



# HIGH COURT BULLETIN

Produced by the Legal Research Officer,  
High Court of Australia Library  
[2022] HCAB 2 (18 March 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

Case	Title
<a href="#"><i>Wells Fargo Trust Company, National Association (As Owner Trustee) &amp; Anor v VB Leaseco Pty Ltd (Administrators Appointed) &amp; Ors</i></a>	Aviation
<a href="#"><i>Hobart International Airport Pty Ltd v Clarence City Council &amp; Anor; Australia Pacific Airports (Launceston) Pty Ltd v Northern Midlands Council &amp; Anor</i></a>	Constitutional Law
<a href="#"><i>Ruddick v Commonwealth of Australia</i></a>	Constitutional Law
<a href="#"><i>Stubbings v Jams 2 Pty Ltd &amp; Ors</i></a>	Equity
<a href="#"><i>NSW Commissioner of Police v Cottle &amp; Anor</i></a>	Industrial Law

<a href="#"><i>H. Lundbeck A/S &amp; Anor v Sandoz Pty Ltd; CNS Pharma Pty Ltd v Sandoz Pty Ltd</i></a>	Patents
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### 3: Cases Reserved

<b>Case</b>	<b>Title</b>
<a href="#"><i>Nathanson v Minister for Home Affairs &amp; Anor</i></a>	Administrative Law
<a href="#"><i>Garlett v The State of Western Australia &amp; Anor</i></a>	Constitutional Law
<a href="#"><i>Thoms v Commonwealth of Australia</i></a>	Constitutional Law
<a href="#"><i>Hoang v The Queen</i></a>	Criminal Law
<a href="#"><i>Fairbairn v Radecki</i></a>	Family Law

### 4: Original Jurisdiction

### 5: Section 40 Removal

### 6: Special Leave Granted

<b>Case</b>	<b>Title</b>
<a href="#"><i>Bryant &amp; Ors as Liquidators of Gunns Limited and Auspine Limited v Badenoch Integrated Logging Pty Ltd</i></a>	Corporations Law
<a href="#"><i>Allianz Australia Insurance Limited v Delor Vue Apartments CTS 39788</i></a>	Insurance
<a href="#"><i>Aristocrat Technologies Australia Pty Ltd v Commissioner of Patents</i></a>	Intellectual Property
<a href="#"><i>BDS20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</i></a>	Migration

<a href="#"><i>Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l. &amp; Anor</i></a>	Private International Law
<a href="#"><i>Electricity Networks Corporation T/as Western Power v Herridge &amp; Ors; Electricity Networks Corporation T/as Western Power v Campbell &amp; Ors; Electricity Networks Corporation T/as Western Power v Campbell &amp; Ors; Electricity Networks Corporation T/as Western Power v Campbell &amp; Ors; Electricity Networks Corporation T/as Western Power v Campbell &amp; Ors; Electricity Networks Corporation T/as Western Power v Campbell &amp; Ors; Electricity Networks Corporation T/as Western Power v KP Adams &amp; Ors; Electricity Networks Corporation T/as Western Power v A Adams &amp; Ors; Electricity Networks Corporation T/as Western Power v Powell &amp; Ors; Electricity Networks Corporation T/as Western Power v Campbell &amp; Ors; Electricity Networks Corporation T/as Western Power v Ventia Utility Services Pty Ltd &amp; Ors; Electricity Networks Corporation T/as Western Power v Ventia Utility Services Pty Ltd &amp; Ors; Electricity Networks Corporation T/as Western Power v Ventia Utility Services Pty Ltd &amp; Ors</i></a>	Torts

7: Cases Not Proceeding or Vacated

<b>Case</b>	<b>Title</b>
<a href="#"><i>Bell v The Queen</i></a>	Criminal Law

8: Special Leave Refused

## 2: CASES HANDED DOWN

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

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### Aviation

*Wells Fargo Trust Company, National Association (As Owner Trustee) & Anor v VB Leaseco Pty Ltd (Administrators Appointed) & Ors*

**S60/2021:** [\[2022\] HCA 8](#)

**Judgment:** 16 March 2022

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

#### Catchwords:

Aviation – Aircraft leasing – Where first appellant leased aircraft engines to lessee company – Where administrators appointed to lessee company – Where lease agreements specified obligations for redelivery of aircraft engines – Where Protocol to Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment ("Protocol") required administrators to "give possession" of aircraft engines upon insolvency-related event – Where specific redelivery obligations under lease agreements preserved by Convention on International Interests in Mobile Equipment but constrained by s 440B of *Corporations Act 2001* (Cth) – Whether obligation to give possession under Art XI(2) of Protocol fulfilled by administrators providing opportunity to take possession of aircraft engines in Australia – Meaning of "give possession" in Art XI(2) of Protocol.

Words and phrases – "aircraft engines", "aircraft objects", "give possession", "insolvency-related event", "lease agreements", "obligation to give possession", "opportunity to take control", "provide an opportunity for the exercise of the right to take possession", "right to take possession", "rules of insolvency procedure".

*Corporations Act 2001* (Cth), s 440B.

*International Interests in Mobile Equipment (Cape Town Convention) Act 2013* (Cth).

**Appealed from FCA (FC):** [\[2020\] FCAFC 168](#); (2020) 279 FCR 518; (2020) 384 ALR 378

**Held:** Appeal dismissed with costs.

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## Constitutional Law

*Hobart International Airport Pty Ltd v Clarence City Council & Anor; Australia Pacific Airports (Launceston) Pty Ltd v Northern Midlands Council & Anor*

**H2/2021; H3/2021:** [\[2022\] HCA 5](#)

**Judgment delivered:** 9 March 2022

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

### Catchwords:

Constitutional Law (Cth) – Judicial power of Commonwealth – Meaning of "matter" – Where Commonwealth entered leases ("Leases") with operators of Hobart Airport and Launceston Airport ("Lessees") for Hobart Airport site and Launceston Airport site ("Airports") – Where Clarence City Council and Northern Midlands Council ("Councils") administer municipal area covering Airports – Where Airports not amenable to council rates or State land tax because located on Commonwealth land – Where cl 26. 2(a) of Leases requires that, in lieu of rates, Lessees pay Councils amount that would have been payable if Airports not on Commonwealth land, but relevantly only in respect of parts of Airports on which "trading or financial operations are undertaken" – Where Lessees required to use "all reasonable endeavours" to enter agreements with Councils to make such payments – Where Commonwealth and Lessees not in dispute about meaning of cl 26. 2(a) or Lessees' compliance with it – Where Councils not parties to Leases – Where Councils sought declaratory relief regarding proper construction of cl 26. 2(a) and Lessees' obligations to make payments – Whether dispute involves "matter" for purposes of Ch III of *Constitution* – Whether dispute involves justiciable controversy – Whether Councils have standing to have dispute determined.

