



HIGH COURT BULLETIN

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

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1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the August 2016 sittings.

Constitutional Law

Murphy & Anor v Electoral Commissioner & Anor
M247/2015: [\[2016\] HCA 36](#)

Orders pronounced: 12 May 2016

Reasons published: 5 September 2016

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

Catchwords:

Constitutional law (Cth) – Legislative power – Franchise – Power of Parliament to regulate exercise of entitlement to enrol to vote – Provisions of Commonwealth Electoral Act 1918 (Cth) precluding consideration of claims for enrolment or transfer of enrolment and amendment of Electoral Rolls during "suspension period" from 8pm on day of closing of Electoral Rolls until close of polling for election – Whether burden on constitutional mandate that Parliament be "directly chosen by the people" – Whether burden justified by substantial reason – Relevance of *Roach v Electoral Commissioner* (2007) 233 CLR 162; [2007] HCA 43 and *Rowe v Electoral Commissioner* (2010) 243 CLR 1; [2010] HCA 46.

Words and phrases – "adequacy in its balance", "burden", "constitutional mandate of popular choice", "directly chosen by the people", "franchise", "necessity", "obvious and compelling alternative", "reasonably appropriate and adapted", "structured proportionality", "substantial reason", "suitability".

Constitution – ss 7, 10, 24, 30, 51(xxxvi).

Commonwealth Electoral Act 1918 (Cth) – ss 94A(4), 95(4), 96(4), 101, 102(4), 103A(5), 103B(5), 118(5).

Held: Questions answered.

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Criminal Law

Miller v The Queen; Smith v The Queen; Presley v The Director of Public Prosecutions for the State of South Australia
[A28/2015](#); [A22/2015](#); [A17/2015](#): [2016] HCA 30

Judgment delivered: 24 August 2016

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

Catchwords:

Criminal law – Criminal liability – Complicity – Extended joint criminal enterprise liability – Where appellants and fourth man involved in violent altercation, during which fourth man fatally stabbed victim – Where appellants tried with fourth man for murder – Where bases on which murder left to jury included extended joint criminal enterprise – Whether liability for murder on basis of extended joint criminal enterprise should have been left to jury – Whether extended joint criminal enterprise proper basis for conviction of murder.

Criminal law – Appeal – Where appeal against conviction on ground jury verdict unreasonable or cannot be supported having regard to evidence – Where evidence appellants intoxicated – Whether Court of Criminal Appeal of Supreme Court of South Australia reviewed sufficiency of evidence.

Criminal law – Criminal liability – Complicity – Extended joint criminal enterprise – Consideration of *McAuliffe v The Queen* (1995) 183 CLR 108; [1995] HCA 37 in light of *R v Jogee* [2016] 2 WLR 681; [2016] 2 All ER 1 – Whether doctrine of extended joint criminal enterprise liability should be confined or abandoned.

High Court – Stare decisis – Whether *McAuliffe v The Queen* (1995) 183 CLR 108 should be reopened and overruled.

Words and phrases – "accessorial liability", "common purpose", "complicity", "extended common purpose", "extended joint criminal enterprise", "joint criminal enterprise", "review of sufficiency of evidence", "unreasonable verdict", "verdict not supported by the evidence".

Appealed from SASC (FC): [\[2015\] SASFC 53](#).

Held: Appeals allowed.

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Sio v The Queen

[S241/2015](#); [S83/2016](#): [\[2016\] HCA 32](#)

Judgment delivered: 24 August 2016

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

Catchwords:

Criminal law – Criminal liability – Inconsistent verdicts – Where appellant drove person to brothel – Where person intended to commit robbery – Where person fatally stabbed victim and took money – Where appellant charged with murder and armed robbery with wounding – Where jury directions on armed robbery with wounding charge omitted element of foresight of use of knife to wound – Where appellant acquitted of murder and convicted of armed robbery with wounding – Whether conviction and acquittal inconsistent – Whether substituted verdict should be ordered – Whether new trial should be ordered.

Evidence – Hearsay evidence – Evidence Act 1995 (NSW), s 65(2)(d) – Where person made representation that appellant gave him knife – Whether representation made in circumstances that made it likely that the representation was reliable.

Words and phrases – "circumstances that make it likely that the representation is reliable", "hearsay evidence", "inconsistent verdicts", "merciful verdict", "misdirection", "new trial", "substituted verdict".

Criminal Appeal Act 1912 (NSW) – ss 7, 8.

Evidence Act 1995 (NSW) – s 65.

Appealed from NSWSC (CCA): [\[2015\] NSWCCA 42](#).

Held: Special leave granted; appeal allowed.

