



# HIGH COURT BULLETIN

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High Court of Australia Library  
[2017] HCAB 8 (1 November 2017)

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>Brown &amp; Anor v The State of Tasmania</i></a>	Constitutional Law
<a href="#"><i>Wilkie v The Commonwealth; Australian Marriage Equality Ltd v Cormann</i></a>	Constitutional Law
<a href="#"><i>Re Canavan; Re Ludlam; Re Waters; Re Roberts (No 2); Re Joyce; Re Nash; Re Xenophon</i></a>	Court of Disputed Returns
<a href="#"><i>Director of Public Prosecutions v Dalglish (A Pseudonym)</i></a>	Criminal Law
<a href="#"><i>Koani v The Queen</i></a>	Criminal Law
<a href="#"><i>BRF038 v The Republic of Nauru</i></a>	Migration

### 3: Cases Reserved

<b>Case</b>	<b>Title</b>
<a href="#"><u>Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union &amp; Anor</u></a>	Industrial Law
<a href="#"><u>DWN042 v The Republic of Nauru</u></a>	Migration

### 4: Original Jurisdiction

<b>Case</b>	<b>Title</b>
<a href="#"><u>Alley v Gillespie</u></a>	Constitutional Law

### 5: Special Leave Granted

<b>Case</b>	<b>Title</b>
<a href="#"><u>Cecil v Director of Public Prosecutions (Nauru); Kepae v Director of Public Prosecutions (Nauru); Jeremiah v Director of Public Prosecutions (Nauru)</u></a>	Criminal Law
<a href="#"><u>DL v The Queen</u></a>	Criminal Law
<a href="#"><u>The Queen v Falzon</u></a>	Criminal Law
<a href="#"><u>Ancient Order of Foresters in Victoria Friendly Society Limited v Lifeplan Australia Friendly Society Limited &amp; Anor</u></a>	Equity
<a href="#"><u>Traljesic v Bosnia and Herzegovina &amp; Anor</u></a>	Extradition
<a href="#"><u>SAS Trustee Corporation v Miles</u></a>	Interpretation
<a href="#"><u>The Commissioner of Taxation of the Commonwealth of Australia v Thomas; The Commissioner of Taxation of the Commonwealth of Australia v Martin Andrew Pty Ltd; The Commissioner of Taxation of the Commonwealth of Australia v Thomas Nominees Pty Ltd; The Commissioner of Taxation of the Commonwealth of Australia v Thomas</u></a>	Taxation

6: Cases Not Proceeding or Vacated

<b>Case</b>	<b>Title</b>
<u><i>ResourceCo Material Solutions Pty Ltd &amp; Anor v State of Victoria &amp; Anor</i></u>	Constitutional Law

## 2: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the October 2017 sittings.

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### Constitutional Law

*Brown & Anor v The State of Tasmania*

**H3/2016:** [\[2017\] HCA 43](#)

**Judgment delivered:** 18 October 2017

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

**Catchwords:**

Constitutional law (Cth) – Implied freedom of political communication – *Workplaces (Protection from Protesters) Act 2014* (Tas) – Where Act empowers police officers to direct protesters to leave and stay away from business premises and business access areas under pain of arrest and criminal penalties – Where business premises include forestry land – Where Act allows police officers to give such directions if they reasonably believe protester is preventing, hindering or obstructing business activity, has done so, or is about to do so – Where Forestry Tasmania authorised to undertake forest operations in Lapoinya Forest – Where plaintiffs protested in vicinity of forest operations – Where plaintiffs directed to leave and stay away from forestry land – Where plaintiffs arrested and charged, purportedly under Act, as result of protest activity – Whether Act restricts otherwise lawful protest activity – Whether implied freedom burdened – Whether Act, or provisions thereof, impose impermissible burden on implied freedom in their operation in respect of forestry land and related business access areas – Whether provisions suitable, necessary and adequate in balance.

Constitutional law (Cth) – Where plaintiffs charged under *Workplaces (Protection from Protesters) Act 2014* (Tas) – Where charges not pursued – Where plaintiffs intend to engage in conduct unless conduct validly proscribed by Act – Whether plaintiffs have standing to challenge validity of Act.

