered operator of ZLEV to pay charge for use of ZLEV on specified roads -- Whether s 7(1) of ZLEV Act invalid as imposing duty of excise within meaning of s 90 of *Constitution*.

Special case referred to the Full Court on 2 June 2022.

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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

Stanley v Director of Public Prosecutions (NSW) (Sydney) & Anor
S9/2022: [\[2022\] HCATrans 139](#)

Date heard: 19 August 2022 – *Special leave granted*

Catchwords:

Administrative law – Judicial review – Jurisdictional error – Where District Court's exercise of sentencing discretion governed by *Crimes (Sentencing Procedure) Act 1999* (NSW) ("CSP") – Where s 7 of CSP provides court that sentenced offender to imprisonment may make intensive correction order ("ICO") – Where, when considering making ICO, Part 5 of CSP applies, including s 66 which provides "[c]ommunity safety must be paramount consideration" when sentencing court is deciding whether to make ICO – Where s 66(2) requires sentencing court to assess whether making order or serving sentence more likely to address offender's risk of reoffending – Whether failure to comply with s 66(2) of CSP constitutes jurisdictional error – Whether statutory requirement that matter be considered is jurisdictional/mandatory if power being exercised is part of sentencing process undertaken by court – Whether statutory requirement that matter be considered is not jurisdictional if failure to comply cannot be characterised as fundamentally misconceiving sentencing function – Whether "complex" consequences of finding criminal sentence invalid weigh significantly against finding statutory requirement intended to be jurisdictional/mandatory.

Appealed from NSW (CA): [\[2021\] NSWCA 337](#); (2021) 107 NSWLR 1; (2021) 398 ALR 355

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Constitutional Law

Attorney-General (Cth) v Huynh & Ors
S78/2022: [\[2022\] HCATrans 91](#)

Date determined: 12 May 2022 – *Special leave granted*

Catchwords:

Constitutional law – Judicial power – Post-appeal application for inquiry into conviction – State courts – Supervisory jurisdiction – Where s 68(1) of *Judiciary Act 1903* (Cth) provided State laws with respect to procedures apply to persons charged with Commonwealth offences where jurisdiction conferred on courts of that State – Where s 68(2) conferred jurisdiction on State courts with respect to criminal proceedings – Where, following conviction for offences against laws of Commonwealth and unsuccessful appeal, Mr Huynh applied to NSW Supreme Court under Pt 7, Div 3 of *Crimes (Appeal and Review) Act 2001* (NSW) ("Appeal and Review Act") for review of conviction and sentence – Where NSW Supreme Court judge dismissed application and Mr Huynh sought judicial review of decision – Whether post-appeal inquiry and review procedures in Pt 7, Div 3 of Appeal and Review Act available in relation to conviction or sentence for Commonwealth offence heard in NSW court – Whether power exercised by judge under s 79 of Pt 7, Div 3 of Appeal and Review Act, to consider applications for inquiry into conviction made under s 78, judicial or administrative in nature – Whether ss 78-79 of Appeal and Review Act apply as federal law pursuant to s 68(1) of *Judiciary Act* in relation to conviction.

Appealed from NSW (CA): [\[2021\] NSWCA 297](#); (2021) 107 NSWLR 75; (2021) 396 ALR 422

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Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Ors; DCM20 v Secretary of Department of Home Affairs & Anor

M32/2022; S81/2022: [\[2022\] HCATrans 89](#); [\[2022\] HCATrans 90](#)

Date determined: 12 May 2022 – *Special leave granted*

Catchwords:

Constitutional law – Judicial review – Non-statutory executive action – Sections 61 and 64 of *Constitution* – Where s 351(1) of the *Migration Act 1958* (Cth) ("Act") provided if Minister thinks it in public interest, Minister may substitute decision of Administrative Appeals Tribunal under s 349 of Act for decision more favourable to applicant – Where s 351(3) and s 351(7) provided power under s 351(1) be exercised by Minister personally and Minister under no duty to consider whether to exercise power – Where Minister issued guidelines in relation to power conferred by s 351 setting out circumstances in which Department of Home Affairs should refer requests – Where Departmental officers concluded requests for intervention failed to satisfy criteria for referral in guidelines – Whether decision of Departmental officer not to refer to request for

Minister to exercise power conferred by s 351(1) amenable to judicial review – Whether decision of Departmental officer affected by legal unreasonableness – Whether remedies available.