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NH v The Director of Public Prosecutions; Jakaj v The Director of Public Prosecutions; Zefi v The Director of Public Prosecutions; Stakaj v The Director of Public Prosecutions

[A14/2016](#); [A15/2016](#); [A16/2016](#); [A19/2016](#): [\[2016\] HCA 33](#)

Judgment delivered: 31 August 2016

Coram: French CJ, Kiefel, Bell, Nettle and Gordon JJ

Catchwords:

Criminal law – Appeal – Verdict – Not guilty of murder but guilty of manslaughter – Alleged mistake by foreperson – Requisite majority for verdict of not guilty of murder allegedly not reached – Report of foreperson to court officer disclosing alleged error – Statements as affidavits from jurors – Full Court quashed jury verdicts and ordered new trials on count of murder – Whether presumption of correctness of jury verdicts rebuttable in circumstances – Whether Full Court could reconsider perfected orders in original jurisdiction – Whether alleged mistake was material irregularity leading to unlawful verdicts – Whether alleged mistake by foreperson and acquiescence of jury an abuse of process – Whether inherent power to correct perfected orders in circumstances – Admissibility of jury statements to impeach verdicts – Consideration of distinction between verdict and judgment.

Appealed from SASC (CCA): [\[2015\] SASCF 139](#).

Held: Appeals allowed with costs.

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The Queen v Baden-Clay

B33/2016: [\[2016\] HCA 35](#)

Judgment delivered: 31 August 2016

Coram: French CJ, Kiefel, Bell, Keane & Gordon JJ

Catchwords:

Criminal law – Criminal liability – Where respondent's wife disappeared and body later found – Where respondent involved in sexual affair with another woman – Where some injuries to respondent's cheek likely caused by fingernails – Where respondent gave evidence at trial denying involvement in killing wife and disposing of body – Where jury convicted respondent of murder – Where Court of Appeal held hypothesis of unintentional killing not excluded by prosecution and substituted verdict of manslaughter – Where common ground on appeal that respondent killed his wife – Whether hypothesis consistent with innocence of murder open – Whether jury's verdict unreasonable – Whether jury entitled to be satisfied beyond reasonable doubt that respondent acted with intent to kill or cause grievous bodily harm when he killed his wife.

Words and phrases – "circumstantial evidence", "hypothesis consistent with innocence", "intention", "intractably neutral", "lies", "motive", "post-offence conduct", "role of the jury", "unreasonable verdict", "whole of the evidence".

Criminal Code (Q) – s 668E(1).

Appealed from QSC (CA): [\[2015\] QCA 265](#)

Held: Appeal allowed.

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Occupational Health and Safety

Deal v Father Pius Kodakkathanath

M252/2015: [\[2016\] HCA 31](#)

Judgment delivered: 24 August 2016

Coram: French CJ, Kiefel, Bell, Gageler and Nettle JJ

Catchwords:

Occupational health and safety – Statutory duty – Occupational Health and Safety Regulations 2007 (Vic), regs 3. 1. 1, 3. 1. 2, 3. 1. 3 – Duties of employers in relation to hazardous manual handling tasks – Where primary school teacher tasked to use step ladder to remove papier mâché displays from pin-board on classroom wall – Where displays unstable or unbalanced, or difficult to grasp and hold – Where task constituted hazardous manual handling task – Where in course of task teacher fell from step ladder and injured knee – Whether evidence capable of supporting cause of action for breach of statutory duty – Whether risk of injury amounted to risk of musculoskeletal disorder "associated with a hazardous manual handling task" – Whether sufficient evidence for jury to infer it was reasonably practicable for employer to identify task as involving hazardous manual handling.

Statutes – Interpretation – Remedial legislation – Occupational Health and Safety Act 2004 (Vic) – Where Act and Regulations intended to protect employees against risk of injury in course of work – Where legislation imposes civil penalties on employers for breach of statutory duty – Whether fact of civil penalty requires narrow interpretation of provision.

Words and phrases – "associated with", "close connection", "combined in terms of circumstances", "combined in terms of classification", "hazardous manual handling task", "musculoskeletal disorder", "real risk", "reasonably practicable", "Shirt calculus".

Occupational Health and Safety Act 2004 (Vic) – ss 2(1), 4, 20, 21, 158.

Occupational Health and Safety Regulations 2007 (Vic) – regs 1. 1. 1, 1. 1. 5, 1. 1. 7, 3. 1. 1, 3. 1. 2, 3. 1. 3.

Appealed from VSC (CA): [\[2015\] VSCA 191](#)

Held: Appeal allowed with costs.

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Statutes

The Maritime Union of Australia & Anor v Minister for Immigration and Border Protection & Anor

S136/2015: [\[2016\] HCA 34](#)

Judgment delivered: 31 August 2016

Coram: French CJ, Bell, Gageler, Keane & Nettle JJ

Catchwords:

Statutes – Delegated legislation – Validity – Migration Act 1958 (Cth) – Offshore resources industry – Where amendments to Migration Act had effect of extending migration zone to non-citizens participating in or supporting offshore resources activity – Where amendments created specified visa requirements for such persons – Where amendments conferred power on Minister to make determination excepting operations and activities from extended migration zone – Where Minister's determination purported to except from migration zone, and specified visa requirements, all operations and activities to extent certain vessels or structures were used – Whether determination entirely negated operation of general rule in extending migration zone to non-citizens participating in or supporting offshore resources activity – Whether determination beyond power and invalid.

Words and phrases – "Australian resources installation", "exception", "migration zone", "offshore resources activity".

Legislation Act 2003 (Cth) – s 42.