Words and phrases – "burden", "business access area", "discriminatory effect", "implied freedom of political communication", "proportionality testing", "protest activity", "protester", "reasonably appropriate and adapted".

*Forest Management Act 2013* (Tas) – ss 8, 9, 13, 21, 22, 23.

*Workplaces (Protection from Protesters) Act* 2014 (Tas) – ss 6, 8, 11, 13 and Pt 4.

**Held:** Questions answered

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*Wilkie & Ors v The Commonwealth & Ors; Australian Marriage Equality Ltd & Anor v Cormann & Anor*

[M105/2017](#); [M106/2017](#): [2017] HCA 40

**Reasons delivered:** 28 September 2017

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

**Catchwords:**

Constitutional law (Cth) – Appropriation of moneys from Consolidated Revenue Fund – Construction of *Appropriation Act (No 1) 2017-2018* (Cth) – Where Finance Minister made determination under s 10(2) of *Appropriation Act (No 1) 2017-2018* (Cth) – Where determination sought to provide funding for postal survey – Whether s 10 of *Appropriation Act (No 1) 2017-2018* (Cth) invalid – Whether appropriation for purpose Parliament lawfully determined may be carried out.

Statutes – Construction of *Appropriation Act (No 1) 2017-2018* (Cth) – Power of Finance Minister to make determination under s 10(2) of *Appropriation Act (No 1) 2017-2018* (Cth) – Whether determination made by Finance Minister authorised by s 10 – Whether Finance Minister satisfied urgent need for expenditure not provided for or insufficiently provided for because expenditure unforeseen – Whether Finance Minister erred in law by conflating satisfaction as to urgent need for expenditure with satisfaction as to expenditure being unforeseen – Whether s 10 limited by description of *Appropriation Act (No 1) 2017-2018* (Cth) as Act for ordinary annual services of Government.

Statutes – Delegated legislation – Validity – Whether direction to Australian Statistician exceeded power of Treasurer under s 9(1)(b) of *Census and Statistics Act 1905* (Cth) – Whether information to be collected statistical information – Whether information to be collected in relation to matters prescribed in s 13 of *Census and Statistics Regulation 2016* (Cth) – Whether Treasurer had power to specify from whom information to be collected – Whether s 7A of *Commonwealth Electoral Act 1918* (Cth) gave Australian Electoral Commission authority to assist Australian Bureau of Statistics in implementing direction.

Constitutional law (Cth) – Appropriation of moneys from Consolidated Revenue Fund – Standing to bring action for

declarations and injunctions – Whether necessary or appropriate to determine if plaintiffs have standing – Standing of Member of House of Representatives – Standing of Senator – Standing of elector – Standing of incorporated body – Standing of association.

Words and phrases – "Advance to the Finance Minister", "appropriation", "Australian Bureau of Statistics", "Australian Electoral Commission", "Australian Statistician", "Consolidated Revenue Fund", "departmental item", "Electoral Commissioner", "expenditure", "Finance Minister", "ordinary annual services of the Government", "plebiscite", "Treasurer", "unforeseen", "urgent need for expenditure".

Constitution – ss 53, 54, 56, 81, 83.

*Appropriation Act (No 1) 2017 –2018 (Cth)*, ss 3, 6, 7, 10, 12, Sched 1.

*Audit Act 1901 (Cth)* – s 36A.

*Australian Bureau of Statistics Act 1975 (Cth)* – s 16A.

*Census and Statistics Act 1905 (Cth)* – s 9.

*Census and Statistics Regulation 2016 (Cth)* – s 13.

*Commonwealth Electoral Act 1918 (Cth)* – ss 7, 7A.

*Legislation Act 2003 (Cth)* – ss 15G, 15H, 15J, 38, 39.

Public Governance – *Performance and Accountability Act 2013 (Cth)*, ss 74, 75.

