



HIGH COURT BULLETIN

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High Court of Australia Library
[2013] HCAB 05 (28 June 2013)

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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SUMMARY OF NEW ENTRIES

[1: Cases Handed Down](#)

Case	Title
Plaintiff M79 v Minister for Immigration and Citizenship	Administrative Law
State of NSW v Kable	Constitutional Law
Agius v The Queen	Criminal Law
Director of Public Prosecutions (Cth) v JM	Criminal Law
Nguyen v The Queen	Criminal Law
Issa; & Elias v The Queen & Anor	Criminal Law
Maloney v The Queen	Discrimination Law
Kakavas v Crown Melbourne Limited & Ors	Equity
Hunt & Hunt Lawyers v Mitchell Morgan	Judgments and Orders

Nominees Pty Ltd [No 2]	
X7 v Australian Crime Commission and Anor	Statutes

2: Cases Reserved

Case	Title
Construction Forestry Mining & Energy Union v Mammoet Australia Pty Ltd ACN 075 483 644	Industrial Law
Apotex Pty Ltd v Sanofi-Aventis Australia Pty Ltd & Ors	Intellectual Property
Legal Services Board v Gillespie-Jones	Legal Practitioners

3: Original Jurisdiction

Case	Title
There are no new matters ready for hearing in the original jurisdiction of the High Court.	

4: Special Leave Granted

Case	Title
Expense Reduction Analysts Group Pty Ltd & Ors v Armstrong Strategic Management and Marketing Pty Limited & Ors	Civil Procedure
Munda v The Queen	Criminal Law
PEB v The Queen	Criminal Law
Reeves v The Queen	Criminal Law
Magaming v The Queen	Constitutional Law
Daly v Thiering & Ors	Statutes

1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the May-June 2013 sittings.

Administrative Law

Plaintiff M79 v Minister for Immigration and Citizenship
M79/2012: [\[2013\] HCA 24](#).

Judgment delivered: 29 May 2013.

Coram: French CJ, Hayne, Crennan, Bell and Gageler JJ.

Catchwords:

Administrative law – Migration – Refugees – Minister exercised power under s 195A(2) of *Migration Act 1958* (Cth) to grant plaintiff temporary safe haven visa permitting stay of seven days and bridging visa permitting stay of six months – Temporary safe haven visa granted to engage bar imposed by s 91K of Act on making valid application for protection visa – Whether decision to grant temporary safe haven visa made without power – Whether decision to grant temporary safe haven visa made for improper purpose – Whether plaintiff's application for protection visa valid.

Words and phrases – "improper purpose", "offshore entry person", "public interest", "temporary safe haven visa".

This application for an order to show cause was filed in the original jurisdiction of the High Court of Australia.

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Constitutional Law

See also [Discrimination Law](#): *Maloney v The Queen*

State of NSW v Kable
S233/2012: [\[2013\] HCA 26](#).

Judgment delivered: 5 June 2013.

Coram: French CJ, Hayne, Crennan, Kiefel, Bell, Gageler and Keane JJ.

Catchwords:

Constitutional law – Judicial power – Respondent detained pursuant to order of Supreme Court of New South Wales made under *Community Protection Act 1994* (NSW) ("CP Act") – CP Act subsequently held invalid – Respondent sought damages for false imprisonment – Whether order of Supreme Court valid until set aside – Whether order of Supreme Court judicial order.

Torts – False imprisonment – Defences – Lawful authority – Respondent held under order of Supreme Court subsequently set aside – Whether officers of appellant could rely on order made under invalid legislation as lawful authority.

Words and phrases – "judicial order", "lawful authority", "superior court of record", "void ab initio", "void or voidable".

Appealed from NSW SC (CA): [\[2012\] NSWCA 243](#).

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Criminal Law

Agius v The Queen

S254/2012: [\[2013\] HCA 27](#).

Judgment delivered: 5 June 2013.

Coram: French CJ, Hayne, Crennan, Kiefel, Bell, Gageler and Keane JJ.

Catchwords:

Criminal law – Conspiracy – Where appellant charged with conspiracy to defraud Commonwealth contrary to ss 86(1) and 29D of *Crimes Act 1914* (Cth) – Where appellant charged with conspiracy to dishonestly cause loss to Commonwealth contrary to s 135.4(5) of *Criminal Code* (Cth) ("Code") – Where both charges related to single scheme to defraud Commonwealth of taxation revenue – Where two charges necessary because of legislative change – Whether s 135.4(5) of Code required prosecution to prove appellant entered into agreement after commencement of provision – Whether "state of affairs" could be physical element of s 135.4(5) of Code – Whether being party to an existing agreement a "state of affairs" – Whether s 135.4(5) of Code given retrospective effect if offence satisfied by continuation of agreement formed before commencement of provision.

Words and phrases – "agreement", "conspiracy", "state of affairs".

Appealed from NSW (CCA): [\[2011\] NSWCCA 119](#).

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Director of Public Prosecutions (Cth) v JM

M73/2012: [\[2013\] HCA 30](#).

Judgment delivered: 27 June 2013.

Coram: French CJ, Hayne, Crennan, Kiefel, Bell, Gageler and Keane JJ.

Catchwords:

Criminal law – Market manipulation – *Corporations Act* 2001 (Cth), s 1041A – Transactions alleged to have effect or likely effect of creating "artificial price" for shares on Australian Securities Exchange – Meaning of "artificial price" in s 1041A of the *Corporations Act* – Whether meaning of "artificial price" informed by United States of America conceptions of "cornering" and "squeezing".