Appealed from FCA (FC): [\[2021\] FCAFC 213](#); (2021) 288 FCR 23

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Vunilagi v The Queen & Anor
C13/2022: [\[2022\] HCATrans 113](#)

Date heard: 17 June 2022 – *Special leave granted*

Catchwords:

Constitutional law – Powers of courts – Powers of Legislative Assembly of Australian Capital Territory – Trial by jury – Where appellant arrested and committed to trial – Where, following COVID-19 outbreak, *Supreme Court Act 1933* (ACT) amended by *COVID-19 Emergency Response Act 2020* (ACT) to include s 68BA which provided, relevantly, Court may order trial by judge alone – Where appellant advised Chief Justice proposed making order pursuant to s 68BA – Where appellant and first respondent opposed making of order – Where s 68BA repealed, but continued to apply to appellant by operation of s 116 and 117 of *Supreme Court Act* – Where Chief Justice ordered appellant's trial to proceed by judge alone – Where appellant found guilty – Whether s 68BA contravened limitation deriving from *Kable v Director of Public Prosecutions* (NSW) (1996) 198 CLR 511 – Whether s 68BA inconsistent with requirement in s 80 of *Constitution* that trial on indictment of any offence against law of Commonwealth be by jury.

Appealed from ACTSC (CA): [\[2021\] ACTCA 12](#); (2021) 17 ACTLR 72; (2021) 362 FLR 385

Contracts

Laundy Hotels (Quarry) Pty Limited v Dyco Hotels Pty Limited atf The Parras Family Trust & Ors
S8/2022: [\[2022\] HCATrans 136](#)

Date heard: 19 August 2022 – *Special leave granted*

Catchwords:

Contracts – Construction – Interpretation – Termination – Frustration – Supervening illegality – Covid-19 – Public Health Order – Where settlement of goodwill, plant and equipment under contract for sale

of hotel and associated business agreed to take place on 30 March 2020 – Where cl 50.1 of contract required vendor to carry on business in usual and ordinary course as regards its nature, scope and manner and repair and maintain assets in same manner as at date of contract and use reasonable endeavours to ensure all items on inventory in good repair and in proper working order – Where *Public Health (Covid-19 Places of Social Gathering) Order 2020* (NSW), made pursuant to *Public Health Act 2010* (NSW), came into effect on 23 March 2020 and prohibited opening of pubs except for sale of food and beverages to be consumed off premises – Where purchasers asserted contract had been frustrated – Whether supervening illegality pursuant to Public Health Order suspended parties' obligations to seek completion of contract – Whether Public Health Order amounted to doctrine of temporary suspension of obligations inconsistent with approach to resolving questions of supervening illegality.

Appealed from NSW (CA): [\[2021\] NSWCA 332](#); (2021) 396 ALR 340

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Copyright

Realestate.com.au Pty Ltd v Hardingham & Ors; RP Data Pty Limited v Hardingham & Ors
S57/2022; S58/2022: [\[2022\] HCATrans 64](#)

Date heard: 12 April 2022 – *Special leave granted*

Catchwords:

Copyright – Informal oral agreements – Inferred term – Implied term – Where Hardingham professional photographer and sole director of Real Estate Marketing Australia Pty Ltd ("REMA") – Where REMA commissioned by agencies to take photographs and prepare floor plans of properties for use on platforms concerning marketing of properties for sale or lease – Where retainer of Hardingham and REMA by agencies oral, informal and said nothing of copyright in photographs and floorplans – Where Hardingham entered into "deed of licence" with REMA by which Hardingham granted REMA exclusive licence of copyright subsisting in works originated by him – Where photographs and floor plans provided to each agency were uploaded to appellant's platform – Where appellant's terms and conditions provided that agency granted licence to appellant to use and adapt content provided by agency – Where s 15 of *Copyright Act 1968* (Cth) provided "act shall be deemed to have been done with licence of copyright owner if doing of act was authorized by a licence binding copyright owner" – Whether, in informal agreement under which owner of copyright in works intends to grant another person licence

to use works, including right to grant sub-licence to third party, it is necessary for licensor and licensee to know precise terms of grant by sub-licence – Whether, for purposes of engaging s 15 of *Copyright Act*, it is necessary to show what licence binding on owner allowed, and whether infringer acted consistently with licence.

Appealed from FCA (FC): [\[2021\] FCAFC 148](#); (2021) 395 ALR 644; (2021) 162 IPR 1

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Corporations Law

Bryant & Ors as Liquidators of Gunns Limited and Auspine Limited v Badenoch Integrated Logging Pty Ltd

A10/2022: [\[2022\] HCATrans 42](#)

Date heard: 18 March 2022 – *Special leave granted*

Catchwords:

Corporations law – Voidable transactions – Unfair preferences – "Peak indebtedness" rule – Interpretation of s 588FA of *Corporations Act 2001* (Cth) – Where, pursuant to s 588FA(1), transaction an unfair preference given by company to creditor if company and creditor are parties to transaction and, as a result of transaction, creditor receives more than creditor would have were creditor to prove for debt in winding up – Where s 588FA(3)(c) provided s 588FA(1) applies to all transactions forming part of relationship as if single transaction where, relevantly, transaction an integral part of a continuing business relationship – Where Full Court set aside primary judge's finding that liquidators entitled to choose point of peak indebtedness during statutory period in endeavouring to show, from that point, preferential payment under s 588FA(1) – Whether, by enacting s 588FA(3)(c), Parliament intended to abrogate liquidator's right to choose any point during statutory period, including point of peak indebtedness, to show point from which preferential payment under s 588FA(1) – Proper point for single transaction under s 588FA(3)(c) – Whether continuing business relationship will cease if operative and mutual purpose of inducing further support is subordinated to predominant purpose of recovering past indebtedness.

Appealed from FCA (FC): [\[2021\] FCAFC 64](#); (2021) 284 FCR 590; (2021) 152 ACSR 361

Appealed from FCA (FC): [\[2021\] FCAFC 111](#)

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Metal Manufacturers Pty Limited v Gavin Morton as Liquidator of MJ Woodman Electrical Contractors Pty Ltd (in Liquidation) & Anor
B19/2022: [\[2022\] HCATrans 88](#)

Date determined: 12 May 2022 – *Special leave granted*

Catchwords:

Corporations law – Insolvency – Liquidators – Set-off – Unfair preferences – Mutuality – Where s 533C(1) of *Corporations Act 2001* (Cth) provided, relevantly, where mutual credits, mutual debts or other mutual dealings between insolvent company being wound up and person who wants debt or claim admitted against company: (a) account to be taken of what due in respect of mutual dealings; and (b) sum due from one party to be set off against any sum due from other party; and (c) only balance of account admissible to proof against company – Where ss 588FA, 588FE and 588FF of *Corporations Act* provide for recovery of unfair preferences – Where creditor received payments during relation back period of \$190,000 – Where quantum of creditor’s alleged set-off admitted to be \$194,727.23 – Whether statutory set-off under s 553C(1) of *Corporations Act* available to creditor against liquidator in answer to claim for recovery of unfair preference under ss 588FA, 588FE and 588FF of *Corporations Act* – Proper approach to mutuality in s 533C.