**Held:** Application dismissed; questions answered

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## Court of Disputed Returns

*Re Canavan; Re Ludlam; Re Waters; Re Roberts (No 2); Re Joyce; Re Nash; Re Xenophon*

[C11/2017](#); [C12/2017](#); [C13/2017](#); [C14/2017](#); [C15/2017](#);  
[C17/2017](#); [C18/2017](#): [2017] HCA 45

**Judgment delivered:** 27 October 2017

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

**Catchwords:**

Constitutional law (Cth) – Parliamentary elections – References to Court of Disputed Returns – Where referred persons elected to Commonwealth Parliament – Where evidence to suggest each held dual citizenship at date of nomination for election – Whether each person incapable of being chosen or of sitting as senator or member of House of Representatives by reason of s 44(i) of Constitution – Proper construction of s 44(i) of Constitution – Whether s 44(i) contains implied mental element in relation to acquisition or retention of foreign citizenship – Whether each person subject or citizen of foreign power or entitled to rights or privileges of subject or citizen of foreign power for purposes of s 44(i).

Words and phrases – "a subject or a citizen ... of a foreign power", "constitutional imperative", "foreign citizenship", "incapable of being chosen", "knowledge", "natural-born", "naturalised", "reasonable steps", "voluntariness", "voluntary act", "wilful blindness".

Constitution – ss 16, 34, 44(i), 45(i).

*Commonwealth Electoral Act 1918* (Cth) – ss 163, 376.

**Held:** Questions answered

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## Criminal Law

*Director of Public Prosecutions v Dalglish (A Pseudonym)*

**M1/2017:** [\[2017\] HCA 41](#)

**Judgment delivered:** 11 October 2017

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

**Catchwords:**

Criminal law – Sentencing – Current sentencing practices – Incest – Crown appeal on ground of manifest inadequacy – Where s 5(2) of *Sentencing Act 1991* (Vic) provided that in sentencing an offender a court must have regard to current sentencing practices – Where Court of Appeal held that sentence not wholly outside permissible range reflected in current sentencing practices – Where Court of Appeal held that current sentencing so low as to reveal error in principle – Whether latter conclusion required appellate intervention to correct error reflected in sentence the subject of appeal.

Words and phrases – "comparable cases", "current sentencing practices", "manifest inadequacy", "maximum penalty", "reasonable consistency".

*Sentencing Act 1991 (Vic) – s 5(2).*

**Appealed from VSC (CA):** [\[2016\] VSCA 148](#)

**Held:** Appeal allowed

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*Koani v The Queen*

**B20/2017:** [\[2017\] HCA 42](#)

**Reasons delivered:** 18 October 2017

**Coram:** Kiefel CJ, Bell, Gageler, Nettle and Gordon JJ

**Catchwords:**

Criminal law – Murder and manslaughter – Act causing death – Where appellant convicted of murder – Where death occasioned by discharge of shotgun held by appellant – Where alternative prosecution case for murder put to jury on basis that shotgun may have discharged as result of unwilled act – Whether unwilled, criminally negligent act or omission can result in conviction for murder where jury satisfied accused possessed intention to kill or inflict grievous bodily harm – Whether breach of duty to use reasonable care and to take reasonable precautions in use and management of dangerous thing can found conviction of murder.

Words and phrases – "act causing death", "breach of duty", "criminally negligent", "intention", "intentional offence", "manslaughter", "murder", "omission", "reasonable care", "unwilled act".

*Criminal Code (Q) – ss 289, 302(1)(a).*

**Appealed from QSC (CA):** [\[2016\] QCA 289](#); [2017] 1 Qd R 273

**Held:** Appeal allowed

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## Migration

*BRF038 v The Republic of Nauru*

**M28/2017:** [\[2017\] HCA 44](#)

**Judgment delivered:** 18 October 2017

**Coram:** Keane, Nettle and Edelman JJ

**Catchwords:**

Appeal – Supreme Court of Nauru – Where *Refugees Convention Act 2012 (Nr)*, s 43(1) confers right to "appeal" to Supreme Court against a decision by Refugee Status Review Tribunal not to recognise person as a refugee – Whether Supreme Court was exercising original jurisdiction when determining "appeal" from Tribunal – Whether appeal from Supreme Court to High Court lay as of right.

Migration – Refugees – Where *Refugees Convention Act 2012 (Nr)*, s 3 adopts definition of "refugee" under Refugees Convention as modified by Refugees Protocol – Where Refugees Convention requires "well-founded fear of being persecuted" – Where Tribunal found harm appellant and family faced constituted discrimination, but not persecution – Whether Supreme Court erred in failing to hold that Tribunal applied wrong test in determining whether appellant suffered persecution – Whether Tribunal required total deprivation of appellant's human rights to find persecution.