Criminal procedure – Question of law arising before trial – Question of law referred to Court of Appeal – Case stated – Case stated set out facts which prosecution sought to prove at trial – Facts set out in case stated neither admitted nor proved – Whether question of law referred hypothetical.

Words and phrases – "artificial price", "case stated", "cornering", "genuine supply and demand", "market manipulation", "sole or dominant purpose", "squeezing".

Appealed from Vic SC (CA): (2012) 90 ACSR 96; [\[2012\] VSCA 21](#).

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Nguyen v The Queen

M30/2013: [\[2013\] HCA 32](#).

Judgment delivered: 27 June 2013.

Coram: French CJ, Kiefel, Bell, Gageler and Keane JJ.

Catchwords:

Criminal law – Murder – Practice and procedure – Directions to jury – Available alternative charge – Whether position of appellant and co-accused sufficiently distinguishable to affect adequacy of directions to jury – Whether reasonably open to jury to return

alternative verdict of manslaughter – Whether failure to leave alternative verdict to jury constituted wrong decision on question of law – Whether substantial miscarriage of justice occurred.

Words and phrases – "alternative verdict of manslaughter", "substantial miscarriage of justice".

Appealed from VSC (CA): [\[2010\] VSCA 23](#).

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Issa; & Elias v The Queen & Anor
M29, M25/2013: [\[2013\] HCA 31](#).

Judgment delivered: 27 June 2013.

Coram: French CJ, Hayne, Kiefel, Bell and Keane JJ.

Catchwords:

Criminal law – Sentence – Where offence carries higher maximum penalty than other offence for which offender could have been prosecuted – Whether sentencing judge required to take lesser maximum penalty for other offence into account as mitigating factor – Whether *R v Liang* (1995) 124 FLR 350 should be followed.

Criminal law – Respective roles of prosecution and sentencing judge – Whether appropriate for sentencing judge to have regard to other offence which judge considers as appropriate or more appropriate to facts of case.

Appealed from VSC (CA): [\[2012\] VSCA 160](#).

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Criminal Procedure

See also [Criminal Law](#): *Director of Public Prosecutions (Cth) v JM*

Discrimination Law

Maloney v The Queen

B57/2012: [\[2013\] HCA 28](#).

Judgment delivered: 19 June 2013.

Coram: French CJ, Hayne, Crennan, Kiefel, Bell and Gageler JJ.

Catchwords:

Discrimination law – Racial discrimination – Certain geographical areas on Palm Island subject to restrictions as to nature and quantity of liquor which may be possessed – Palm Island population overwhelmingly Aboriginal – Appellant, an Indigenous member of Palm Island community, convicted of possessing liquor in restricted area on Palm Island – Whether restrictions affected enjoyment of right to equal treatment before tribunals protected by Art 5(a) of International Convention on the Elimination of All Forms of Racial Discrimination ("Convention") – Whether restrictions affected enjoyment of right to own property protected by Art 5(d)(v) of Convention – Whether restrictions affected enjoyment of right of access to places or services for use by general public protected by Art 5(f) of Convention – Whether restrictions engaged s 10 of *Racial Discrimination Act* 1975 (Cth) – Whether restrictions valid as special measure within meaning of s 8 of *Racial Discrimination Act*.

Constitutional law (Cth) – Inconsistency between Commonwealth and State laws – Whether State law inconsistent with Commonwealth law and invalid to extent of inconsistency pursuant to s 109 of Constitution.

Words and phrases – "human rights or fundamental freedoms", "racial discrimination", "right of access to any place or service intended for use by the general public", "right to equal treatment before the tribunals and all other organs administering justice", "right to own property", "special measure".

Appealed from Qld SC (CA): (2012) 262 FLR 172; [\[2012\] QCA 105](#).

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Equity

Kakavas v Crown Melbourne Limited & Ors

M117/2012: [\[2013\] HCA 25](#).

Judgment delivered: 5 June 2013.

Coram: French CJ, Hayne, Crennan, Kiefel, Bell, Gageler and Keane JJ.

Catchwords:

Equity – Unconscionable conduct – Where appellant gambled at first respondent's casino and lost \$20.5 million – Where appellant diagnosed as suffering from condition known as "pathological gambling" – Where appellant subject to "interstate exclusion order" under *Casino Control Act 1991* (Vic) – Whether gambling transactions affected by unconscionable dealing – Whether appellant suffered from special disadvantage making him susceptible to exploitation – Whether first respondent had sufficient knowledge of any special disadvantage.

Words and phrases – "actual knowledge", "constructive notice", "interstate exclusion order", "special disadvantage", "unconscionable conduct".

Appealed from Vic SC (CA): [\[2012\] VSCA 95](#).

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Judgments and Orders

Hunt & Hunt Lawyers v Mitchell Morgan Nominees Pty Ltd [No 2]
S270/2012: [\[2013\] HCA 23](#).

Judgment delivered: 29 May 2013.

Coram: French CJ, Hayne and Kiefel JJ.

Catchwords:

Judgments and orders – Interest – Interest on judgment – Whether pre-judgment interest, pursuant to s 100 of *Civil Procedure Act 2005* (NSW), or post-judgment interest, under s 101 of *Civil Procedure Act*, should apply to judgment sum.