Migration Act 1958 (Cth) – ss 5, 8, 9A, 13(1), 41.

Migration Amendment (Offshore Resources Activity) Act 2013 (Cth).

Offshore Minerals Act 1994 (Cth) – s 4, Ch 2.

Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth) – s 7, Chs 2, 3.

Held: Questions answered.

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2: CASES RESERVED

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

Competition

Australian Competition & Consumer Commission v Flight Centre Travel Group Limited

B15/2016: [\[2016\] HCATrans 167](#)

Date heard: 27 July 2016

Coram: French CJ, Kiefel, Gageler, Nettle & Gordon JJ

Catchwords:

Competition – Whether appellant travel agent attempted to induce specific airlines to make a contract, arrangement or arrive at an understanding which had the purpose or effect of substantially lessening competition in a market – Consideration of relevant market – Characterisation of relevant services supplied by airlines and travel agents – Whether airlines and travel agents competed in a market for booking and distribution services, or whether the only relevant market was the market for international passenger air travel services – Whether travel agents competed with airlines in that market given they were the agent of the airlines when supplying such services – Application of ss 45 and 45A of the *Trade Practices Act 1974* (Cth).

Appealed from FCA (FC): [\[2015\] FCAFC 104](#).

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Constitutional Law

Cunningham & Ors v Commonwealth of Australia & Anor

S140/2015: [\[2016\] HCATrans 140](#)

Date heard: 16 June 2016

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

Catchwords:

Constitution – s 51(xxxi) – *Remuneration and Other Legislation Amendment Act 2011 (Cth) – Members of Parliament (Life Gold Pass) and Other Legislation Amendment Act 2012 (Cth)* – Acquisition of property on just terms – Where applicants are former members of the House of Representatives – Where applicants occupied positions as Ministers of State or where officeholders of the Parliament or of a House of Parliament – Where Parliament reduced the ‘retiring allowance’ of past members – Where Parliament restricted the number of return trips per year using the ‘Gold Pass’.

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Contract Law

Simic & Ors v NSW Land and Housing Corporation & Ors
[S136/2016: \[2016\] HCATrans 160](#)

Date heard: 20 July 2016

Coram: French CJ, Kiefel, Gageler, Nettle and Gordon JJ

Catchwords:

Contract – Letters of credit – Whether a misdescription of the beneficiary of a bank guarantee entitled the bank to refuse to pay out the credit – Whether regard could be had to the underlying contract to confirm the correct description of the beneficiary – Autonomy principle – Principle of strict compliance

Appealed from NSWSC (CA): [\[2015\] NSWCA 413](#)

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Criminal Law

Bucca v The Queen
[A26/2016: 2016 HCATrans 189](#)

Date heard: 31 August 2016

Coram: Kiefel, Bell, Gageler, Keane & Nettle JJ

Catchwords:

Criminal law – Evidence – Confessions and admissions – Application of proviso – Where statement was incorrectly admitted – Misdirection and non-direction

Criminal law – Evidence – Propensity evidence – Possession of firearms – Whether court of appeal erred in holding that evidence regarding the possession of firearms was correctly admitted.

Appealed from SASC (CCA): [\[2015\] SASCF 180](#)

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Castle v The Queen

A24/2016: [2016 HCATrans 189](#)

Date heard: 31 August 2016

Coram: Kiefel, Bell, Gageler, Keane & Nettle JJ

Catchwords:

Criminal law – Evidence – Confession and admissions – Application of proviso – Whether possibility jury relied on inadmissible statement made by the co-accused to reject oral evidence could be excluded.

Criminal law – Extended joint enterprise – Application of *McAuliffe v The Queen* (1995) 183 CLR 108.

Appealed from SASC (CCA): [\[2015\] SASCF 180](#)

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Discrimination

Lyons v State of Queensland

B16/2016: [\[2016\] HCATrans 165](#)

Date heard: 25 July 2016

Coram: French CJ, Bell, Gageler, Keane and Nettle JJ

Catchwords:

Discrimination – direct discrimination – where the appellant, who was deaf, was excluded from jury service by a Deputy Registrar –

where the appellant made a complaint of direct discrimination – construction of s 11 of the *Anti-Discrimination Act 1991* (Qld) – where the appellant argues that her impairment was inextricably linked to her requirement of an Auslan interpreter – construction of *Jury Act 1995* (Qld).

Appealed from QSC (CA): [\[2015\] QCA 159](#).

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Procedure

Ainsworth & Ors v Albrecht & Anor
B37/2016: [\[2016\] HCATrans 187](#)

Date heard: 29 August 2016

Coram: French CJ, Bell, Keane, Nettle & Gordon JJ

Catchwords:

Procedure – *Body Corporate and Community Management Act 1997* (QLD) – Where applicants opposed the first respondent’s application to extend balcony – Whether Court of Appeal erred in holding that adjudicator was required to reach conclusion on whether the motion should have passed – Whether QCAT was correct in upholding that adjudicator should have determined whether the ‘motion was objectively unreasonable’.