Migration – Refugees – Where *Refugees Convention Act 2012 (Nr)*, s 22(b) provides that Tribunal "must act according to the principles of natural justice and the substantial merits of the case" – Where appellant stated that Somalian authorities were unwilling to assist him and his family due to ethnicity – Where Tribunal relied on country information indicating that there are police from every tribe in Somaliland to conclude appellant would have "some redress from the acts of others" – Whether failure by Tribunal to put substance of information to appellant constituted breach of requirements of procedural fairness.

Words and phrases – "appeal", "country information", "credible, relevant and significant", "original jurisdiction", "persecution", "procedural fairness", "well-founded fear of persecution".

*Appeals Act 1972 (Nr)* – s 44.

*Nauru (High Court Appeals) Act 1976 (Cth)* – ss 5, 8.

*Refugees Convention Act 2012 (Nr)* – ss 3, 5(1), 6(1), 22(b), 31(1), 37, 43(1), 44.

*Refugees Convention (Derivative Status & Other Measures) (Amendment) Act 2016 (Nr)* – ss 5, 6, 24.

*Refugees Convention (Amendment) Act 2017 (Nr)* – ss 4, 5, 6, 7.

Agreement between the Government of Australia and the Government of the Republic of Nauru Relating to Appeals to the High Court of Australia from the Supreme Court of Nauru (1976) – Art 1.

Convention relating to the Status of Refugees (1951) as amended by the Protocol relating to the Status of Refugees (1967) – Art 1A(2).

**Appealed from Supreme Court of Nauru:** [\[2017\] NRSC 14](#)

**Held:** Appeal allowed

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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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### Criminal Law

*Commissioner of the Australian Federal Police v Hart & Ors; Commonwealth of Australia v Yak 3 Investments Pty Ltd as Trustee for Yak 3 Discretionary Trust & Ors; Commonwealth of Australia & Anor v Flying Fighters Pty Ltd & Ors*

[B21/2017](#); [B22/2017](#); [B23/2017](#): [\[2017\] HCATrans 153](#); [\[2017\] HCATrans 155](#); [\[2017\] HCATrans 156](#)

**Date heard:** 14, 15 and 17 August 2017

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

**Catchwords:**

Criminal law – Proceeds of crime – *Proceeds of Crime Act* 2002 (Cth) – Where Commonwealth obtained restraining order under s 17 of the Act over property under first respondent’s effective control – Where first respondent subsequently found guilty of nine offences of defrauding the Commonwealth – Where property forfeited to Commonwealth under s 92 – Where Commonwealth granted pecuniary penalty order (PPO) against first respondent under s 116 – Where Commonwealth sought declaration under s 141 that forfeited property available to satisfy PPO – Where primary judge dismissed application under s 141 on discretionary grounds – Where majority of Court of Appeal dismissed Commonwealth’s appeals on basis that s 141 did not apply to property the subject of a restraining order under s 17 – Whether majority of Court of Appeal erred in holding that s 141 does not apply to property subject to restraining orders under s 17 – Whether majority of Court of Appeal erred in construing date of effective control under s 141(1)(c) as date on which application is determined notwithstanding that property was subject of restraining orders under s 17 – Whether majority of Court of Appeal erred in construing words “not ... derived or realised ... by any person from any unlawful activity” in s 102(3)(a) as meaning wholly derived or wholly realised from unlawful activity.

**Appealed from QSC (CA):** [\[2016\] QCA 215](#); (2016) 336 ALR 492; (2016) 314 FLR 1 and [\[2016\] QCA 284](#)

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*Van Beelen v The Queen*

**A8/2017:** [\[2017\] HCATrans 135](#); [\[2017\] HCATrans 137](#)

**Date heard:** 21 and 22 June 2017

**Coram:** Bell, Gageler, Keane, Nettle and Edelman JJ

**Catchwords:**

Criminal law – *Criminal Law Consolidation Act 1935 (SA)* s 353A – Second or subsequent appeal – Where appellant seeks to appeal against murder conviction on basis that new evidence shows expert evidence as to time of victim’s death flawed – Whether new evidence is “compelling” – Whether majority of Court of Criminal Appeal erred in holding further attack on expert evidence precluded because expert evidence contested at trial – Whether evidence could have been adduced at original trial – Whether majority of Court of Criminal Appeal erred in finding principle of finality relevant to s 353A appeal – Whether in “interests of justice” to allow appeal.