Appealed from NSW SC (CA): [\[2012\] NSWCA 38](#).

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Statutes

X7 v Australian Crime Commission and Anor
S100/2012: [\[2013\] HCA 29](#).

Judgment delivered: 26 June 2013.

Coram: French CJ, Hayne, Crennan, Kiefel and Bell JJ.

Catchwords:

Statutes – Interpretation – Plaintiff charged with three indictable Commonwealth offences – Plaintiff served with summons to attend examination by examiner appointed under *Australian Crime Commission Act 2002* (Cth) ("Act") – Examiner asked plaintiff questions about subject matter of charged offences – Whether Act empowered examiner to conduct examination of person charged with indictable Commonwealth offence where examination concerned offence charged.

Words and phrases – "accusatorial process of criminal justice", "examination", "prejudice the fair trial of a person who has been, or may be, charged with an offence", "principle of legality", "privilege against self-incrimination", "right to silence", "trial according to law".

This writ of summons was filed in the original jurisdiction of the High Court of Australia.

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Torts

See also [Constitutional Law](#): *State of NSW v Kable*

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Words and Phrases

See also [Administrative Law](#): *Plaintiff M79 v Minister for Immigration and Citizenship*

See also [Constitutional Law](#): *State of NSW v Kable*

See also [Criminal Law](#): *Agius v The Queen*

See also [Criminal Law](#): *Director of Public Prosecutions (Cth) v JM*

See also [Criminal Law](#): *Nguyen v The Queen*

See also [Discrimination Law](#): *Maloney v The Queen*

See also [Equity](#): *Kakavas v Crown Melbourne Limited & Ors*

See also [Statutes](#): *X7 v Australian Crime Commission and Anor*

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2: CASES RESERVED

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

Constitutional Law

See also [Criminal Law](#): *Lee & Anor v New South Wales Crime Commission*

Fortescue Metals Group Limited and Ors v The Commonwealth of Australia

S163/2012: [\[2013\] HCATrans 41](#); [\[2013\] HCATrans 42](#); [\[2013\] HCATrans 43](#).

Dates heard: 6, 7 & 8 March 2013.

Coram: French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ.

Catchwords:

Constitutional law (Cth) – Powers of the Commonwealth Parliament – Constitution, s 51(ii) – Taxation – Commonwealth Parliament passed several Acts establishing a 'minerals resource rent tax' – Whether any or all of *Minerals Resource Rent Tax (Imposition-Customs) Act 2012* (Cth) s 3, *Minerals Resources Rent Tax (Imposition-Excise) Act 2012* (Cth) s 3, *Minerals Resource Rent Tax (Imposition-General) Act 2012* (Cth) s 3 (collectively 'the Acts') are invalid to the extent that they discriminate between the States contrary to s 51(ii) of the Constitution.

Constitutional law (Cth) – Constitution, s 99 – Prohibition on Commonwealth preference in trade, commerce or revenue – Whether any or all of the Acts give preference to one State over another.

Constitutional law (Cth) – *Melbourne Corporation* doctrine – Whether any or all of the Acts discriminate against or place a particular burden upon the operations or activities of the States, as to be beyond the legislative power of the Commonwealth.

Constitutional law (Cth) – Constitution, s 91 – Section 91 provides, inter alia, that '[n]othing in this Constitution prohibits a State from granting any aid to or bounty on mining for gold, silver, or other metals' – Whether any or all of the Acts contravene s 91.

This writ of summons was filed in the original jurisdiction of the High Court of Australia.

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Criminal Law

Lee & Anor v New South Wales Crime Commission
S292/2012: [\[2013\] HCATrans 93](#).

Date heard: 1 May 2013.

Coram: French CJ, Hayne, Crennan, Kiefel, Bell, Gageler and Keane JJ.

Catchwords:

Criminal law – Recovery of proceeds of crime – Examination orders – Whether examination would interfere with the administration of justice in criminal proceedings – Whether examination order may be made where criminal charges pending against examinee – Whether procedural protections available to prevent abuse of power – *Criminal Assets Recovery Act 1990* (NSW), ss 13A, 31D, 63.

Constitutional law – Ch III of the Constitution – Separation of judicial powers – Functions incompatible with institutional integrity of State Supreme Court – Validity of s 31D of *Criminal Assets Recovery Act 1990* (NSW) – Whether requiring a State Supreme Court to make an examination order without regard to the capacity of that order to prejudice the fair trial of the person is incompatible with Ch III.

Statutes – *Criminal Assets Recovery Act 1990* (NSW) ss 13A, 31D, 63 – Examination orders – Whether power to order examination limited by general law principles relating to a fair trial.

Appealed from NSW (CA): [\[2012\] NSWCA 276](#).

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Equity

See also [Legal Practitioners](#): *Legal Services Board v Gillespie-Jones*

Industrial Law

Construction Forestry Mining & Energy Union v Mammoet Australia Pty Ltd ACN 075 483 644
P26/2013: [\[2013\] HCATrans 150](#).

Date heard: 20 June 2013.

Coram: Crennan, Kiefel, Bell, Gageler and Keane JJ.

Catchwords:

Industrial law – *Fair Work Act 2009* (Cth) – Whether provision of accommodation constituted payment with the meaning of s 470(1) of the *Fair Work Act* – Whether the removal of accommodation constituted adverse action.