Words and phrases – "all reasonable endeavours", "declaratory relief", "doctrine of privity", "federal jurisdiction", "heads of jurisdiction", "immediate right, duty or liability to be established", "judicial power of the Commonwealth", "justiciable controversy", "legally enforceable remedy", "material interest", "matter", "outsider to a contract", "private rights", "public rights", "real commercial interest", "real interest", "real practical importance", "special interest", "standing", "subject matter requirement", "sufficient interest", "third party", "trading or financial operations".

*Constitution*, Ch III.

*Airports (Transitional) Act 1996* (Cth), s 22.

**Appealed from FCA (FC):** [\[2020\] FCAFC 134](#); (2020) 280 FCR 265; (2020) 382 ALR 273

**Held:** Appeals dismissed with costs.

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*Ruddick v Commonwealth of Australia*

**[S151/2021](#)**: [\[2022\] HCA 9](#)

**Pronouncement of orders:** 9 March 2022

**Reasons published:** 25 March 2022

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

**Catchwords:**

Constitutional Law (Cth) – Parliament – Elections – Senate and House of Representatives – Senators and members of House of Representatives to be "directly chosen by the people" – Where amendments to *Commonwealth Electoral Act 1918* (Cth) ("2021 Amendments") constrained political party applying for registration from using name, abbreviation or logo which had word in common with name or abbreviation of prior registered party without that party's consent – Where 2021 Amendments provided that existing party could not remain registered if earlier registered party objected to existing party's name or logo and that name or logo had word in common with name or abbreviation of earlier registered party – Whether 2021 Amendments precluded direct choice by the people of senators and members of House of Representatives.

Constitutional Law (Cth) – Implied freedom of communication on government or political matters – Whether 2021 Amendments infringed implied freedom.

Words and phrases – "ballot paper", "directly chosen by the people", "implied freedom", "informed choice", "legitimate purpose", "registered political parties", "voter confusion".

*Constitution*, ss 7, 24, 64, 128.

*Commonwealth Electoral Act 1918* (Cth), ss 129, 129A, 134A, 210A, 214, 214A.

*Electoral Legislation Amendment (Party Registration Integrity) Act 2021* (Cth), Sch 1 items 7, 9, 11, 14.

*Special case referred to the Full Court on 1 December 2021*

**Held:** Questions answered.

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## Equity

*Stubbings v Jams 2 Pty Ltd & Ors*

**M13/2021:** [\[2022\] HCA 6](#)

**Judgment delivered:** 16 March 2022

**Coram:** Kiefel CJ, Keane, Gordon, Steward and Gleeson JJ

**Catchwords:**

Equity – Unconscionable conduct – Where respondents engaged in business of asset based lending – Where system of lending involved law firm, acting through intermediary, facilitating secured loans by respondents – Where law firm acted as agent of respondents – Where respondents' agent never dealt directly with appellant – Where appellant unemployed with no regular income and poor financial literacy – Where appellant guaranteed loan made by respondents to company owned and controlled by appellant – Where company had no assets and never traded – Where loan and guarantee secured by mortgages over appellant's three properties – Where appellant provided signed certificates of independent financial advice and independent legal advice drafted by law firm – Where company defaulted on loan and respondents sought to enforce rights against appellant – Whether respondents acted unconscionably in seeking to enforce rights – Whether respondents' agent had knowledge of appellant's circumstances – Whether respondents entitled to rely on certificates of independent advice – Whether unconscientious exploitation of appellant's special disadvantage.

Words and phrases – "agent", "asset based lending", "certificates of independent advice", "knowledge of that special disadvantage", "special disadvantage", "system of conduct", "unconscientious", "unconscientious exploitation", "unconscionable conduct", "vulnerability", "wilfully blind".

**Appealed from VSC (CA):** [\[2020\] VSCA 200](#)

**Held:** Appeal allowed with costs.

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## Industrial Law

*NSW Commissioner of Police v Cottle & Anor*

**S56/2021**: [\[2022\] HCA 7](#)

**Judgment:** 16 March 2022

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

**Catchwords:**

Industrial law (NSW) – Jurisdiction – Unfair dismissal – Industrial Relations Commission of New South Wales ("IR Commission") – Where first respondent had been retired as non executive police officer by NSW Commissioner of Police ("Police Commissioner") under s 72A of *Police Act 1990* (NSW) on medical grounds – Where dismissal claimed by first respondent to be harsh, unreasonable or unjust under s 84 of *Industrial Relations Act 1996* (NSW) ("IR Act") – Where Pt 6 of Ch 2 of IR Act confers jurisdiction on IR Commission to review dismissal of "any public sector employee", including any member of NSW Police Force – Where s 72A of *Police Act* does not expressly exclude or modify reach of Pt 6 of Ch 2 of IR Act – Where s 85 of *Police Act* states Police Commissioner is employer of non executive police officers for proceedings dealing with industrial matters – Whether *Police Act* excludes application of IR Act to decisions made under s 72A of *Police Act* – Whether IR Commission had jurisdiction to hear and determine application under s 84 of IR Act.

Words and phrases – "harsh, unreasonable or unjust", "indication of parliamentary intent", "Industrial Relations Commission", "jurisdiction to hear and determine", "non executive police officer", "objective criteria", "overlapping statutes", "Police Commissioner", "police officer", "power to dismiss", "public sector employee", "retirement on medical grounds", "statutory construction", "unfair dismissal", "unique functions of the NSW Police Force".

*Industrial Relations Act 1996* (NSW), ss 83, 84, Pt 6 of Ch 2.  
*Police Act 1990* (NSW), ss 44, 50, 72A, 80, 85, 181D, 218, Div 1C of Pt 9.

**Appealed from NSW (CA):** [\[2020\] NSWCA 159](#); (2020) 298 IR 202

**Held:** Appeal dismissed with costs.

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## Patents

*H. Lundbeck A/S & Anor v Sandoz Pty Ltd; CNS Pharma Pty Ltd v Sandoz Pty Ltd*

**S22/2021**; **S23/2021**: [\[2022\] HCA 4](#)



**Judgment delivered:** 9 March 2022

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

**Catchwords:**

Contract – Construction – Where clause in settlement agreement entered into between appellants and respondent prior to expiry of original term of patent granted respondent non-exclusive licence to exploit patent – Where clause in settlement agreement did not specify end date of non-exclusive licence – Whether non-exclusive licence applied to acts during extended term of patent.