**Appealed from SASC (CCA):** [\[2016\] SASCF 71](#); (2016) 125 SASR 253

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## Family Law

*Thorne v Kennedy*

**B14/2017:** [\[2017\] HCATrans 148](#)

**Date heard:** 8 August 2017

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

**Catchwords:**

Family law – *Family Law Act 1975 (Cth)* ss 90K, 90KA – Where husband and wife entered into financial agreements prior to and shortly after wedding – Where husband and wife subsequently separated – Where trial judge found wife signed agreements under duress – Where Full Family Court declared second financial agreement binding – Whether Full Court erred in failing to find financial agreements not binding and should be set aside on grounds of duress, undue influence or unconscionable conduct.

**Appealed from FamFC (FC):** [\[2016\] FamCAFC 189](#); [2016] FLC 93-737

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## Industrial Law

*Aldi Foods Pty Limited v Shop, Distributive & Allied Employees Association & Anor*

**M33/2017:** [\[2017\] HCATrans 149](#)

**Date heard:** 9 August 2017

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

**Catchwords:**

Industrial law – Jurisdictional error – *Fair Work Act 2009* (Cth) – Approval of enterprise agreements – Where enterprise agreement approved by Deputy President of Fair Work Commission – Where appeal dismissed by Full Bench of Fair Work Commission – Where majority of Federal Court held employees not “covered by the agreement” as required by Act – Where majority also held Full Bench erred in finding agreement satisfied “better off overall test” under s 193 – Whether majority erred in finding Fair Work Commission fell into jurisdictional error in exercising functions under s 186 – Whether majority erred in finding Fair Work Commission fell into jurisdictional error in determining agreement satisfied “better off overall test”.

**Appealed from FCA (FC):** [\[2016\] FCAFC 161](#); (2016) 245 FCR 155; (2016) 262 IR 329

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*Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union & Anor*

**M65/2017:** [\[2017\] HCATrans 202](#)

**Date heard:** 17 October 2017.

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

**Catchwords:**

Industrial law – *Fair Work Act 2009* (Cth) – Where respondents admitted contravention of s 348 of Act – Where pecuniary penalties imposed on respondents – Where primary judge ordered first respondent not to indemnify second respondent against penalties – Where Full Federal Court set aside order on basis that Court had no power to make such order – Whether Federal Court has power to

order party not to indemnify another party in respect of pecuniary penalty order made under s 546.

**Appealed from FCA (FC):** [\[2016\] FCAFC 184](#); (2016) 247 FCR 339; (2016) 266 IR 151

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*Esso Australia Pty Ltd v The Australian Workers' Union; The Australian Workers' Union v Esso Australia Pty Ltd*  
**M185/2016; M187/2016:** [\[2017\] HCATrans 150](#); [\[2017\] HCATrans 151](#)

**Date heard:** 10 August 2017

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

**Catchwords:**

Industrial Law – *Fair Work Act* 2009 (Cth) s 413(5) – Where Australian Workers' Union ("AWU") organised industrial action against Esso Australia Pty Ltd ("Esso") – Where AWU asserted industrial action "protected" under Act – Where Fair Work Commission made order under s 418 stopping disputed industrial action – Where AWU continued to organise industrial action in contravention of order – Where trial judge held that due to contraventions, all industrial action including forms notionally "protected" could not be "protected" because of operation of s 413(5) – Where trial judge rejected Esso's claim for injunction restraining AWU from organising further industrial action – Where Full Court rejected appeal by Esso – Whether Full Court erred in concluding s 413(5) only operates where taking or organising industrial action was itself in contravention of order and order still operated and applied to contravention at time of action – Whether Full Court erred by failing to construe s 413(5) as limited in operation to contraventions where contravening conduct continuing or occurring at time of organising or taking industrial action.