Words and phrases – “payment”

Appealed from FC: [\[2012\] FCA 850](#).

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Intellectual Property

Apotex Pty Ltd v Sanofi-Aventis Australia Pty Ltd & Ors
S1/2013: [\[2013\] HCATrans 123](#); [\[2013\] HCATrans 124](#).

Date heard: 28 & 29 May 2013.

Coram: French CJ, Hayne, Crennan, Kiefel and Gageler JJ.

Catchwords:

Intellectual Property – Patents – Patent claimed administration of pharmaceutical drug as method of preventing or treating particular condition – Administration of drug for different purpose than that specified in patent had effect of preventing or treating condition referred to in patent – Whether methods of treating human body patentable inventions within the meaning of s 18(1)(a) of the *Patents Act 1900* (Cth) – Whether second or subsequent medical uses of previously known products patentable inventions.

Intellectual Property – Patents – Infringement – Patent claimed use of compound for treatment of a specified disease – Whether a person who supplies the compound and indicates its use for treatment of a different disease infringes the patent under s 177(1) of the *Patents Act 1990* (Cth).

Appealed from FCA (FC): (2012) 204 FCR 494; (2012) 290 ALR 1; (2012) 96 IPR 185; [\[2012\] FCAFC 102](#).

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Legal Practitioners

Legal Services Board v Gillespie-Jones

M27/2013: [\[2013\] HCATrans 126](#).

Date heard: 4 June 2013.

Coram: French CJ, Hayne, Crennan, Kiefel, Bell, Gageler and Keane JJ.

Catchwords:

Legal Practitioners – Fidelity fund – Moneys paid to solicitor to be paid into trust account and used for express purpose of paying counsel’s fees – Moneys used by solicitor for own purpose – Whether counsel entitled to claim against Fund – Whether claim barred by lack of costs agreement.

Equity – Trusts and trustees – *Quistclose* trust – Whether moneys paid to solicitor for purpose of paying counsel’s fees held on *Quistclose* trust.

Words and phrases – “Actual pecuniary loss” – “Interests” – “For or on behalf of”.

Appealed from VSC (CA): [\[2012\] VSCA 68](#).

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Native Title

Leo Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia & Ors

B58/2012: [\[2013\] HCATrans 15](#).

Date heard: 12 February 2013.

Coram: French CJ, Hayne, Crennan, Kiefel and Bell JJ.

Catchwords:

Native title – Preservation of native title rights – Prior extinguishment – Native title claim over maritime area – Native title right to take fish and other aquatic life for commercial purposes – Whether native title rights extinguished by fisheries legislation prohibited, in the absence of a licence, taking of such resources for commercial purposes – Whether rights to take resources from an area constitute native title rights or interests within the meaning of s 223(1) of the *Native Title Act* 1993 (Cth) where those rights are held under traditional laws and customs on the basis of a 'reciprocal relationship' with a holder of 'occupation based' native title rights.

Appealed from FCA (FC): (2012) 289 ALR 400, [\[2012\] FCAFC 25](#).

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Statutes

See also [Criminal Law](#): *Lee & Anor v New South Wales Crime Commission*

Words and Phrases

See also [Legal Practitioners](#): *Legal Services Board v Gillespie-Jones*

3: ORIGINAL JURISDICTION

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

4: SPECIAL LEAVE GRANTED

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

Administrative Law

See also [Statutes](#): *Wingfoot Australia Partners Pty Ltd & Anor v Kocak & Ors*

Civil Procedure

Clark v Macourt
S9/2013: [\[2013\] HCATrans 112](#).

Date heard: 10 May 2013 – *Special leave granted*.

Catchwords:

Civil Procedure – Damages – Assisted reproductive technology practice – Damages for breach of various warranties contained in the Deed relating to donor sperm – Proper categorisation of the contract – Whether the trial judge erred in not concluding that the respondent had fully mitigated her loss – Whether the respondent avoided the loss she otherwise would have sustained by having to replace the non-compliant sperm by charging her patients for the cost of replacement sperm.

Civil Procedure – Costs – Whether the respondent would have been entitled to indemnity costs if the award of damages was upheld in her favour.

Appealed from NSW (CA): [\[2011\] NSWSC 1276](#); [\[2012\] NSWCA 367](#).

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Expense Reduction Analysts Group Pty Ltd & Ors v Armstrong Strategic Management and Marketing Pty Limited & Ors
S12/2013: [\[2013\] HCATrans 137](#).

Date heard: 6 June 2013 – *Special leave granted*.

Catchwords:

Civil procedure – Discovery – Privilege – Documents upon which legal professional or client legal privilege attached inadvertently disclosed to the other side – Whether such inadvertent disclosure has the effect of waiving privilege.

Civil procedure – Discovery – Confidential information – Whether the only basis on which the respondents could be prohibited from using the documents, or required to return the documents, was dependent on whether the circumstances on which they were communicated to or obtained by the respondents were such as to impose an obligation of conscience on the respondents – Whether an obligation of conscience could be imposed on the respondents in the circumstances.

Appealed from NSWSC (CA): [2012] NSWSC 393; [\[2012\] NSWCA 430](#).

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Corporations Law

Willmott Growers Group Inc v Willmott Forests Ltd (Receivers and Managers Appointed) (In Liquidation) & Ors
M99/2012: [\[2013\] HCATrans 106](#).

Date heard: 10 May 2013 – *Special leave granted*.