Patents – Infringement – Where term of patent extended under *Patents Act 1990* (Cth) ("Act") – Where patentee and exclusive licensee brought infringement proceedings for acts done during extended term of patent – Whether exclusive licensee had rights to bring infringement proceedings under s 79 of Act for acts done during extended term of patent – Whether respondent engaged in misleading or deceptive conduct by not disclosing to customers possibility that term of patent might be extended – Construction and effect of s 79 of Act – When patentee's cause of action accrued under s 79 of Act for the purposes of s 51A(1)(a) of *Federal Court of Australia Act 1976* (Cth).

Words and phrases – "acts of infringement", "cause of action accrued", "commercial benefit", "exclusive licensee", "extension", "extension of the term of the patent", "grant of an extension", "infringement proceedings", "irrevocable non-exclusive licence", "misleading or deceptive conduct", "patent", "patentee's rights", "pharmaceutical substance", "term of the patent".

*Federal Court of Australia Act 1976* (Cth), s 51A(1)(a).  
*Patents Act 1990* (Cth), s 79.

**Appealed from FCA (FC):** [\[2020\] FCAFC 133](#); (2020) 384 ALR 35; (2020) 153 IPR 380

**Held (S22/2021):** Appeal allowed with costs.

**Held (S23/2021):** 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.

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### Administrative Law

*Nathanson v Minister for Home Affairs & Anor*

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

**Date heard:** 10 March 2022

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

**Catchwords:**

Administrative law – Jurisdictional error – Procedural fairness – Materiality – Where appellant's visa cancelled by delegate on character grounds – Where, after delegate's decision but before Tribunal review, Minister issued new direction, which relevantly included as additional factor that violent crimes against women or children viewed "very seriously, regardless of sentence imposed" – Where appellant not put on notice prior to Tribunal hearing that past incidents of alleged domestic violence would be taken into account, despite not having been charged or convicted of any crimes – Where appellant not given opportunity to call further evidence or make further submissions on domestic violence issue – Where appellant applied for judicial review of Tribunal decision – Where Minister conceded Tribunal denied procedural fairness and majority of Full Federal Court dismissed application on basis appellant failed to show realistic possibility of different outcome – Whether Full Federal Court applied correct test of materiality – Whether appellant's denial of procedural fairness material and constituted jurisdictional error.

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

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### Constitutional Law

*Citta Hobart Pty Ltd & Anor v Cawthorn*

**H7/2021:** [\[2022\] HCATrans 1](#); [\[2022\] HCATrans 4](#)

**Date heard:** 8 and 9 February 2022

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

**Catchwords:**

Constitutional law – Federal jurisdiction – Jurisdiction of State Tribunal – Inconsistency between Commonwealth and State laws – Discrimination – Disability Discrimination – Where respondent complained to Tasmania Anti-Discrimination Tribunal on basis appellants' building development constituted disability discrimination under *Anti-Discrimination Act 1998* (Tas) – Where appellants pleaded in defence inconsistency with *Disability Discrimination Act 1992* (Cth) pursuant to s 109 of *Constitution* – Where Tribunal dismissed complaint for lack of jurisdiction because determination of s 109 defence exercise of federal jurisdiction – Where Full Court allowed appeal on basis s 109 defence would not succeed – Whether Full Court applied correct test as to jurisdiction of State Tribunal – Whether *Anti-Discrimination Act 1998* (Tas) inconsistent with *Disability Discrimination Act 1992* (Cth).

**Appealed from TASSC (FC):** [\[2020\] TASFC 15](#); (2020) 387 ALR 356

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*Delil Alexander (by his litigation guardian Berivan Alexander) v Minister for Home Affairs & Anor*

**S103/2021:** [\[2022\] HCATrans 8](#); [\[2022\] HCATrans 11](#)

**Date heard:** 16 and 17 February 2022

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

**Catchwords:**

Constitutional law – Legislative power – Citizenship – Cessation of Australian citizenship – Where s 36B of *Australian Citizenship Act 2007* (Cth) provided Minister may make determination person ceases to be Australian citizen if Minister satisfied person dual citizen and person engaged in terrorist activities – Where plaintiff Australian citizen by birth and also Turkish citizen – Where, in 2013, plaintiff entered Al Raqqa Province of Syria – Where Al Raqqa province declared area for purposes of terrorism offences – Where, in 2018, plaintiff arrested and incarcerated by Syrian Government – Where plaintiff found guilty of terrorism offences against Syrian Penal Code on basis of evidence allegedly procured by torture – Where Australian Security and Intelligence Organisation advised Minister plaintiff likely engaged in foreign incursions and recruitment by remaining in declared area – Where, on 2 July 2021, Minister determined plaintiff ceased to be Australian citizen under s 36B – Where plaintiff

pardoned under Syrian law, but remains in indefinite detention because no lawful right to be in Syria, cannot be removed to Turkey because citizenship under different name, and cannot be removed to Australia because of citizenship cessation – Whether s 36B within scope of aliens power in s 51(xix) of *Constitution*, defence power in s 51(vi) of *Constitution*, external affairs power in s 51(xxix) of *Constitution* or implied nationhood power – Whether implied constitutional limitation on legislative power preventing "people of Commonwealth" from being deprived of their status as such – Whether constitutionally prescribed system of representative government incompatible with s 36B, which operates to permanently disenfranchise Australian citizens – Whether s 36B impermissibly disqualifies plaintiff from eligibility to sit as member of Parliament, contrary to ss 34 and 44 of *Constitution* – Whether s 36B punitive and unlawful exercise of judicial power by Parliament – Whether s 36B within legislative competence of Commonwealth Parliament.

*Special case referred to the Full Court on 26 October 2021.*

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

**S83/2021:** [\[2022\] HCATrans 5](#); [\[2022\] HCATrans 6](#)

**Date heard:** 10 and 11 February 2022

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

#### **Catchwords:**

Constitutional law – Implied freedom of political communication – Where s 7 of *Surveillance Devices Act 2007* (NSW) prohibited installation, use and maintenance of listening devices to record private conversations – Where s 8 prohibited installation, use and maintenance of optical surveillance devices on premises without owner or occupier's consent – Where s 11 created offence to communicate or publish material recorded in contravention of ss 7 or 8 – Where s 12 created offence to possess material knowing it had been recorded in contravention of ss 7 or 8 – Where plaintiffs published photographs and recordings of animal agricultural practices in New South Wales in contravention of ss 11 and 12 and intends to continue to engage in such activity – Whether ss 11 and 12 impermissibly burden implied freedom of communication – If so, whether ss 11 and 12 severable in respect of operation on political communication.