Industrial Law – *Fair Work Act* 2009 (Cth) ss 343, 348 – Where sections prevent actions being taken "with intent to coerce" other person to take or not take industrial action – Whether majority of Full Court erred in holding contravention of ss 343, 348 may be established without proof of intent to take action that was unlawful, illegitimate or unconscionable – Whether majority of Full Court erred by failing to consider actual intent to take protected industrial action.

**Appealed from FCA (FC):** [\[2016\] FCAFC 72](#); (2016) 245 FCR 39; (2016) 258 IR 396

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*Regional Express Holdings Limited v Australian Federation of Air Pilots*

**[M71/2017](#)**: [\[2017\] HCATrans 178](#)

**Date heard:** 12 September 2017

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

**Catchwords:**

Industrial law – *Fair Work Act 2009* (Cth) – *Fair Work (Registered Organisations) Act 2009* (Cth) – Standing – Where appellant sent letter to unidentified persons who applied for cadet employment program – Where respondent, a registered organisation, commenced proceedings in Federal Circuit Court seeking pecuniary penalty orders against appellant on basis letter contravened various provisions of *Fair Work Act* – Where appellant sought orders dismissing or striking out application on basis respondent lacked standing – Whether respondent “entitled to represent the industrial interests” of letter recipients under s 540(6)(b)(ii) because recipients capable of becoming members of respondent despite not actually being members.

**Appealed from FCA (FC):** [\[2016\] FCAFC 147](#); (2016) 244 FCR 344; (2016) 264 IR 192

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## Migration

*DWN042 v The Republic of Nauru*

**[M20/2017](#)**: [\[2017\] HCATrans 203](#)

**Date heard:** 18 October 2017

**Coram:** Keane, Nettle and Edelman JJ

**Catchwords:**

Migration – *Nauru (High Court Appeals) Act 1976* (Cth) – *Refugees Convention Act 2012* (Nr) – Where appellant applied to Nauru for refugee status determination under Act – Where Secretary of Nauru Department of Justice determined appellant not refugee and not entitled to complementary protection – Where Refugee Status Review Tribunal affirmed Secretary’s determination – Where appellant appealed to Supreme Court of Nauru – Where Supreme Court struck out two grounds of appeal and first day of hearing –

Where grounds struck out alleged that because appellant unlawfully detained contrary to s 5 of Constitution of Nauru, Tribunal failed to afford natural justice or hearing unconstitutional – Where appellant sought leave to appeal to High Court from interlocutory decision striking out grounds of appeal – Where High Court dismissed application after reassurances respondent would not seek to rely on interlocutory decision – Whether Supreme Court erred in failing to consider motion seeking reinstatement of grounds of appeal – Whether High Court lacks jurisdiction because grounds involve interpretation of Constitution of Nauru – Whether Supreme Court erred in finding Tribunal did not err in concluding appellant not entitled to complementary protection – Whether Supreme Court erred in failing to find Tribunal denied appellant procedural fairness by relying on certain evidence.

**Appealed from Supreme Court of Nauru:** [\[2017\] NRSC 4](#)

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*HFM045 v The Republic of Nauru*

**M27/2017:** [\[2017\] HCATrans 180](#)

**Date heard:** 14 September 2017

**Coram:** Bell, Keane and Nettle JJ

**Catchwords:**

Migration – *Nauru (High Court Appeals) Act 1976 (Cth)* – *Refugees Convention Act 2012 (Nr)* – Where appellant applied to Nauru for refugee status determination under Act – Where Secretary of Nauru Department of Justice determined appellant not refugee and not entitled to complementary protection – Where Refugee Status Review Tribunal affirmed Secretary’s determination – Where Supreme Court of Nauru dismissed appeal – Whether primary judge failed to consider s 37 of *Refugees Convention Act 2012* – Whether Supreme Court erred in holding Tribunal did not deny appellant procedural fairness in relation to contrary information – Whether Supreme Court erred in holding Tribunal did not apply wrong test or misinterpret law in determining complementary protection claim.

**Appealed from Supreme Court of Nauru:** [\[2017\] NRSC 12](#)

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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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### Constitutional Law

*Alley v Gillespie*

**[S190/2017](#)**: *Writ of Summons*

**Catchwords:**

Constitutional law – Constitution ss 44(v), 46 – *Common Informers (Parliamentary Disqualifications) Act 1975* (Cth) – Whether Court can and should decide whether defendant incapable of sitting as Member of House of Representatives for purposes of s 3 *Common Informers (Parliamentary Disqualifications) Act* – If yes, whether Court should not issue subpoenas directed to forensic purpose of assisting plaintiff in attempt to demonstrate defendant incapable of sitting.