Catchwords:

Corporations law – Liquidation – Liquidator of lessor disclaims lease agreement under s 568(1) of *Corporations Act 2001* (Cth) – Whether disclaimer extinguishes leasehold interest – Whether leasehold interest survives termination of the lease agreement.

Appealed from VSC (CA): [\[2012\] VSC 29](#); [\[2012\] VSCA 202](#).

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Criminal Law

Bugmy v The Queen
S16/2013: [\[2013\] HCATrans 111](#).

Date heard: 10 May 2013 – *Special leave granted*.

Catchwords:

Criminal law – Sentencing – *Fernando* considerations – Whether court of appeal erred by failing to consider the question of manifest inadequacy and the exercise of residual discretion when increasing sentence – Whether court of appeal erred by holding that the weight to be given to the *Fernando* considerations is diminished over the passage of time – Whether mental illness relevant in sentencing – Whether discretion of sentencing judge had miscarried by virtue of his assessment of the objective seriousness of the offence.

Appealed from NSW CCA: [\[2012\] NSWCCA 223](#).

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Munda v The State of Western Australia

P28/2012: [\[2013\] HCATrans 136](#).

Date heard: 5 June 2013 – *Special leave granted*.

Catchwords:

Criminal law – Sentencing – Residual discretion – Principles which govern the operation of residual discretion – Appellant found guilty of unlawful killing of de facto wife – Sentenced to 5 years and 3 months imprisonment – Court of Appeal allowed Crown appeal and increased sentence to 7 years and 9 months – Court of Appeal accepted that it had a residual discretion to disallow a prosecution appeal against sentence but chose not to exercise it – Whether Court of Appeal erred in holding that residual discretion should only be exercised where parity considerations arise.

Criminal law – Sentencing – *Fernando* considerations – Whether Court of Appeal erred in its application of the *Fernando* principles.

Criminal law – Sentencing – Manifest inadequacy – Whether prosecution appeal contending manifest inadequacy is a proper occasion for an intermediate court to review the appropriateness of a sentencing range.

Appealed from WASC (CA): [\[2012\] WASCA 164](#).

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PEB v The Queen

B9/2013: [\[2013\] HCATrans 135](#).

Date heard: 5 June 2013 – *Special leave granted*.

Catchwords:

Criminal law – Sufficiency of reasons – Verdict unreasonable or not supported by evidence – Appellant convicted of two counts of unlawfully and indecently dealing with a child under 12 years old and in his care – Appellant appealed from conviction on basis that verdict was unreasonable or not supported by evidence – Whether Court of Appeal is required to provide detailed reasons for its conclusion that verdict was not unreasonable or was supported by evidence – Whether Court of Appeal must undertake an independent assessment of the evidence in determining such question.

Appealed from QCA (CA): [\[2012\] QCA 333](#).

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Reeves v The Queen

S58/2013: [\[2013\] HCATrans 143](#).

Date heard: 6 June 2013 – *Referred to Full Court*.

Catchwords:

Criminal law – Surgical procedure – Informed consent – Appellant conducted a “simple vulvectomy” on a patient – Surgery unnecessary and appellant later convicted of grievous bodily harm with intent – Whether a surgeon must inform a patient of the “nature and extent” of an operation or simply the “nature” of the operation in order to meet the standard of informed consent – Whether Court of Appeal erred in relying on the proviso in s 6(1) of the *Criminal Appeal Act 1912* (NSW)

Appealed from NSWSC (CCA): [\[2013\] NSWCCA 34](#).

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Constitutional Law

Magaming v The Queen

S58/2013: [\[2013\] HCATrans 140](#).

Date heard: 6 June 2013 – *Special leave granted*.

Catchwords:

Constitutional law – Criminal law – Mandatory minimum sentences – Appellant convicted of people smuggling contrary to s 233C of the

Migration Act 1958 (Cth) ("the Act") – s 236B of the Act prescribed a mandatory minimum penalty of 5 years imprisonment – Whether s 236B of the Act requires the exercise of the judicial power of the Commonwealth in a manner inconsistent with its nature – Whether s 236B(3) of the Act when read with ss 233A(1) and 233C(1) authorises the executive government to direct the outcome of the exercise of the court's federal jurisdiction to sentence offenders – Whether s 236B(3) is therefore invalid as contrary to Ch III of the Constitution.

Appealed from NSWSC (CCA): [\[2013\] NSWCCA 23](#).

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Equity

Westpac Banking Corporation & Ors v Bell Group Ltd (In Liq) & Ors

P29/2012: [\[2013\] HCATrans 49](#).

Date heard: 15 March 2013 – *Special leave granted*.

Catchwords:

Equity – fiduciary duty – Judicial review – Whether courts can intervene to review the exercise of powers by directors on the basis of a lack of reasonable grounds for decision.

Equity – Fiduciary duty – Breach – Remedies – Equitable compensation versus account of profits – Whether compound interest should be utilised for restitutionary purposes – If so, whether the appropriate measure of compound interest can be determined – Whether on appeal the measure of compound interest was "grossly excessive" or a simple disgorgement of profits.

Equity – Fiduciary duty – *Barnes v Addy* – Particularisation of breach of fiduciary duty by directors – Whether recipient liability is available against a person who enters an executory transaction with a company involving a balance of rights and obligations that are performed on both sides before any act of avoidance – Whether accessory liability requires a dishonest and fraudulent design by the trustee.