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

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*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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*Thoms v Commonwealth of Australia*

**B56/2021:** [\[2022\] HCATrans 24](#)

**Date heard:** 9 March 2022

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

**Catchwords:**

Constitutional law – Aliens power – Immigration detention – Wrongful imprisonment – Where applicant held in immigration detention pursuant to s 189 of *Migration Act 1958* (Cth) – Where officers who detained applicant suspected he was unlawful non-citizen because not Australian citizen and did not have visa – Where, in *Love v Commonwealth; Thoms v Commonwealth* [2020] HCA 3, majority of High Court declared applicant not alien for purposes of s 51(xix) of

*Constitution*, and applicant released from immigration detention – Where applicant's claim remitted to Federal Court of Australia, where applicant sought declaration detention unlawful and not supported by s 189 of *Migration Act*, and damages for wrongful imprisonment – Where Federal Court ordered question of whether detention unlawful be determined separately – Whether within scope of aliens power for s 189 of *Migration Act* to validly authorise immigration detention of persons subjectively suspected to be unlawful non-citizen, even if person later found not alien – Whether applicant's detention unlawful.

*Removed from the Federal Court of Australia.*

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## Criminal Law

*Hoang v The Queen*

[S146 to S149/2021: \[2022\] HCATrans 32](#)

**Date heard:** 16 March 2022

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

**Catchwords:**

Criminal law – Juror misconduct – Juror conducting own inquiries – Mandatory discharge – Where s 53A of *Jury Act 1977* (NSW) required mandatory discharge of juror if juror engaged in misconduct – Where s 68C provided juror must not make own inquiries "for purpose of obtaining information" about matters relevant to trial – Where appellant charged with 12 offences – Where jury commenced deliberations and, on 5 November 2015, jury sent note to trial judge stating agreement reached on 8 counts – Where, on evening of 5 November, juror conducted internet search for personal reasons only on matter related to trial – Where jury continued deliberating on 6 November until jury foreperson notified trial judge of juror's actions – Where trial judge took verdicts on 10 counts before discharging juror pursuant to s 53A – Where remaining jurors continued deliberating and gave verdict on remaining 2 counts – Where appellant appealed on basis trial judge failed to discharge juror prior to taking of first 10 counts – Where Court of Criminal Appeal held no juror misconduct and dismissed appeal – Whether inquiries made "for purpose of obtaining information" in s 68C includes juror making inquiries for solely personal reasons – If so, whether juror should have been discharged prior to taking of first 10 counts – If so, whether verdicts on any counts valid.

**Appealed from NSWSC (CCA):** [\[2018\] NSWCCA 166](#); (2018) 98 NSWLR 406; (2020) 273 A Crim R 501

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## Family Law

*Fairbairn v Radecki*

**S179/2021:** [\[2022\] HCATrans 22](#)

**Date heard:** 8 March 2022

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

**Catchwords:**

Family law – De-facto relationship – Breakdown – Proper test for determination of breakdown of de-facto relationship – Where s 90SM of *Family Law Act 1975* (Cth) provides, in property settlement proceedings after breakdown of de-facto relationship, court may make order altering interest of parties to de-facto relationship in property – Where, in 2005 or 2006, appellant and respondent entered into de-facto relationship – Where basis of relationship living together on domestic basis with clear understanding as to separation of each other's financial affairs and property interests – Where, in 2015, appellant began to suffer from rapid cognitive decline – Where appellant incapable of managing own affairs and, in 2018, New South Wales Trustee & Guardian appointed to act for appellant – Where Public Guardian placed appellant into aged care facility – Where respondent did not provide financial support for appellant, continued to reside in appellant's property and prevented Trustee from selling appellant's property – Where Trustee commenced proceedings against respondent in Federal Circuit Court seeking order for property settlement pursuant to s 90SM, claiming appellant and respondent's de-facto relationship had broken down – Where primary judge declared de-facto relationship had broken down no later than 25 May 2018 – Where respondent successfully appealed to Full Family Court – Whether basis of appellant and respondent's de-facto relationship no longer existed – Whether de-facto relationship had broken down.

**Appealed from FamCA (FC):** [\[2020\] FamCAFC 307](#); (2020) 62 Fam LR 62

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## Immigration

*Plaintiff M1/2021 v Minister for Home Affairs*

**[M1/2021](#)**: [\[2021\] HCATrans 203](#)

**Date heard:** 30 November 2021

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

**Catchwords:**

Immigration – Judicial review – Non-refoulement obligations – Where plaintiff granted Refugee and Humanitarian (Class XB) Subclass 202 (Global Special Humanitarian) visa in 2006 – Where, on 19 September 2017, plaintiff convicted of unlawful assault and sentenced to 12 months' imprisonment – Where, on 27 October 2017, delegate of Minister cancelled plaintiff's visa pursuant to s 501(3A) of *Migration Act 1958* (Cth) – Where plaintiff made representations to Minister regarding possibility of refoulement if plaintiff returned to home country – Where, on 9 August 2018, delegate of Minister decided not to revoke cancellation decision pursuant to s 501CA(4) of *Migration Act* – Where, in making decision, delegate did not consider whether non-refoulement obligations owed to plaintiff because plaintiff able to apply for protection visa under *Migration Act* – Whether delegate required to consider plaintiff's representations concerning non-refoulement obligations in making non-revocation decision pursuant to s 501CA(4) where plaintiff can apply for protection visa – If so, whether delegate failed to consider representations – If so, whether delegate failed to exercise jurisdiction under *Migration Act* or denied plaintiff procedural fairness – Whether non-revocation decision affected by jurisdictional error.

*Special case referred to the Full Court on 30 March 2021.*

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## Industrial Law

*Australian Building and Construction Commissioner v Pattinson & Anor*

**[M34/2021](#)**: [\[2021\] HCATrans 211](#)

**Date heard:** 7 December 2021

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



**Catchwords:**

Industrial law – Civil penalties – Determination of appropriate penalty – Where s 349(1) of *Fair Work Act 2009* (Cth) provided unlawful for person to knowingly or recklessly make false or misleading representation about another person's obligation to engage in industrial activity – Where second respondent union had "no ticket no start" policy and respondents carried out policy by representing to two workers they could not work unless joined union – Where respondents admitted liability for two contraventions of s 349(1) – Where second respondent well-resourced and, since 2000, had breached pecuniary penalty provisions on more than 150 occasions, including at least 15 occasions involving "no ticket no start" policy and 7 previous contraventions of s 349(1) – Where primary judge considered statutory maximum penalty required to sufficiently deter respondents in light of previous contraventions and imposed maximum – Where respondents appealed to Full Federal Court, which held maximum penalty must only be imposed for most serious and grave contravening conduct and imposed lower penalty – Whether statutory maximum penalty must only be imposed for most serious and grave contravening conduct – Whether statutory maximum penalty can be imposed if necessary to deter contravening conduct.