Appealed from QSC (CA): [\[2015\] QCA 220](#)

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Timbercorp Finance Pty Ltd (In Liquidation) v Collins & Anor
M98/2016: [\[2016\] HCATrans 193](#)

Date heard: 1 September 2016

Coram: French CJ, Kiefel, Keane, Nettle & Gordon JJ

Catchwords:

Procedure – Group proceedings – Part 4A of the *Supreme Court Act 1986* (Vic) – Managed investment schemes – Collapse of schemes – Group proceeding on behalf of investors in schemes – Defendants include lender to investors – Dismissal of group proceeding – opt out provisions – Subsequent recovery proceedings by lender against group members – Group members had not opted out of

group proceeding – Group members raised individual claims and defences in recovery proceedings – Whether failure to opt out of group proceeding precluded group members from raising individual claims and defences in recovery proceedings.

Procedure – Group proceedings – *Anshun* estoppel – Test – Whether unreasonable of group members not to have raised individual claims and defences during group proceeding – Whether group members estopped from raising individual claims and defences in subsequent proceedings by a reason of failure to raise individual claims and defences in the group proceedings – *Port of Melbourne Authority v Anshun Pty Ltd* (1981) 147 CLR 589.

Procedure – Group proceedings – Abuse of process – Failure of plaintiff of group members to raise individual claims in group proceedings – Whether raising individual claims and defences by group members in subsequent proceedings is oppressive or brings administration of justice into disrepute.

Appealed from VSC (CA): [\[2016\] VSCA 128](#)

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Timbercorp Finance Pty Ltd (In Liquidation) v Tomes

M101/2016: [\[2016\] HCATrans 193](#)

Date heard: 1 September 2016

Coram: French CJ, Kiefel, Keane, Nettle & Gordon JJ

Catchwords:

Procedure – Group proceedings – Part 4A of the *Supreme Court Act 1986* (Vic) – Managed investment schemes – Collapse of schemes – Group proceeding on behalf of investors in schemes – Defendants include lender to investors – Dismissal of group proceeding – opt out provisions – Subsequent recovery proceedings by lender against group members – Group members had not opted out of group proceeding – Group members raised individual claims and defences in recovery proceedings – Whether failure to opt out of group proceeding precluded group members from raising individual claims and defences in recovery proceedings.

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Procedure – Group proceedings – Abuse of process – Failure of plaintiff of group members to raise individual claims in group proceedings – Whether raising individual claims and defences by group members in subsequent proceedings is oppressive or brings administration of justice into disrepute.

Appealed from VSC (CA): [\[2016\] VSCA 128](#)

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Taxation

Blank v Commissioner of Taxation

S144/2016: [\[2016\] HCATrans 181](#); [\[2016\] HCATrans 182](#)

Date heard: 23 August 2016; 24 August 2016

Coram: French CJ, Kiefel, Gageler, Keane, & Gordon JJ

Catchwords:

Income tax – Where appellant participated in profit participation schemes as an employee of company group in foreign countries and in Australia – Where employee allocated ‘profit participation units’ and equal number of shares in holding company – Whether amount assessable as ordinary income or as a capital gain.

Appeal from FCA (FC): [\[2015\] FCAFC 154](#)

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Bywater Investments Limited & Ors v Commissioner of Taxation

S134/2016: [\[2016\] HCATrans 183](#); [\[2016\] HCATrans 184](#)

Date heard: 24 August 2016; 25 August 2016

Coram: French CJ, Kiefel, Bell, Nettle & Gordon JJ

Catchwords:

Income Tax – Whether company is resident of Australia – Place of central management and control – Real business – Relevant principles in determining place of central management and control – Construction of s 70-40(2) of the *Income Tax Assessment Act 1997* (Cth).

Appealed from FCA (FC): [\[2015\] FCAFC 176](#)

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Hua Wang Bank Berhad v Commissioner of Taxation

S135/2016: [\[2016\] HCATrans 183](#); [\[2016\] HCATrans 184](#)

Date heard: 24 August 2016; 25 August 2016

Coram: French CJ, Kiefel, Bell, Nettle & Gordon JJ

Catchwords:

Income Tax – Whether company is resident of Australia – Place of central management and control – Real business – Relevant principles in determining place of central management and control – Profits from sale of shares – Trading stock – Construction of s 70-40(2) of the *Income Tax Assessment Act 1997* (Cth).

Appealed from FCA (FC): [\[2015\] FCAFC 176](#)

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Torts

Prince Alfred College Incorporated v ADC

A20/2016: [\[2016\] HCATrans 163](#)

Date heard: 21 July 2016

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

Catchwords:

Torts – Negligence – Negligence of school authorities or teachers – Liability of employer – Limitation of actions – Extension of time in personal injuries matters – Knowledge of material facts of decisive character – Principles upon which discretion to grant extension of time – Whether Full Court erred in granting extension of time.

Appeal from SASC (FC): [\[2015\] SASCF 161](#)

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Workers Compensation

Comcare v Martin

S142/2016: [\[2016\] HCATrans 186](#)

Date heard: 26 August 2016

Coram: French CJ, Bell, Gageler, Keane & Nettle JJ

Catchwords:

Workers compensation – The operation and exclusion in s 5A of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) – Causation of injury, disease or aggravation under the Act – Whether injury, disease or aggravation suffered ‘as a result of’ administrative action – Whether administrative action taken ‘in a reasonable manner’.