Appealed from FCA (FC): [\[2021\] FCAFC 228](#); (2021) 402 ALR 387; (2021) 159 ACSR 115; (2021) 18 ABC(NS) 257

Appealed from FCA (FC): [\[2022\] FCAFC 1](#)

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Courts and Judges

QYFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor
M84/2021: [\[2022\] HCATrans 130](#)

Date heard: 12 August 2022 – *Special leave granted*

Catchwords:

Courts and judges – Bias – Reasonable apprehension of bias – Disqualification – Where, prior to appointment, judge as Commonwealth Director of Public Prosecutions: (a) instituted and carried on successful prosecution of QYFM on indictment, and (b) appeared to successfully oppose appeal by QYFM against conviction

– Where QYFM brought challenge to Minister’s decision not to revoke cancellation of QYFM’s visa – Where application for disqualification brought against judge on basis of apprehended bias – Where judge heard application alone, refused to disqualify himself and sat on Full Court appeal challenging primary judge's decision dismissing application for judicial review of Administrative Appeals Tribunal's decision to affirm cancellation of QYFM's visa – Whether application for disqualification of single member of Full Court on basis of apprehended bias should be decided by single judge alone or by Full Court – Whether judgment of Full Court liable to be set aside if single judge affected by apprehended bias.

Constitutional Law – Chapter III – Judicature of the Commonwealth – Impartiality of judiciary – Bias – Reasonable apprehension of bias – Proper application of test in *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337.

Appealed from FCA (FC): [\[2021\] FCAFC 166](#); (2021) 287 FCR 328

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Criminal Law

Awad v The Queen; Tambakakis v The Queen
M44/2022; M45/2022: [\[2022\] HCATrans 115](#)

Date heard: 17 June 2022 – *Special leave granted on limited grounds*

Catchwords:

Criminal law – Jury directions – *Jury Directions Act 2015* (Vic) – Where s 44J(b) of *Jury Directions Act* prohibited trial judge from directing jury that accused gave evidence because: (i) guilty person who gives evidence more likely to be believed; and (ii) innocent person can do nothing more than give evidence – Where appellants arraigned before jury panel, both pleading not guilty to one charge alleging commission of offence of attempt to possess commercial quantity of unlawfully imported border controlled drug – Where Crown's case was appellants in joint possession of drugs for period – Where Tambakakis gave sworn evidence – Where trial judge gave jury direction regarding Tambakakis' evidence that Court of Appeal held contrary to s 44J of *Jury Directions Act* – Where Court of Appeal held, despite direction contrary to s 44J of *Jury Directions Act*, direction did not result in substantial miscarriage of justice for either appellant – Whether, given impugned direction prohibited by s 44J of *Jury Directions Act*, substantial miscarriage of justice occurred.

Appealed from VSC (CA): [\[2021\] VSCA 285](#); (2021) 291 A Crim R 303

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BA v The Queen

S101/2022: [\[2022\] HCATrans 111](#)

Date heard: 17 June 2022 – *Special leave granted*

Catchwords:

Criminal law – Breaking and entering – Legal right to enter – Meaning of "breaks" – Where s 112 of *Crimes Act 1900* (NSW) provides person who breaks and enters any dwelling-house or other building and commits any serious indictable offence guilty of offence – Where appellant and complainant resided together in apartment occupied pursuant to residential tenancy where both named as lessees – Where relationship broke down and appellant moved out taking most of possessions – Where, when appellant remained co-tenant, appellant entered apartment by breaking down locked door and assaulted complainant – Where appellant charged with offence against s 112 of *Crimes Act* – Whether person with legal right to enter building capable of being guilty of breaking and entering building for purposes of s 112 of *Crimes Act* – Whether co-tenant can revoke second co-tenant's permission to enter leased dwelling-house with result that, despite enjoying right of entry under lease, second co-tenant may be guilty of breaking and entering – Whether permission of occupant without legal entitlement to occupy be determinative of whether person with legal right of immediate possession breaks into building for purposes of s 112 of *Crimes Act*.