**Appealed from FCA (FC):** [\[2020\] FCAFC 177](#); (2020) 384 ALR 75; (2020) 299 IR 404

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## Taxation

*Commissioner of Taxation v Carter & Ors*  
**S62/2021:** [\[2021\] HCATrans 189](#)

**Date heard:** 9 November 2021

**Coram:** Gageler, Gordon, Edelman, Steward and Gleeson JJ

**Catchwords:**

Taxation – Trust distribution – Effect of disclaimer – Where respondents default beneficiaries of trust – Where trust deed provided respondents entitled to income of trust for given tax year (ending 30 June) if trustee did not make effective determination departing from default position – Where trustee had not made effective determination as at 30 June 2014 – Where s 97(1) of *Income Tax Assessment Act 1936* (Cth) provided if beneficiary of trust is "presently entitled" to share of trust income, that share included in assessable income of beneficiary – Where, following audit, on 27 September 2015, appellant issued income tax assessments to

respondents for income year ended 30 June 2014 including their share of 2014 trust income – On 30 September 2016, respondents purported to disclaim entitlement to income from trust for 2014 income year – Where Full Court of Federal Court considered themselves bound to hold general law extinguishes entitlement to trust income ab initio and held disclaimers displaced application of s 97(1) – Whether disclaimer of gift render gift void ab initio for all purposes – Whether, if beneficiary disclaims trust distribution after end of income year, beneficiary "presently entitled" to distribution for purposes of s 97(1).

**Appealed from FCA (FC):** [\[2020\] FCAFC 150](#); (2020) 279 FCR 83; (2020) 112 ATR 493

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## Torts

*Kozarov v State of Victoria*

**M36/2021:** [\[2021\] HCATrans 204](#)

**Date heard:** 2 December 2021

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

**Catchwords:**

Torts – Negligence – Causation – Where appellant worked in Serious Sex Offenders Unit ("SSOU") of Office of Public Prosecutions ("OPP") – Where work in SSOU required appellant to deal with confronting material of graphic sexual nature – Where, on 11 August 2011, appellant took sick leave for symptoms consistent with post-traumatic stress disorder ("PTSD") but was not diagnosed and returned to work on 29 August 2011 – Where, on return, appellant was involved in dispute with manager and stated she did not wish to be rotated to different unit within OPP – Where, on 9 February 2012, appellant emailed manager requesting she be rotated out of SSOU due to effect of SSOU work on her health, but request was not actioned – Where primary judge held respondent was put on notice as to risks to appellant's health in August 2011 – Where primary judge made inference that timely welfare enquiry by respondent would have revealed appellant's PTSD and, if appellant had been made aware of her condition, she would have consented to be rotated out of SSOU – Where primary judge held respondent failed to discharge duty of care in August 2011 by not making welfare enquiry and not rotating appellant out of SSOU – Where Court of Appeal overturned primary judge's inference that appellant would have consented to be rotated out and held that appellant's own actions in

not consenting to be rotated out caused injury rather than respondent's actions – Where Court of Appeal did not address primary judge's finding that return to work after February 2012 caused appellant injury – Where Court of Appeal allowed respondent's appeal – Whether open to Court of Appeal to overturn primary judge's finding that if duty of care had been discharged in August 2011, appellant would have consented to be rotated out of SSOU – Whether Court of Appeal erred in failing to consider injury caused by return to work after February 2012.

**Appealed from VSC (CA):** [\[2020\] VSCA 301](#); (2020) 301 IR 446

**Appealed from VSC (CA):** [\[2020\] VSCA 316](#)

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*Tapp v Australian Bushmen's Campdraft & Rodeo Association Limited*

**S63/2021:** [\[2021\] HCATrans 190](#)

**Date heard:** 10 November 2021

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

**Catchwords:**

Torts – Negligence – Breach of duty – Obvious risk – Where appellant injured in competition conducted by respondent when horse she was riding slipped and fell – Where appellant contended cause of fall was deterioration in ground surface and respondent negligent in failing to plough ground at site of event, failing to stop competition, or failing to warn competitors when ground became unsafe – Where prior to appellant's participation, there had already been 7 falls – Where trial judge held no breach of duty of care established – Where majority of Court of Appeal held appellant failed to establish cause of fall was ground surface deterioration and therefore failed to establish respondent breached duty – Where majority of Court of Appeal held even if breach established, s 5L of *Civil Liability Act 2002* (NSW) applied to exclude respondent's liability as injury suffered was manifestation of "obvious risk" – Whether Court of Appeal's approach to evidence of ground surface deterioration did not afford appellant rehearing – Proper approach to identification of "obvious risk".

**Appealed from NSWSC (CA):** [\[2020\] NSWCA 263](#)

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## 4: ORIGINAL JURISDICTION

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

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### Administrative Law

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

[S135/2021](#): [2021] HCATrans 214

#### Catchwords:

Administrative law – Judicial review – Writ of certiorari – Writ of mandamus – Where plaintiff holder of visa cancelled by Minister pursuant to s 501(3)(b) of *Migration Act 1958* (Cth) – Where plaintiff applied for extension of time, pursuant to s 477A(2) of *Migration Act*, seeking review of Minister's decision – Where application for extension of time was refused by judge of Federal Court of Australia – Whether judge erred in assessing, in respect of plaintiff's proposed second ground of review of Minister's decision, whether plaintiff's claim had reasonable prospects of success so as to justify extension of time pursuant to s 477A(2) of the *Migration Act* – Proper test for extension of time.

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

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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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### Constitutional Law

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

[S192/2021](#): [\[2021\] HCATrans 201](#)

*Removed into the High Court under s 40 of the Judiciary Act 1903 (Cth) on 29 November 2021.*

#### 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.*

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## 6: SPECIAL LEAVE GRANTED

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

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### Constitutional Law

*SDCV v Director-General of Security & Anor*

**S27/2022:** [\[2022\] HCATrans 20](#)

**Date heard:** 21 February 2022 – *Special leave granted*

#### 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

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## Corporations Law

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

**A27/2021:** [\[2022\] 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

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

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## Criminal Law

*Dansie v The Queen*

**A4/2022:** [\[2022\] HCATrans 14](#)

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

**Catchwords:**



Criminal law – Murder – Unreasonable verdict – Verdict unsupported by evidence – Where appellant's wife drowned after her wheelchair entered pond – Where prosecution alleged intentional drowning – Where, on defence case, drowning accidental – Where s 158(1)(a) of *Criminal Procedure Act 1921* (SA) provided for appeal to be allowed where Court considers verdict should be set aside on ground that conviction unreasonable or cannot be supporting having regard to evidence – Whether Court of Criminal Appeal failed to conduct independent assessment of whole of evidence – Whether open to trial judge to exclude hypothesis of accidental drowning – Proper approach by intermediate appellate court to "unreasonable verdict" limb of common form appeal provision following judge-alone trial.