Appealed from FCA (FC): [\[2015\] FCAFC 169](#)

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3: ORIGINAL JURISDICTION

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

Constitutional Law

ResourceCo Material Solutions Pty Ltd & Anor v State of Victoria & Anor

[M32/2016](#): *Demurrer*

Catchwords:

Constitutional law – Section 92 – Trade within the Commonwealth to be free – *Environment Protection Act 1970* (Vic) – *Environment Protection (Industrial Waste Resource) Regulations 2009* (Vic) – Where plaintiffs operate in national waste collection, recycling and disposal industry - Contract to dispose of contaminated soil in Victoria by transporting to and disposing of in South Australia - 2nd plaintiff obtained approval from Environment Protection Authority South Australia for treatment of soil in South Australia - 1st plaintiff sought approval from Environment Protection Victoria for transport of waste from Victoria to South Australia – Where approval refused - EPA Vic not satisfied waste would be deposited at facility in SA with better environmental performance standards than in Vic - Whether reg 26 or 26(3) *Environment Protection (Industrial Waste Resource) Regulations 2009* (Vic) contrary to s92 Commonwealth Constitution and therefore invalid - Whether refusal decision contrary to s92 Commonwealth Constitution and therefore invalid or ultra vires the Regulations.

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Migration

Plaintiff S61/2016 v Minister for Immigration and Border Protection

[S61/2016](#): *Special case*

Catchwords:

Migration – Family Stream – Direction by Minister – Where Minister gave written Direction 62 – order for considering and disposing of Family Stream visa applications, under s 499 of the *Migration Act 1958* (Cth) – Where direction provides an order of priority for the processing of Family Stream visa applications – Whether the Direction is a legislative instrument per *Legislation Act 2003* (Cth) –

Whether Direction obliged delegates of the Minister to follow the order of priority set out in s 8 of the Direction in every case – Whether Direction is inconsistent with the Minister’s obligation under the *Migration Act* to consider and determine each Family Stream visa application within a reasonable time - Whether Direction is inconsistent with s 51(1) of the *Migration Act*.

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4: SPECIAL LEAVE GRANTED

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

Administrative Law

Southern Han Breakfast Point Pty Ltd (In Liquidation) v Lewence Construction Pty Ltd & Ors

S199/2016: [\[2016\] HCATrans 173](#)

Date heard: 28 July 2016 – *Special leave granted on limited grounds.*

Catchwords:

Administrative law – Jurisdictional error – Reference date – Whether the existence of a reference date in s 8 of the *Building and Construction Industry Security of Payment Act 1999* (NSW) to support a payment claim is a jurisdictional fact.

Appealed from NSWSC (CA): [\[2015\] NSWCA 288](#)

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AAR15 v Minister for Immigration and Border Protection

P7/2016: [\[2016\] HCATrans 196](#)

Date heard: 2 September 2016 – *Special leave granted.*

Catchwords:

Administrative law – Jurisdictional error – Provision of reasons – Where Refugee Review Tribunal preferred one piece of evidence over another piece of contrary evidence closer in time to the decision being made – Where no reasons were provided for preference of one piece of evidence contrary to another – Where appellants speculated as to why Tribunal made preference of one piece of evidence contrary to another.

Appealed from FCA: [\[2016\] FCA 150](#).

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Criminal Law

RP v The Queen

S193/2016: [\[2016\] HCATrans 162](#)

Date heard: 21 July 2016 – *Special leave granted.*

Catchwords

Criminal law – Sexual intercourse with a child under 10 years – Where accused was aged between 11 and 13 years – *Doli incapax* – Whether presumption rebutted – Test for establishing whether *doli incapax* presumption rebutted.

Appealed from NSWSC (CCA): [\[2015\] NSWCCA 215](#)

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The Queen v Kilic

M105/2016: [\[2016\] HCATrans 169](#)

Date heard: 28 July 2016 – *Special leave granted.*

Catchwords:

Criminal law – Sentencing – Where respondent doused victim with petrol and set her alight – Where respondent pleaded guilty to intentionally causing serious injury – Where offence carries a maximum of 20 years imprisonment – Where respondent was sentenced to 14 years for primary offence – Where Court of Appeal found that the sentence was manifestly excessive – Where Court of Appeal reduced sentence – Principles regarding the review of sentencing.

Appealed from VSC(CA): [\[2015\] VSCA 331](#)

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Perara-Cathcart v The Queen

A6/2016: [\[2016\] HCATrans 191](#)

Date heard: 1 September 2016 – *Special leave granted.*

Catchwords:

Criminal law – Directions to jury – Proviso – Application of proviso – Where evidence was led at trial about the appellants drug possession – Where Court of Criminal Appeal held that evidence of

the appellant's drug possession was relevant and correctly admitted – Where a majority of the Court of Criminal Appeal held that the trial Judge failed to provide satisfactory directions regarding the permissible use of the evidence of the appellant's drug possession – Whether the Court of Criminal Appeal correctly applied the proviso.