Appealed from NSW (CCA): [\[2021\] NSWCCA 191](#); (2021) 105 NSWLR 307; (2021) 291 A Crim R 514

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Mitchell v The Queen; Rigney v The Queen; Carver v The Queen; Tenhoopen v The Queen

A14/2022; A15/2022; A16/2022, A17/2022: [\[2022\] HCATrans 112](#)

Date heard: 17 June 2022 (A14/2022; A15/2022; A16/2022) – *Special leave granted*

Date determined: 18 August 2022 (A17/2022) – *Special leave application referred to the Full Court*

Catchwords:

Criminal law – Ancillary liability – Extended joint criminal enterprise – Statutory charges – Where appellants and others entered into agreement to steal amount of cannabis from grow-house and, in

furtherance of agreement, one or more of group members inflicted one or more blows to head of person guarding grow-house who died of injuries – Where appellants charged for contravening s 12A *Criminal Law Consolidation Act 1935* (SA) ("CCA") and convicted of murder – Where s 12A of CCA provided person who commits intentional act of violence while acting in course or furtherance of major indictable offence punishable by imprisonment for 10 years or more, and thus causes death of another, guilty of murder – Whether principles of joint criminal enterprise apply to statutory charge under s 12A of CCA – Whether, for secondary participant to be guilty of common law murder according to principles of extended joint criminal enterprise, secondary participant must contemplate that co-participant might do act that might cause death of person – Whether, for secondary participant to be guilty of offence against s 12A of CCA, secondary participant must contemplate that co-participant might commit intentional act of violence causing death of person – Whether, for secondary participant to be guilty of offence against s 12A of CCA, sufficient that secondary participant contemplates any act of violence rather than contemplates possibility of death caused by violence.

Appealed from SASC (CCA): [\[2021\] SASCA 74](#); (2021) 290 A Crim R 384

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Intellectual Property

Self Care IP Holdings Pty Ltd & Anor v Allergan Australia Pty Ltd & Anor; Self Care IP Holdings Pty Ltd & Anor v Allergan Australia Pty Ltd & Anor

S79/2022; S80/2022: [\[2022\] HCATrans 94](#)

Date heard: 13 May 2022 – *Special leave granted*

Catchwords:

Intellectual property – Trade marks – Infringement claim – Section 120 of *Trade Marks Act 1995* (Cth) – Where respondents authorised user and owner of registered trade mark for word "BOTOX" – Where respondents claimed appellants used brand name "PROTOX" as trade mark and "PROTOX" deceptively similar to BOTOX trade mark, constituting infringement under s 120(1) of *Trade Marks Act* – Where respondents claimed appellants used phrase "instant Botox® alternative" as trade mark, which constituted infringement of BOTOX trade mark – Whether appellant infringed BOTOX trade mark by using "instant Botox® alternative" or "PROTOX" – Whether phrase "instant Botox® alternative" deceptively similar to "BOTOX" within meaning of s 120(1) of *Trade Marks Act* – Whether appellants' use of phrase "instant Botox® alternative" attracts defences under s

122(1)(b)(i) and (d) of *Trade Marks Act* regarding use in good faith and use not infringing exclusive right of registered owner.

Consumer law – Misleading or deceptive conduct – Where respondent claimed appellants' statement "instant Botox® alternative" constituted representation appellants' Inhibox product would give same results as BOTOX products in contravention of s 18 or s 29(1)(a) of *Australian Consumer Law* ("ACL"), being Schedule 2 to *Competition and Consumer Act 2010* (Cth), or Inhibox would achieve or had same performance characteristics, uses and/or benefits as Botox in contravention of s 18 or 29(1)(g) of ACL – Whether appellants' made misleading or false representations contrary to ss 18, 29(1)(a) and 29(1)(g) of ACL.