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

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*Hore v The Queen; Wichen v The Queen*  
**A5/2022; A6/2022:** [\[2022\] HCATrans 18](#)

**Date heard:** 21 February 2022 – *Special leave granted*

**Catchwords:**

Criminal law – Sentence – Sentencing Orders – Offenders incapable of controlling, or unwilling to control, sexual instincts – Meaning of "willing" – Where appellants detained by Court order, following application by Crown, on grounds they were incapable or unwilling to control sexual instincts – Where s 59(1a)(a) of *Sentencing Act 2017* provided person detained cannot be released unless Court satisfied person "capable of controlling and willing to control" person's sexual instincts – Where s 57, providing authority for Court to make order for indefinite detention, contained definition of "unwilling" – Where Court of Appeal held "willing" in s 59(1a)(a) had converse meaning to defined term "unwilling" in s 57(1) such that appellants could only be regarded as willing to control sexual instincts if established no significant risk they would, given opportunity to commit relevant offence, fail to exercise appropriate control of sexual instincts – Whether meaning of "willing" in s 59(1a)(a) is converse of word "unwilling" as defined in s 57 – Proper meaning of term "willing" in s 59(1a)(a).

**Appealed from SASC (CCA):** [\[2021\] SASCA 29](#)

**Appealed from SASC (CCA):** [\[2021\] SASCA 30](#); (2021) 138 SASR 134

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*O'Dea v The State of Western Australia*

**P53/2021:** [\[2021\] HCATrans 210](#)

**Date heard:** 3 December 2021 – *Special leave granted on limited grounds*

**Catchwords:**

Criminal law – Joint liability – Acting in concert – Where appellant and co-accused stood trial on one count of doing grievous bodily harm with intent to do grievous bodily harm contrary to s 294(1) of *Criminal Code* (WA) – Where appellant and co-accused alleged jointly criminally responsible – Where trial judge gave jury handout, relevantly describing circumstances in which two accused may be criminally responsible as "joint principals" under s 7(a) of Code – Where appellant was convicted but co-accused discharged with jury unable to reach verdict – Where Court of Appeal held criminal responsibility under s 7(a) of Code extended to cases where several persons are "acting in concert" – Whether appellant and co-accused can be criminally liable as joint principals in circumstances where acts of co-accused were not proved unlawful – Whether trial judge was required to direct jury that "acting in concert" requires two accused to have reached an understanding or arrangement amounting to agreement to commit crime.

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

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## Defamation

*Google LLC v Defteros*

**M86/2021:** [\[2021\] HCATrans 216](#)

**Date heard:** 10 December 2021 – *Special leave granted on conditions*

**Catchwords:**

Defamation – Publication – Qualified privilege defence – Common law qualified privilege – Statutory qualified privilege – Where respondent alleged that certain webpages were published by appellant and were defamatory – Where two webpages consisted of set of search results displayed on website [www.google.com.au](http://www.google.com.au) in response to search of respondent's name and hyperlinked article, included in search results, entitled "Underworld loses valued friend at court" (Web Matter) – Where appellant alleged it was for "common convenience and welfare of society" for appellant to return search results that hyperlinked articles published by reputable sources – Where appellant claimed material was matter of considerable public interest such that recipients had necessary interest in material for purposes

of s 30(1) of *Defamation Act 2005* (Vic) – Whether appellant published Web Matter – Whether common law qualified privilege defence applies – Whether statutory qualified privilege defence in s 30(1) applies.

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

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## Insurance

*Allianz Australia Insurance Limited v Delor Vue Apartments CTS 39788*

**S114/2021:** [\[2022\] HCATrans 35](#)

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

### 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) 396 ALR 27; (2021) 153 ACSR 522

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## Intellectual Property

*Aristocrat Technologies Australia Pty Ltd v Commissioner of Patents*

**S40/2022:** [\[2022\] HCATrans 25](#)

**Date determined:** 10 March 2022 – *Special leave granted*

**Catchwords:**

Intellectual property – Patents – Manner of manufacture – Electronic gaming machine ("EGM") – Where ss 18(1)(a) and 18(1A)(a) of *Patents Act 1990* (Cth) provide invention will be patentable if "manner of manufacture" within meaning of s 6 of *Statute of Monopolies* (21 Jac 1 c 3) – Where question before Federal Court whether invention disclosed by Claim 1 to Patent 967 constituted patentable subject matter – Where Claim 1 described EGM with particular feature game – Where primary judge approached question of patentability by asking: first, whether Claim 1 for mere business scheme; and secondly, if for mere business scheme, one implemented in computer, did invention lie in manner of implementation into computer – Where majority of Full Court adopted alternative approach whereby computer-implemented inventions would be patentable where invention claimed could broadly be described as "advance in computer technology" – Where majority concluded invention disclosed in Claim 1 computer-implemented invention and did not advance computer technology – Whether general principles of patentability apply to computer-implemented inventions – Whether computer-implemented inventions must be advance in computer technology to be patentable – Proper test of patentability for computer-implemented inventions.

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

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## Migration

*BDS20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs*

**S95/2021:** [\[2022\] HCATrans 41](#)

**Date heard:** 18 March 2022 – *By consent, special leave granted and appeal treated as instituted, heard instanter and allowed*

**Catchwords:**

Migration – Visa cancellation – Where, pursuant to s 501CA(3) of *Migration Act 1958* (Cth) ("Act"), after making a visa cancellation decision (original decision), Minister must give person written notice

setting out original decision and particulars of "relevant information", and invite person to make representations to Minister about revocation of original decision – Where "relevant information", pursuant to s 501CA(2), is information that Minister considers would be reason, or part of reason, for making original decision, and is specifically about person or another person and not just about class of persons – Where, pursuant to s 501CA(4) of Act, Minister may revoke original decision if, relevantly, person makes representations in accordance with invitation – Where reg 2.52(2)(b) of *Migration Regulations 1994* (Cth) ("Regulations") imposed requirements as to period and manner of representations – Where applicant failed to make representations within period prescribed in reg 2.52(2)(b) – Where Minister argued that s 501CA(3) and 501CA(4) specified a mandatory time limit, set in Regulations and which could not be dispensed with by Minister, including by issuing second invitation, and Minister's power to revoke arose only if person made representations "in accordance with invitation" – Whether Minister has power to issue further invitation to visa applicant under s 501CA(3)(b) of Act to make representations about revocation of cancellation decision – Whether "relevant information", as defined in s 501CA(2), confined to information before original decision-maker under s 501(3A) or whether "relevant information" includes new information that emerges after original decision.