Appealed from SASC (CCA): [\[2015\] SASCF 103](#).

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Prior v Mole

D3/2016: [\[2016\] HCATrans 192](#)

Date heard: 1 September 2016 – *Special leave granted*.

Catchwords:

Criminal law – Where appellant was taken into 'protective custody' under the *Police Administration Act* (NT) s 128 – Where appellant spat on police officer – Where appellant was convicted of assault – Construction of s 128(1) of the *Police Administration Act* (NT) – Exercise of power under s 128(1) – Whether the Police Officer had reasonable grounds to establish that the appellant was likely to commit another offence – Whether the appellants apprehension was lawful.

Appealed from NTCA: [\[2016\] NTCA 2](#).

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Hughes v The Queen

S23/2016: [\[2016\] HCATrans 201](#)

Date heard: 2 September 2016 – *Special leave granted on limited grounds*.

Catchwords:

Criminal law – Tendency evidence – Significant probative value – Whether trial judge erred in admitting tendency evidence – Whether trial judge properly accounted for risk of contamination and concoction in assessing significant probative value – Evidence Act 1995 (NSW) s 97 – Prejudicial effect of tendency evidence – Evidence Act 1995 (NSW) s 101 – Whether directions to jury sufficient.

Appealed from NSWSC (CCA): [\[2015\] NSWCCA 330](#).

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Land

New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act

S168/2016: [\[2016\] HCATrans 144](#)

Date heard: 17 June 2016 – *Special leave granted on limited grounds.*

Catchwords:

Land – Aboriginal land rights – *Aboriginal Land Rights Act 1983* (NSW) – Claim to Crown Land – Where land had been dedicated to gaol – Where gaol decommissioned but dedications not revoked – Whether land was lawfully occupied within the meaning of s 36(1)(b) of Act.

Appealed from NSWSC (CA): [\[2015\] NSWCA 349](#)

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Migration

Minister for Immigration and Border Protection v Kumar & Ors

P8/2016: [\[2016\] HCATrans 197](#)

Date heard: 2 September 2016

Catchwords:

Migration – Requirement that visa applicant holds a certain visa at the time of application – Where visa application lodged on the Monday immediately following expiry on Sunday of the previously held visa – Application of s 36(2) of the *Acts Interpretation Act 1901* (Cth).

Appealed from FCA: [\[2016\] FCA 177](#).

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Negligence

Kendirjian v Lepore & Anor

S170/2016: [\[2016\] HCATrans 141](#); [\[2016\] HCASL 140](#)

Date heard: 17 June 2016 – *Special leave granted.*

Catchwords:

Negligence – Professional negligence – Lawyers – Advocates immunity – Duties and liabilities – Settlement of proceedings – Whether alleged failure in advice in relation to settlement offer was a decision affecting the conduct of the case in Court – Application of test in *D’Orta-Ekenaike v Victorian Legal Aid* (2005) 223 CLR 1.

Appealed from NSWSC (CA): [\[2015\] NSWCA 132](#)

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Stillman v Rusbourne & Ors

S34/2016: [\[2016\] HCATrans 194](#)

Date heard: 2 September 2016 – *Special leave granted. Appeal instituted, heard instanter and allowed.*

Catchwords:

Negligence – Scope of advocates’ immunity – Applicant advised to settle following court ordered mediation – Whether advice led to a decision affecting conduct of a case in court – Judgment entered pursuant to settlement – Sufficient connection between advice and conduct of case in court.

Appeal from NSWSC (CA): [\[2015\] NSWCA 410.](#)

Planning

Western Australian Planning Commission v Leith; Western Australian Planning Commission v Southregal Pty Ltd & Anor

P13/2016; P14/2016: [\[2016\] HCATrans 190](#)

Date heard: 1 September 2016 – *Special leave granted.*

Catchwords:

Planning – Statutory construction – *Planning and Development Act 2005* (WA), s 173, s 177 – Planning Scheme – Amendment to

planning scheme – Injurious affection – Compensation – Whether compensation available to person who subsequently purchased property from owner at the time scheme came into effect.

Appealed from WASC (CA): [\[2016\] WASCA 53](#).

Taxation

Commissioner of State Revenue v ACN 005 057 349 Pty Ltd
M88/2016; M89/2016: [\[2016\] HCATrans 146](#).

Date heard: 17 June 2016 – *Special leave granted*.

Catchwords:

Taxation – Land tax – Where Commissioner of State Revenue raised a land tax liability under the *Land Tax Act 1958* (Vic) – Duplication error – Discretionary power of the Commissioner to amend assessments – Where the Commissioner refuses to amend assessments – Whether the issue of a tax assessment creates a tax debt.

Appealed from the VSC (CA): [\[2015\] VSCA 332](#)

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Elecnet (Aust) Pty Ltd (as Trustee for the Electrical Industry Severance Scheme) v Commissioner of Taxation of the Commonwealth of Australia
M104/2016: [\[2016\] HCATrans 170](#)

Date heard: 28 July 2016 – *Special leave granted*.