Appealed from FCA (FC): [\[2021\] FCAFC 163](#); (2021) 286 FCR 259; (2021) 393 ALR 595; (2021) 162 IPR 52

Appealed from FCA (FC): [\[2021\] FCAFC 180](#)

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Private International Law

Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l. & Anor

S43/2022: [\[2022\] HCATrans 39](#)

Date heard: 18 March 2022 – *Special leave granted*

Catchwords:

Private international law – Foreign state immunity – Interaction between s 9 of *Foreign States Immunities Act 1985* (Cth) ("Immunities Act") and *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* ("ICSID Convention") – Where proceedings commenced in Federal Court for recognition of award of International Centre for Settlement of Investment Disputes ("ICSID") under s 35(4) of *International Arbitration Act 1974* (Cth) ("Arbitration Act") – Where Kingdom of Spain asserted sovereign immunity – Where s 9 of Immunities Act provided that foreign state immune from jurisdiction of courts of Australia in proceeding – Where s 10 of Immunities Act provided foreign state not immune in proceeding in which it submitted to jurisdiction whether by agreement or otherwise – Where Art 54(1) provided each Contracting State shall recognize award rendered pursuant to ICSID Convention as binding – Where Art 54(2) of ICSID Convention referred to recognition or enforcement of award – Whether, by Art 54 of ICSID Convention, Kingdom of Spain agreed to submit itself to jurisdiction within meaning of s 10 of Immunities

Act – Whether ICSID Convention excludes claims for foreign state immunity in proceedings for recognition and enforcement of an award – Proper meaning of "recognition" and "enforcement" in Art 54.

Appealed from FCA (FC): [\[2021\] FCAFC 112](#); (2021) 392 ALR 443; (2021) 153 ACSR 59

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Statutory Interpretation

Page v Sydney Seaplanes Pty Ltd trading as Sydney Seaplanes
S60/2022: [\[2022\] HCATrans 70](#)

Date heard: 13 April 2022 – *Special leave granted*

Catchwords:

Statutory interpretation – Jurisdiction – Limitation of actions – Inconsistency – Where s 11(2) of *Federal Courts (State Jurisdiction) Act 1999* (NSW) ("NSW Jurisdiction Act") enabled party to proceeding in which "relevant order" was made to apply to NSW Supreme Court for order that proceeding be treated as one in Supreme Court – Where appellant commenced proceedings in Federal Court of Australia seeking damages from respondent in connection with seaplane accident pursuant to provisions of *Civil Aviation (Carriers' Liability) Act 1959* (Cth) ("Commonwealth Act"), incorporated by s 5 of *Civil Aviation (Carriers' Liability) Act 1967* (NSW) – Where Federal Court dismissed application for want of jurisdiction because accident occurred solely in New South Wales – Where action subject to two-year limitation and extinguishment of right to damages – Where two years had passed before Federal Court decision – Where appellant sought orders in NSW Supreme Court under s 11 that Federal Court proceedings be treated as Supreme Court proceedings such that proceedings commenced within limitation period – Where Court of Appeal held "relevant order" in s 11 of NSW Jurisdiction Act refers to not to general want of jurisdiction but to general want of jurisdiction by reason of constitutionally invalid conferral of jurisdiction as considered in *Re Wakim; Ex parte McNally* (1999) 198 CLR 511 – Whether order of Federal Court dismissing Federal Court proceeding for want of jurisdiction was "relevant order" within meaning of s 11 of NSW Jurisdiction Act.