Appealed from WASC (CA): [\[2012\] WASCA 157](#).

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Industrial Law

Comcare v PVYW

S8/2013: [\[2013\] HCATrans 114](#).

Date heard: 10 May 2013 – *Special leave granted*.

Catchwords:

Industrial law – Workers compensation – Proper interpretation of the principles established in *Hatzimanolis v ANI Corporation Limited* – Employee injured during an overnight stay in a motel room booked by her employer – Injuries were sustained in an interval or interlude within an overall period or episode of work – Whether it is sufficient that the injuries were sustained by the employee at a place the employer induced or encouraged her to be – Whether circumstances surrounding such an injury are relevant to assessment.

Appealed from FCA (FC): (2012) 291 ALR 302; [\[2012\] FCA 395](#); [\[2012\] FCAFC 181](#).

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Native Title

Karpany & Anor v Dietman

A18/2012: [\[2012\] HCATrans 210](#).

Date heard: 7 September 2012 – *Referred to Full Court*

Catchwords:

Native title – Preservation of native title rights – Prior extinguishment – Native title right to take fish – Applicants convicted of possession of an aquatic resource contrary to s 72(2)(c) Fisheries Management Act 2007 (SA) – Whether native title rights to take fish extinguished by virtue of s 29 of the Fisheries Act 1971 (SA) – Whether s 72(2)(c) Fisheries Management Act 2007 (SA) inoperative due to inconsistency with s 221 of the *Native Title Act* 1993 (Cth).

Appealed from SA SC (FC): (2012) 112 SASR 51; (2012) 262 FLR 292; [\[2012\] SASCF 53](#).

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Statutes

Wingfoot Australia Partners Pty Ltd & Anor v Kocak & Ors
M107/2012: [\[2013\] HCATrans 105](#).

Date heard: 10 May 2013 – *Special leave granted*.

Catchwords:

Statutes – Whether by virtue of s 68(4) of the *Accident Compensation Act 1985* (“ACA”) a court is bound to accept medical panel opinions – Whether function exercised by medical panel under s 68 ACA is quasi-adjudicative/investigative – Appropriate content of right to reasons under s 68(2).

Administrative Law – Judicial review – Certiorari – Error of law on face of record – Whether failure to give adequate reasons constituted an error of law on the face of the record.

Appealed from VSC (CA): [\[2011\] VSC 285](#); [\[2012\] VSCA 259](#).

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Daly v Thiering & Ors
S38/2013: [\[2013\] HCATrans 139](#).

Date heard: 6 June 2013 – *Special leave granted*.

Catchwords:

Statutes – Statutory construction – Whether the Court of Appeal erred in its construction of s 130A of the *Motor Accidents Compensation Act 1999* (NSW) (“the MAC Act”) and s 6(1) of the *Lifetime Care and Support Act 2006* (NSW) (“the LCS Act”) – Whether s 130A of the MAC Act provides that the Lifetime Care and Support Scheme is responsible for the provision of all reasonable and necessary treatment and care required by participants – Or whether s 130A of the MAC Act provides that compulsory third party insurers are required to pay damages for voluntarily provided care.

Appealed from NSWSC (CA): [\[2013\] NSWCA 25](#); [\[2011\] NSWSC 1345](#); [\[2011\] NSWSC 1585](#).

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5: CASES NOT PROCEEDING OR VACATED

The following cases in the High Court of Australia are not proceeding or have been vacated since *High Court Bulletin* 4 [2013] HCAB 04.

Administrative Law

See also [Citizenship and Migration](#): *Plaintiff S138 v Director-General of Security and Ors*

Citizenship and Migration

Plaintiff S138 v Director-General of Security and Ors
S138/2012: *Special case.*

Catchwords:

Citizenship and migration – Migration – Refugees – Protection visas – Plaintiff found to be a refugee but refused protection visa due to adverse security assessment by Australian Security Intelligence Organisation – Department relied on public interest criterion 4002 which requires that applicant not be assessed by ASIO to be a risk to security – In *Plaintiff M47 v Director-General of Security* public interest criterion 4002 found to be beyond power conferred by s 31(3) of the Migration Act 1958 (Cth) – Whether the Secretary made an error of law by relying on public interest criterion 4002.

Citizenship and migration – Mandatory detention – Plaintiff held in detention as unlawful non-citizen – No third country currently available to receive plaintiff – Whether ss 189 and 196 of Act authorise plaintiff's detention.

Administrative law – Procedural fairness – Adverse security assessment – ASIO interviewed plaintiff – Plaintiff did not meet requirements for protection visa – Plaintiff never informed of the reasons why or nature of apparent risk he poses to security – Whether Director-General failed to accord plaintiff procedural fairness.

Constitutional law – Whether ss 189, 196 and 198 of Act are beyond the legislative power of the Commonwealth.

This special case was filed in the original jurisdiction of the High Court of Australia.

On 13 June the amended application for an order to show cause was dismissed by consent.

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Constitutional Law

See also [Citizenship and Migration: Plaintiff S138 v Director-General of Security and Ors](#)

Criminal Law

Pantazis v The Queen & Anor
M80/2012: [\[2013\] HCATrans 51](#).

Date heard: 15 March 2013 – *Special leave granted*.