Catchwords:

Taxation – Statutory construction – “Unit trust” – Meaning of a “unit trust” within Division 6C of *Income Tax Assessment Act 1936* (Cth) – Whether definition of “unit for the purposes of a “prescribed trust estate” can inform the meaning of a “unit trust” – Whether Electrical Industry Severance Scheme is a unit trust.

Appealed from FCA (FC): [\[2015\] FCAFC 178](#)

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5: CASES NOT PROCEEDING OR VACATED

6: SPECIAL LEAVE REFUSED

Publication of Reasons: 24 August 2016

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Walter Elliott Holdings Pty Ltd	Fraser Coast Regional Council (B11/2016)	Supreme Court of Queensland (Court of Appeal) [2016] QCA 19	Application dismissed with costs [2016] HCASL 173
2.	Lynx Engineering Consultants Pty Ltd	Pilbara Infrastructure Pty Ltd & Anor (S89/2016)	Full Court of the Federal Court of Australia [2016] FCAFC 19	Application dismissed with costs [2016] HCASL 174
	Lynx Engineering Consultants Pty Ltd	Bradken Resources Pty Ltd & Anor (S90/2016)	Full Court of the Federal Court of Australia [2016] FCAFC 19	Application dismissed with costs [2016] HCASL 174
3.	Waters	The Federal Court of Australia and the Judges Thereof & Anor (S44/2016)	High Court of Australia [2015] HCATrans 347	Application dismissed with costs [2016] HCASL 175

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Publication of Reasons: 25 August 2016

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Vargas	Clarke (B19/2016)	Full Court of the Family Court of Australia	Application dismissed [2016] HCASL 176
2.	Rose & Anor	Queensland Police Service & Anor (B23/2016 & B24/2016)	Supreme Court of Queensland (Court of Appeal) [2016] QCA 105	Applications dismissed [2016] HCASL 177
3.	WZAVX	Minister for Immigration and Border Protection & Anor (D4/2016)	Federal Court of Australia [2016] FCA 411	Application dismissed [2016] HCASL 178
4.	S	D (P5/2016)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 224 (S2)	Application dismissed [2016] HCASL 179
5.	Sadiq	NSW Trustee and Guardian (S123/2016)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 62	Application dismissed [2016] HCASL 180
6.	CPD15 as Litigation Guardian for CGE15	Minister for Immigration and Border Protection & Anor (S143/2016)	Federal Court of Australia [2016] FCA 475	Application dismissed [2016] HCASL 181
7.	Viavattene	The Queen (S146/2016)	Supreme Court of New South Wales (Court of Criminal Appeal) [2016] NSWCCA 87	Application dismissed [2016] HCASL 182
8.	AQN15	Minister for Immigration and Border Protection & Anor (S149/2016)	Federal Court of Australia [2016] FCA 571	Application dismissed [2016] HCASL 183

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Publication of Reasons: 30 August 2016

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Pallett	Director of Public Prosecutions (Victoria) (M57/2016)	Application for removal	Application dismissed [2016] HCASL 184
2.	Pallett	Director of Public Prosecutions (Victoria) (M58/2016)	Application for removal	Application dismissed [2016] HCASL 184
3.	AHI15	Minister for Immigration and Border Protection & Anor (M71/2016)	Federal Court of Australia [2016] FCA 513	Application dismissed [2016] HCASL 185
4.	MZYRZ	Minister for Immigration and Border Protection & Anor (M74/2016)	Federal Court of Australia [2016] FCA 548	Application dismissed [2016] HCASL 186
5.	Hanna	Minister for Immigration and Border Protection & Anor (S114/2016)	Federal Court of Australia [2016] FCA 282	Application dismissed [2016] HCASL 187
6.	Tanious	South Eastern Sydney Local Health District & Anor (S125/2016)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 83	Application dismissed [2016] HCASL 188
7.	Valdez	Frazier (S126/2016 & S127/2016)	Full Court of the Family Court of Australia	Applications dismissed [2016] HCASL 189
8.	BAX15	Minister for Immigration and Border Protection & Anor (S148/2016)	Federal Court of Australia [2016] FCA 491	Application dismissed [2016] HCASL 190
9.	Meade	The Queen (M30/2016)	Supreme Court of Victoria (Court of Appeal) [2015] VSCA 171	Application dismissed [2016] HCASL 191

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Publication of Reasons: 31 August 2016

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Vecchio	The Queen (B22/2016)	Supreme Court of Queensland (Court of Appeal) [2016] QCA 71	Application dismissed [2016] HCASL 192
2.	MZAIV	Minister for Immigration and Border Protection & Anor (M50/2016)	Federal Court of Australia [2016] FCA 251	Application dismissed with costs [2016] HCASL 193
3.	Harkins	The Queen (S73/2016)	Supreme Court of New South Wales (Court of Criminal Appeal) [2015] NSWCCA 263	Application dismissed [2016] HCASL 194
4.	Barrak Corporation Pty Ltd	Jaswil Properties Pty Ltd as Trustee for the Jaswil Unit Trust (S95/2016)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 32	Application dismissed with costs [2016] HCASL 195
5.	Buckworth	Gladio Pty Ltd & Anor (S107/2016)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 54	Application dismissed with costs [2016] HCASL 196
6.	El-Ali	The Queen (S132/2016)	Supreme Court of New South Wales (Court of Criminal Appeal) [2015] NSWCCA 300	Application dismissed [2016] HCASL 197