Appealed from NSW (CA): [\[2021\] NSWCA 204](#); (2021) 106 NSWLR 1; (2021) 362 FLR 1; (2021) 393 ALR 485

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Torts

Electricity Networks Corporation Trading as Western Power v Herridge Parties & Ors

P5/2022: [\[2022\] HCATrans 37](#)

Date heard: 17 March 2022– *Special leave granted*

Catchwords:

Torts – Negligence – Duty of care – Breach of duty – Statutory authority – Where Western Power ("WP") statutory authority established under *Electricity Corporations Act 2005* (WA) with functions including management, provision and improvement of electricity transmission and distribution services in South West Interconnected System ("SWIS") – Where service cable owned by WP ran from WP's termination pole into mains connection box secured adjacent to top of point of attachment pole ("PA pole") on Mrs Campbell's property – Where PA pole owned by Mrs Campbell – Where electricity passed from wires of WP's service cable to wires of Mrs Campbell's consumer mains cable – Where WP had systems for regular inspection of WP's network assets, but did not regularly inspect or maintain consumer-owned PA poles – Where WP engaged Thiess to replace WP's network poles in Parkerville area, including termination pole, but inspection did not comply with industry standards or Thiess' contractual obligations – Where PA pole fell causing electrical arcing, igniting dry vegetation around base of pole – Where resulting fire spread, becoming Parkerville bushfire, and causing property damage – Where primary judge found WP owed duty to take reasonable care to inspect PA pole to ascertain whether safe and fit condition for supply of electricity before and when undertaking works on pole, but duty discharged by engaging Thiess – Where trial judge apportioned liability for losses 70% as to Thiess and 30% as to Mrs Campbell, and dismissed claims against WP – Where Court of Appeal formulated duty as one owed to persons in vicinity of SWIS to take reasonable care to avoid or minimise risk of injury, and loss to property, from ignition and spread of fire in connection with delivery of electricity through distribution system – Where Court of Appeal held WP had breached duty by failing to have system in place to respond to risk of harm and apportioned liability for losses 50% as to WP, 35% as to Thiess and 15% as to Mrs Campbell – Whether WP, as statutory authority with defined duties, owes common law duty to take reasonable care to avoid fire, discharge of which would oblige WP to exercise discretionary statutory powers in relation to property not owned or controlled by WP – Whether duty of care asserted inconsistent with statute – Proper test for inconsistency between common law duty and statutory scheme which regulates statutory authority.

Appealed from WASC (CA): [\[2021\] WASCA 111](#); (2021) 15 ARLR 1

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7: CASES NOT PROCEEDING OR VACATED

Constitutional Law

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

S192/2021: [\[2022\] HCATrans 51](#); [\[2022\] HCATrans 52](#)

Date heard: 6 and 7 April 2022

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

Catchwords:

Constitutional law – Aliens power – Immigration detention – Indigenous Australians – Where applicant born in and citizen of New Zealand and not Australian citizen – Where applicant's parents and ancestors not Aboriginal Australian or Torres Strait Islanders – Where applicant granted visa to live in Australia in 1997 – Where Mununjali people Indigenous society existing in Australia since prior to 1788 – Where applicant identifies as member of Mununjali people, recognised by Mununjali elders and by Mununjali traditional law and customs as such – Where, in 2018, applicant's visa cancelled – Where in 2019, applicant taken into immigration detention – Where, in *Love v Commonwealth; Thoms v Commonwealth* [2020] HCA 3, majority of High Court held Aboriginal Australian who satisfies tripartite test identified in *Mabo v Queensland (No 2)* (1992) 175 CLR 1 beyond reach of aliens power in s 51(xix) of *Constitution* – Where applicant commenced proceedings in Federal Court of Australia, relevantly seeking declaration not alien within meaning of s 51(xix) following *Love/Thoms* – Whether decision in *Love/Thoms* should be overturned – Whether applicant satisfies tripartite test despite not being biologically descended from Indigenous people – Whether applicant alien.

Courts – Jurisdiction – Appeal from single judge of Federal Court of Australia – Habeas corpus – Competent court – Where appellate jurisdiction of Federal Court defined by s 24(1)(a) of *Federal Court of Australia Act 1976* (Cth) – Where cause removed was appeal to Full Court of Federal Court from orders of single judge – Where single judge exercised original jurisdiction, relevantly issuing writ of habeas corpus – Whether appeal lies from order for issue of writ of habeas corpus.

Removed from the Federal Court of Australia.

Matter discontinued on 28 July 2022.