Catchwords:

Criminal law – Sentencing – Most appropriate offence – *Liang & Li* principle – Maximum penalty for the offence of attempting to pervert the course of justice at common law is prescribed by section 320 of the *Crimes Act* 1958 (Vic) at 25 years imprisonment – Under section 43 of the *Crimes Act* 1914 (Cth) maximum penalty at relevant time was five years imprisonment – Whether Court of Appeal erred in failing to have regard to the lighter sentence.

Appealed from VSC (CA): [\[2012\] VSCA 160](#).

Notice of discontinuance filed 28 May.

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6: SPECIAL LEAVE REFUSED

Canberra: 5 June 2013

(Publication of Reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Re Kowalski	(A36/2012)	High Court of Australia [2012] HCA Trans 278	Application Dismissed [2013] HCASL 78.
Coffey	State of Queensland & Ors (B6/2013)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 368	Application Dismissed [2013] HCASL 79.
Cyonara Snowfox Pty Ltd	Commissioner of Taxation (B7/2013)	Federal Court of Australia [2012] FCAFC 177	Application Dismissed [2013] HCASL 80.
Clampett	Magistrate S Cornack & Anor (B11/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 2	Application Dismissed [2013] HCASL 81.
Sahin & Anor	National Australia Bank Limited & Anor (M6/2013)	Supreme Court of Victoria (Court of Appeal) [2012] VSCA 317	Application Dismissed [2013] HCASL 82.
MZYVA & Anor	Minister for Immigration and Citizenship & Anor (M14/2013)	Federal Court of Australia [2013] FCA 50	Application Dismissed [2013] HCASL 83.
Slaveski	State of Victoria & Ors (M15/2013)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application Dismissed [2013] HCASL 84.
Bahonko	Attorney-General for the State of Victoria (M16/2013)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application Dismissed [2013] HCASL 85.
Del Borrello	Friedman & Lurie (a firm) (P9/2013)	Supreme Court of Western Australia (Court of Appeal) [2013] WASCA 11	Application Dismissed [2013] HCASL 86.
WZAQX	Minister for Immigration and Citizenship & Anor (P11/2013)	Federal Court of Australia [2013] FCA 90	Application Dismissed [2013] HCASL 87.
Viavattene	New South Wales Police (S316/2012 – S321/2012)	Applications for removal	Applications Dismissed [2013] HCASL 88.
SZQVV	Minister for Immigration and Citizenship & Anor (S18/2013)	Federal Court of Australia [2012] FCA 1471	Application Dismissed [2013] HCASL 89.
Christanty	Secretary, Department of Families, Housing, Community Services and	Federal Court of Australia [2012] FCA 1360	Application Dismissed [2013] HCASL 90.

	Indigenous Affairs (S22/2013)		
Rouvinetis	Knoll & Anor (S31/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 24	Application Dismissed [2013] HCASL 91.
Trans Petroleum (Australia) Pty Ltd	White Gum Petroleum Pty Ltd (P30/2012)	Supreme Court of Western Australia (Court of Appeal) [2012] WASCA 165	Application Dismissed with Costs [2013] HCASL 92.
Dye	Commonwealth Securities Limited & Ors (S246/2012)	Federal Court of Australia [2012] FCA 992	Application Dismissed with Costs [2013] HCASL 93.
Dye	Commonwealth Bank of Australia Limited & Anor (S247/2012)	Federal Court of Australia [2012] FCA 992	Application Dismissed with Costs [2013] HCASL 93.
SZQDI & Ors	Minister for Immigration and Citizenship & Anor (S283/2012)	Federal Court of Australia [2012] FCA 932	Application Dismissed with Costs [2013] HCASL 94.
Brown	Sibraa (S324/2012)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 328	Application Dismissed with Costs [2013] HCASL 95.
Mani	Minister for Immigration and Citizenship & Anor (S353/2012)	Federal Court of Australia [2012] FCA 1313	Application Dismissed with Costs [2013] HCASL 96.

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Canberra: 6 June 2013 (by video link to Brisbane and Perth)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Attorney- General for the State of Queensland	Dodge (B66/2012)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 280	Application Dismissed with costs [2013] HCATrans 132.
Commissioner of Taxation	Crown Insurance Services Ltd (B69/2012)	Full Court of the Federal Court of Australia [2012] FCAFC 153	Application Dismissed with costs [2013] HCATrans 129.
The Australian Workers' Union of Employees, Queensland	State of Queensland (B3/2013)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 353	Application Dismissed with costs [2013] HCATrans 131.
Kellas-Sharpe & Ors	PSAL Limited (B4/2013)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 371	Application Dismissed with costs [2013] HCATrans 133.

Kelsall & Anor	State of Queensland & Anor (B5/2013)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 369	Application Dismissed with costs [2013] HCATrans 134.
Wegner	Deputy Commissioner of Taxation (B17/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 46	Application Dismissed with costs [2013] HCATrans 130.
Reardon	Deputy Commissioner of Taxation (B18/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 46	Application Dismissed with costs [2013] HCATrans 130.
Crowley	The Commonwealth of Australia & Ors (C1/2013; C2/2013)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2012] ACTCA 52	Application Dismissed [2013] HCATrans 128.