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Publication of Reasons: 1 September 2016

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Sandhu & Ors	Minister for Immigration and Border Protection & Anor (A21/2016)	Federal Court of Australia [2016] FCA 285	Application dismissed [2016] HCASL 198
2.	RF & Anor	Director-General, Community Services Directorate (C3/2016)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2016] ACTCA 18	Application dismissed [2016] HCASL 199
3.	MZAGS	Minister for Immigration and Border Protection & Anor (M73/2016)	Federal Court of Australia [2016] FCA 551	Application dismissed [2016] HCASL 200
4.	Laurent	Fates & Anor (P1/2016)	Supreme Court of Western Australia (Court of Appeal) [2015] WASCA 226	Application dismissed [2016] HCASL 201
5.	Oxenham	The State of Western Australia (P27/2016)	Supreme Court of Western Australia (Court of Appeal) [2015] WASCA 30	Application dismissed [2016] HCASL 202
6.	Mao	AMP Superannuation Fund & Ors (S139/2016)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 252	Application dismissed [2016] HCASL 203
7.	ADA15	Minister for Immigration and Border Protection & Anor (S161/2016)	Federal Court of Australia [2016] FCA 634	Application dismissed [2016] HCASL 204
8.	AZAFF	Minister for Immigration and Border Protection & Anor (A11/2016)	Federal Court of Australia [2016] FCA 80	Application dismissed with costs [2016] HCASL 205
9.	AZAFG by her litigation guardian AZAFF	Minister for Immigration and Border Protection & Anor (A12/2016)	Federal Court of Australia [2016] FCA 81	Application dismissed with costs [2016] HCASL 205
10.	Hammercall Pty Ltd	The Hon Scott Emerson as Minister for Transport & Main Roads & Ors (B31/2016)	Supreme Court of Queensland (Court of Appeal) [2016] QCA 95	Application dismissed with costs [2016] HCASL 206
11.	Swindells	State of Victoria & Anor (M33/2016)	Supreme Court of Victoria (Court of Appeal) [2016] VSCA 9	Application dismissed with costs [2016] HCASL 207
12.	Clark-Ugle	Clark & Ors (M48/2016)	Supreme Court of Victoria (Court of Appeal) [2016] VSCA 44	Application dismissed with costs [2016] HCASL 208
13.	Bignill	Director of Public Prosecutions (S63/2016)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 13	Application dismissed with costs [2016] HCASL 209

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
14.	James	Royal Bank of Scotland Group PLC & Ors (S97/2016)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 36	Application dismissed with costs [2016] HCASL 210
15.	McKeith	Royal Bank of Scotland Group PLC & Ors (S98/2016)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 36	Application dismissed with costs [2016] HCASL 210
16.	Maio & Ors	City of Stirling & Ors (P11/2016)	Supreme Court of Western Australia (Court of Appeal) [2016] WASCA 45	Application dismissed with costs [2016] HCASL 211
17.	Global Gaming Supplies Pty Ltd & Ors	Aristocrat Technologies Australia Pty Ltd & Ors (S91/2016)	Full Court of the Federal Court of Australia [2016] FCAFC 22	Application dismissed with costs [2016] HCASL 212
18.	Allam	Aristocrat Technologies Australia Pty Ltd & Ors (S93/2016)	Full Court of the Federal Court of Australia [2016] FCAFC 22	Application dismissed with costs [2016] HCASL 213
19.	ATP15 & Anor	Minister for Immigration and Border Protection & Anor (S121/2016)	Full Court of the Federal Court of Australia [2016] FCAFC 53	Application dismissed with costs [2016] HCASL 214
20.	Tanioria	Minister for Immigration and Border Protection (S129/2016)	Full Court of the Federal Court of Australia [2016] FCAFC 43	Application dismissed with costs [2016] HCASL 215

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2 September 2016: Canberra

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Multigate Medical Devices Pty Ltd	B. Braun Melsungen AG & Anor (M42/2016)	Full Court of the Federal Court of Australia [2016] FCAFC 21	Application dismissed with costs [2016] HCATrans 195
2.	Pilbara Infrastructure Pty Ltd	Brockman Iron Pty Ltd & Anor (P9/2016)	Supreme Court of Western Australia (Court of Appeal) [2016] WASCA 36	Application dismissed with costs [2016] HCATrans 198

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2 September 2016: Sydney

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Stretton	Minister for Immigration and Border Protection (B13/2016)	Full Court of the Federal Court of Australia [2016] FCAFC 11	Application dismissed with costs [2016] HCATrans 200
2.	JR Consulting Drafting Pty Limited & Ors	& Cummings & Ors (S87/2016)	Full Court of the Federal Court of Australia [2016] FCAFC 20	Application dismissed with costs [2016] HCATrans 202

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