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8: SPECIAL LEAVE REFUSED

Publication of Reasons: 11 August 2022 (Canberra)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Pascall	Heath & Anor (B14/2022)	Federal Circuit Court and Family Court of Australia (Division 1)	Application dismissed [2022] HCASL 121
2.	CDN16	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Ors (M15/2022)	Federal Court of Australia [2021] FCA 699	Application dismissed [2022] HCASL 122
3.	Singh	Khan & Ors (S52/2022)	Federal Court of Australia (Unreported)	Application dismissed [2022] HCASL 123
4.	Singh	Khan & Ors (S54/2022)	Federal Court of Australia (Unreported)	Application dismissed [2022] HCASL 123
5.	Matthews	Norris (M18/2022)	Federal Circuit Court and Family Court of Australia (Division 1)	Application dismissed with costs [2022] HCASL 124

12 August 2022: Canberra and by video link

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Neill-Fraser	The State of Tasmania (H1/2022)	Supreme Court of Tasmania (Court of Criminal Appeal) [2021] TASCCA 12	Application refused [2022] HCATrans 128
2.	Larry Cavanaugh (a pseudonym)	The Queen (M3/2022)	Supreme Court of Victoria (Court of Appeal) [2021] VSCA 347	Application refused [2022] HCATrans 129
3.	Kassam & Ors	Hazzard & Ors (S3/2022)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 299	Application refused with costs [2022] HCATrans 131
4.	SafeWork NSW	Grasso (S4/2022)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 288	Application refused with costs [2022] HCATrans 132
5.	SafeWork NSW	Grasso Consulting Engineers Pty Ltd (S5/2022)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 288	Application refused with costs [2022] HCATrans 132

Publication of Reasons: 18 August 2022 (Canberra)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	SZROL	Minister for Immigration and Border Protection & Anor (S65/2022)	Federal Court of Australia [2022] FCA 378	Application dismissed [2022] HCASL 125
2.	Renton	Minister for Home Affairs (S66/2022)	Federal Court of Australia [2022] FCAFC 11	Application dismissed [2022] HCASL 126
3.	BSF16	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (S48/2022)	Federal Court of Australia [2022] FCA 61	Application dismissed [2022] HCASL 127
4.	Mohareb	State of New South Wales & Ors (S55/2022)	Court of Appeal of the Supreme Court of New South Wales [2021] NSWCA 278	Application dismissed [2022] HCASL 128
5.	Mohareb	State of New South Wales & Ors (S56/2022)	Court of Appeal of the Supreme Court of New South Wales [2022] NSWCA 45	Application dismissed [2022] HCASL 129
6.	Jasper Lewers (a pseudonym)	The Queen (M162/2019)	Supreme Court of Victoria (Court of Appeal) [2019] VSCA 272	Application dismissed [2022] HCASL 130
7.	Kellett	The Queen (B46/2021)	Court of Appeal of the Supreme Court of Queensland [2020] QCA 199	Application dismissed [2022] HCASL 131
8.	CMC16 & Anor	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (M16/2022)	Federal Court of Australia [2022] FCA 121	Application dismissed with costs [2022] HCASL 132
9.	Charles Parker – a pseudonym	The Queen (M19/2022)	Court of Appeal of the Supreme Court of Victoria [2021] VSCA 348	Application dismissed [2022] HCASL 133

19 August 2022: Canberra and by video link

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Agnew	The Queen (B78/2021)	Supreme Court of Queensland (Court of Appeal) [2021] QCA 190	Application dismissed [2022] HCATrans 138
2.	Goldspan Investments Pty Ltd & Ors	Chappell as executor of the Estate of Robert Hastings Hitchcock (P54/2021)	Supreme Court of Western Australia (Court of Appeal) [2021] WASCA 205	Application dismissed with costs [2022] HCATrans 137
3.	To	The Queen (S211/2021)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 242	Application dismissed [2022] HCATrans 140