**Appealed from FCA (FC):** [\[2021\] FCAFC 91](#)

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## Private International Law

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

**S104/2021:** [\[2022\] 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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## Representative Proceedings

*BHP Group Limited v Impiombato & Anor*  
**M12/2022:** [\[2022\] HCATrans 13](#)

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

### Catchwords:

Representative proceedings – Shareholder class action – Non-resident shareholders – Pt IVA of *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) 151 ACSR 634

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## Superannuation

*Hill v Zuda Pty Ltd as Trustee for The Holly Superannuation Fund & Ors*

**P48/2021:** [\[2021\] HCATrans 199](#)

**Date heard:** 12 November 2021– *Special leave granted*

**Catchwords:**

Superannuation – Self-managed superannuation fund (SMSF) – Binding death benefit nomination – Where reg 6.17A(4), (6) and (7) of *Superannuation Industry (Supervision) Regulations 1994* (Cth), provided for requirements for validity of binding death benefit requirement in respect of superannuation funds – Where reg 6.17A authorised by multiple provisions, relevantly, ss 31, 55A and 59 of *Superannuation Industry (Supervision) Act 1993* (Cth) – Where applicant child and dependant of deceased person – Where deceased person established SMSF with deceased person's partner as sole members – Where cl 5 and 6 of SMSF trust deed made binding death benefit nomination, requiring trustee to distribute whole of deceased member's balance to surviving member – Where applicant argued cl 5 and 6 of deed did not constitute valid binding death benefit notification due to non-compliance with reg 6.17A(6) and (7) of Regulations and claimed portion of deceased person's account – Where claim dismissed and appeal to WA Court of Appeal dismissed – Whether reg 6.17A(4), (6) and (7) of Regulations apply to SMSF.

Courts – Comity – Intermediate appellate courts – Where WA Court of Appeal held principle of comity required it to follow decision of SA Full Court in *Cantor Management Services Pty Ltd v Booth* [2017] SASFC 122 – Where SA Full Court held reg 6.17A did not apply to SMSF because s 59 of Act did not apply to SMSF but did not consider ss 33 or 55A – Whether intermediate appellate court bound to follow decision of other intermediate appellate court where no consideration of relevant aspect of legislation.

**Appealed from WASC (CA):** [\[2021\] WASCA 59](#)

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## Torts

*Electricity Networks Corporation T/as Western Power v Herridge Parties & Ors; Electricity Networks Corporation T/as Western Power v Campbell & Ors; Electricity Networks Corporation T/as Western Power v Campbell & Ors; Electricity Networks Corporation T/as Western Power v Campbell & Ors; Electricity Networks Corporation T/as Western Power v Campbell & Ors; Electricity Networks Corporation T/as Western Power v KP Adams & Ors; Electricity*

*Networks Corporation T/as Western Power v A Adams & Ors; Electricity Networks Corporation T/as Western Power v Powell & Ors; Electricity Networks Corporation T/as Western Power v Campbell & Ors; Electricity Networks Corporation T/as Western Power v Ventia Utility Services Pty Ltd & Ors; Electricity Networks Corporation T/as Western Power v Ventia Utility Services Pty Ltd & Ors; Electricity Networks Corporation T/as Western Power v Ventia Utility Services Pty Ltd & Ors*

**P26/2021; P27/2021; P28/2021; P29/2021; P30/2021; P31/2021; P32/2021; P33/2021; P34/2021; P35/2021; P36/2021; P37/2021: [\[2022\] 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](#)**

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## 7: CASES NOT PROCEEDING OR VACATED

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### Criminal Law

*Bell v The Queen*

**A30/2021:** [\[2022\] HCATrans 30](#)

**Date heard:** 15 March 2022

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

**Catchwords:**

Criminal law – Procedure – Stay of proceedings – Powers of Independent Commissioner Against Corruption ("ICAC") – Where, in 2014, ICAC commenced investigation into appellant – Where, in 2017, ICAC forwarded matter to Director of Public Prosecutions ("DPP") and provided evidentiary material gathered in course of investigation – Where DPP decided to prosecute appellant – Where ICAC officers assisted DPP to prepare for trial – Where appellant applied for permanent stay – Where District Court dismissed application and Full Court dismissed appeal – Whether *Independent Commissioner Against Corruption Act 2012* (SA) authorised ICAC to refer matter, provide evidentiary material and otherwise assist DPP in prosecution – Whether ICAC conduct abuse of process justifying permanent stay.

**Appealed from SASC (FC):** [\[2020\] SASCFC 116](#); (2020) 286 A Crim R 501

***Special leave revoked by the Full Court on 15 March 2022.***

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## 8: SPECIAL LEAVE REFUSED

### Publication of Reasons: 10 March 2022 (Canberra)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Gray	Margaret Carter-Lannstrom and Adam James Carter-Lannstrom as trustees for the Margaret Carter-Lannstrom Self-Managed Superannuation Fund & Anor (B69/2021)	Supreme Court of Queensland (Court of Appeal) [2020] QCA 284	Application dismissed <a href="#">[2022] HCASL 29</a>
2.	Gray	Margaret Carter-Lannstrom and Adam James Carter-Lannstrom as trustees for the Margaret Carter-Lannstrom Self-Managed Superannuation Fund & Anor (B70/2021)	Supreme Court of Queensland (Court of Appeal) [2020] QCA 284	Application dismissed <a href="#">[2022] HCASL 29</a>
3.	Kiley	Senior Constable Timothy McMahon (M57/2021)	Application for Removal	Application dismissed <a href="#">[2022] HCASL 30</a>
4.	Weisinger	Detective Senior Constable Bruce Ingram (M59/2021)	Application for Removal	Application dismissed <a href="#">[2022] HCASL 31</a>
5.	Zhu & Ors	Wang & Ors (S188/2021)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 240	Application dismissed <a href="#">[2022] HCASL 32</a>
6.	EVQ20	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (S190/2021)	Federal Court of Australia [2021] FCA 1308	Application dismissed <a href="#">[2022] HCASL 33</a>
7.	Bowers	The Law Society of New South Wales & Ors (S205/2021)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 118	Application dismissed <a href="#">[2022] HCASL 34</a>
8.	Huang	Lo (B66/2021)	Supreme Court of Queensland (Court of Appeal) [2020] QCA 97	Application dismissed with costs <a href="#">[2022] HCASL 36</a>