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Sydney: 7 June 2013

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
SZQDS	Minister for Immigration and Citizenship & Anor (S187/2012)	Federal Court of Australia [2012] FCA 396	Application Dismissed [2013] HCATrans 145.
Razai	Minister for Immigration and Citizenship & Anor (S204/2012)	Federal Court of Australia [2012] FCA 394	Application Dismissed [2013] HCATrans 145.
SZQKC	Minister for Immigration and Citizenship & Anor (S272/2012)	Federal Court of Australia [2012] FCA 249	Application Dismissed [2013] HCATrans 145.
SZQGX	Minister for Immigration and Citizenship & Anor (S273/2012)	Federal Court of Australia [2012] FCA 306	Application Dismissed [2013] HCATrans 145.
SZQGI	Minister for Immigration and Citizenship & Anor (S274/2012)	Federal Court of Australia [2012] FCA 343	Application Dismissed [2013] HCATrans 145.
SZQGU	Minister for Immigration and Citizenship & Anor (S280/2012)	Federal Court of Australia [2012] FCA 340	Application Dismissed [2013] HCATrans 145.
Norman	The Queen (S333/2012)	Supreme Court of New South Wales (Court of Criminal Appeal) [2012] NSWCCA 230	Application Dismissed [2013] HCATrans 142.
Belfield & Anor	Belfield & Anor (S10/2013)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 416	Application Dismissed with costs
Chi	Technical Further Education	Supreme Court of New South Wales (Court of Appeal) [2012]	Application Dismissed with costs [2013]

	Commission (S11/2013)	NSWCA 421	HCATrans 146.
Potts	The Queen (S20/2013)	Supreme Court of New South Wales (Court of Criminal Appeal) [2012] NSWCCA 229	Application Dismissed with costs [2013] HCATrans 141.
Bayu (aka Ilham Dahlan)	The Queen (S41/2013)	Supreme Court of New South Wales (Court of Criminal Appeal) [2013] NSWCCA 23	Application Dismissed with costs [2013] HCATrans 144.

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Canberra: 20 June 2013

(Publication of Reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Zippo Pty Ltd	National Australia Bank Limited (S87/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 113.	Application Dismissed [2013] HCASL 97.

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Melbourne: 21 June 2013

(Publication of Reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Forster	Forster (A4/2013)	Family Court of Australia	Application Dismissed [2013] HCASL 98.
Forster	Forster (A5/2013)	Family Court of Australia	Application Dismissed [2013] HCASL 98.

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Canberra: 26 June 2013

(Publication of Reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Farmer	Rogers (B1/2013)	Full Court of the Family Court of Australia	Application Dismissed [2013] HCASL 99.
Farmer	Rogers (B2/2013)	Full Court of the Family Court of Australia	Application Dismissed [2013] HCASL 99.
Weeks	Commissioner of Taxation (B12/2013)	Full Court of the Federal Court of Australia [2013] FCAFC 2	Application Dismissed [2013] HCASL 100.

Robinson	The Queen (B13/2013)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 309	Application Dismissed [2013] HCASL 101.
Weeks	Commissioner of Taxation & Anor (B15/2013)	Full Court of the Federal Court of Australia [2013] FCAFC 78	Application Dismissed [2013] HCASL 102.
Manny	Anthony Sims and Stephen Parbery from PPBADVISORY & Ors (C6/2013)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2013] ACTCA 9	Application Dismissed [2013] HCASL 103.
Kocakaya	Minister for Immigration and Citizenship & Anor (M18/2013)	Federal Court of Australia [2013] FCA 55	Application Dismissed [2013] HCASL 104.
MZYUM & Anor	Minister for Immigration and Citizenship & Anor (M20/2013)	Federal Court of Australia [2013] FCA 51	Application Dismissed [2013] HCASL 105.
Bahonko	Moorfields Community and Others (M22/2013)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application Dismissed [2013] HCASL 106.
Bahonko	Moorfields Community and Others (M23/2013)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application Dismissed [2013] HCASL 106.
Williamson & Anor	The Bendigo Adelaide Bank Ltd (P36/2012)	Supreme Court of Western Australia (Court of Appeal) [2012] WASCA 208	Application Dismissed [2013] HCASL 107.
Mahmoud	Sutherland & Anor (S309/2012)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 306	Application Dismissed [2013] HCASL 108.
SZQJB	Minister for Immigration and Citizenship & Anor (S17/2013)	Federal Court of Australia [2013] FCA 10	Application Dismissed [2013] HCASL 109.
SZRGW	Minister for Immigration and Citizenship & Anor (S32/2013)	Federal Court of Australia [2013] FCA 100	Application Dismissed [2013] HCASL 110.
SZRIE	Minister for Immigration and Citizenship & Anor (S34/2013)	Federal Court of Australia [2013] FCA 99	Application Dismissed [2013] HCASL 111.
SZRIX	Minister for Immigration and Citizenship & Anor (S40/2013)	Federal Court of Australia [2013] FCA 121	Application Dismissed [2013] HCASL 112.
SZRKF & Ors	Minister for	Federal Court of Australia	Application Dismissed

	Immigration and Citizenship & Anor (S60/2013)	[2013] FCA 181	[2013] HCASL 113.
SZRJN	Minister for Immigration and Citizenship & Anor (S68/2013)	Federal Court of Australia [2013] FCA 222	Application Dismissed [2013] HCASL 114.
Mathai & Ors	Nelson (M9/2013)	Federal Court of Australia [2012] FCA 1448	Application Dismissed with costs [2013] HCASL 115.
Agricultural and Rural Finance Pty Limited	Wardel & Ors (S358/2012)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 388	Application Dismissed with costs [2013] HCASL 116.

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