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
9.	Gillera	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (B75/2021)	Federal Court of Australia [2021] FCA 1396	Application dismissed with costs <a href="#">[2022] HCASL 37</a>
10.	Tohi	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (S116/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 125	Application dismissed with costs <a href="#">[2022] HCASL 38</a>
11.	EBD20	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (S185/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 179	Application dismissed with costs <a href="#">[2022] HCASL 39</a>
12.	Miraki & Anor	El-Cheikh & Anor (S194/2021)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 271	Application dismissed with costs <a href="#">[2022] HCASL 40</a>

## Publication of Reasons: 16 March 2022 (Canberra)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Storry	Commissioner of Police & Anor (B60/2021)	Supreme Court of Queensland (Court of Appeal) [2018] QCA 29	Application dismissed <a href="#">[2022] HCASL 41</a>
2.	Manning	The Queen (B63/2021)	Supreme Court of Queensland (Court of Appeal) [2020] QCA 14	Application dismissed <a href="#">[2022] HCASL 42</a>
3.	Storry	Chief Executive, The Office of Fair Trading, Department of Justice and Attorney-General (B74/2021)	Supreme Court of Queensland (Court of Appeal) [2021] QCA 30	Application dismissed <a href="#">[2022] HCASL 43</a>
4.	Williams	Minister for Immigration and Border Protection (M76/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 182	Application dismissed <a href="#">[2022] HCASL 44</a>
5.	Zhang	The Queen (S196/2021)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 266	Application dismissed <a href="#">[2022] HCASL 45</a>
6.	Zhang	The Queen (S197/2021)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 266	Application dismissed <a href="#">[2022] HCASL 45</a>
7.	Fung	Forbes (B64/2021)	Federal Circuit and Family Court of Australia	Application dismissed <a href="#">[2022] HCASL 46</a>
8.	In the matter of an application by Sean Simmons for leave to appeal (B72/2021)		High Court of Australia (Unreported)	Application dismissed <a href="#">[2022] HCASL 47</a>
9.	Manderville	Borah (B73/2021)	Federal Circuit and Family Court of Australia	Application dismissed <a href="#">[2022] HCASL 48</a>
10.	Makowska	St George Community Housing Limited & Anor (S186/2021)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 249	Application dismissed <a href="#">[2022] HCASL 49</a>
11.	Gupta	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (S207/2021)	Federal Court of Australia [2021] FCA 1494	Application dismissed <a href="#">[2022] HCASL 50</a>

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
12.	Allwood	Dr J Sundin, Dr A Chung and Dr C Greaves constituting the general Medical Assessment Tribunal – Psychiatric & Anor (B59/2021)	Supreme Court of Queensland (Court of Appeal) [2021] QCA 196	Application dismissed with costs <a href="#">[2022] HCASL 51</a>
13.	Gore	The Queen (B67/2021)	Supreme Court of Queensland (Court of Appeal) [2021] QCA 147	Application dismissed <a href="#">[2022] HCASL 52</a>
14.	Winning	The Queen (B76/2021)	Supreme Court of Queensland (Court of Appeal) [2021] QCA 241	Application dismissed <a href="#">[2022] HCASL 53</a>
15.	The Australian Sawmilling Company Pty Ltd (In Liquidation) & Ors	Environment Protection Authority & Ors (M79/2021)	Supreme Court of Victoria (Court of Appeal) [2021] VSCA 294	Application dismissed with costs <a href="#">[2022] HCASL 54</a>
16.	Azari	The Queen (S144/2021)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 199	Application dismissed <a href="#">[2022] HCASL 55</a>
17.	EGW17	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (S178/2021)	Federal Court of Australia [2021] FCA 1177	Application dismissed with costs <a href="#">[2022] HCASL 56</a>
18.	King of Gifts (Qld) Pty Ltd & Anor	Redland City Council & Anor (B61/2021)	Supreme Court of Queensland (Court of Appeal) [2021] QCA 210	Application dismissed with costs <a href="#">[2022] HCASL 57</a>
19.	Sidaros	The Queen (C20/2021)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2021] ACTCA 31	Application dismissed <a href="#">[2022] HCASL 58</a>
20.	de Vries & Anor	Timbercorp Finance Pty Ltd (in Liquidation) (ACN 054 581 190) (M69/2021)	Supreme Court of Victoria (Court of Appeal) [2021] VSCA 265	Application dismissed with costs <a href="#">[2022] HCASL 59</a>
21.	Chen & Ors	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (P47/2021)	Federal Court of Australia [2021] FCA 1305	Application dismissed with costs <a href="#">[2022] HCASL 60</a>

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<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
22.	Coshott	Spencer & Ors (S184/2021)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 235	Application dismissed with costs <a href="#">[2022] HCASL 61</a>

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## 17 March 2022: Canberra and by video link

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Zafirovska	The Queen (B27/2021)	Supreme Court of Queensland (Court of Appeal) [2020] QCA 128	Application refused <a href="#">[2022] HCATrans 36</a>
2.	QNI Metals Pty Ltd & Anor	Queensland Nickel Pty Ltd (in Liquidation) & Anor (B44/2021)	Supreme Court of Queensland (Court of Appeal) [2021] QCA 138	Application refused with costs <a href="#">[2022] HCATrans 33</a>
3.	Mineralogy Pty Ltd	Queensland Nickel Pty Ltd (in Liquidation) & Ors (B45/2021)	Supreme Court of Queensland (Court of Appeal) [2021] QCA 138	Application refused with costs <a href="#">[2022] HCATrans 33</a>
4.	Medich	The Queen (S53/2021)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 36	Application refused <a href="#">[2022] HCATrans 34</a>



## 18 March 2022: Canberra and by video link

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	McCullagh	The Queen (B43/2021)	Supreme Court of Queensland (Court of Appeal) [2021] QCA 6	Application dismissed <a href="#">[2022] HCATrans 43</a>
2.	The Queen	Smith (a pseudonym) (C13/2021)	Australian Capital Territory Court of Appeal (Full Court) [2021] ACTCA 16	Application dismissed <a href="#">[2022] HCATrans 40</a>
3.	O'Hearn	The Queen (S105/2021)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 103	Application dismissed <a href="#">[2022] HCATrans 44</a>