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### Migration

*Plaintiff M174/2016 v Minister for Immigration and Border Protection*

**[M174/2016](#)**: *Special Case*

**Catchwords:**

Constitutional law – Migration – *Migration Act 1958* (Cth) ss 57(2), 473CA, 473CC – Where plaintiff applied for Temporary Protection (Class XD) (Subclass 785) visa – Where delegate of Minister refused to grant visa – Whether delegate failed to comply with s 57(2) of Act – If so, whether failure to comply with s 57(2) had consequence that there was no decision capable of referral to Immigration Assessment Authority under s 473CA or essential precondition for valid exercise of power by Authority under s 473CC not satisfied – Whether Authority failed to conduct review in accordance with Pt 7AA by unreasonably failing to exercise statutory powers to obtain or consider new information.

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*Falzon v Minister for Immigration and Border Protection*

**[S31/2017](#)**: *Application to Show Cause*

**Catchwords:**

Constitutional law – Migration – Where plaintiff’s visa cancelled pursuant to *Migration Act* 1958 (Cth) s 501(3A) – Where Minister decided not to revoke cancellation under s 501CA – Whether s 501(3A) is invalid because it purports to confer judicial power of Commonwealth on Minister.

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## 5: SPECIAL LEAVE GRANTED

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

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### Administrative Law

*Woollahra Municipal Council v Minister for Local Government & Ors*

**S141/2017**: [\[2017\] HCATrans 108](#)

**Date heard:** 12 May 2017 – *Special leave granted.*

**Catchwords:**

Administrative law – *Local Government Act 1993* (NSW) – Where Minister made proposal under s 218E(1) for forced amalgamation of Woollahra, Waverley and Randwick local government areas – Where Government published document disclosing part of analysis by KPMG – Where Delegate heard evidence in secret from KPMG – Whether obligation to hold inquiry under s 263(2A) did not permit evidence to be heard in secret and not disclosed to public – Whether Court of Appeal erred in failing to find that no prescribed inquiry at which there was examination of required statutory factors had been held – Whether Court of Appeal erred in failing to find that requirement to inquire into financial advantages and disadvantages of proposed amalgamation not discharged without having regard to specific financial advantages and disadvantages to residents and ratepayers of each local government area.

**Appealed from NSWSC (CA):** [\[2016\] NSWCA 380](#); (2016) 219 LGERA 180

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### Constitutional Law

*Burns v Corbett & Ors; Burns v Gaynor & Ors; Attorney General for New South Wales v Burns & Ors; Attorney General for New South Wales v Burns & Ors; State of New South Wales v Burns & Ors*

**S183/2017**; **S185/2017**; **S186/2017**; **S187/2017**; **S188/2017**:  
[\[2017\] HCATrans 136](#)

**Date determined:** 22 June 2017 – *Special leave granted.*

**Catchwords:**

Constitutional law – Diversity jurisdiction – Where resident of New South Wales made complaints to Anti-Discrimination Board of NSW about statements made by Victorian resident and Queensland resident – Where Victorian resident ordered to make apologies by Administrative Decisions Tribunal of New South Wales (ADT) – Where complaints against Queensland resident referred to New South Wales Civil and Administrative Tribunal (NCAT) – Where Court of Appeal held ADT and NCAT lacked jurisdiction – Whether Court of Appeal erred in failing to find state diversity jurisdiction retained by state tribunals – Whether Court of Appeal erred in concluding state law purporting to confer jurisdiction upon state tribunal with respect to matters identified in ss 75 and 76 of Constitution inconsistent with s 39(2) of *Judiciary Act* within meaning of s 109 of Constitution – Whether a state can validly confer judicial power in any matters dealt with in ss 75, 76 of Constitution on person or body that is not a “court of a State” – Whether judicial power conferred upon NCAT to determine matters under *Anti-Discrimination Act 1977* (NSW) between residents of different states regarding conduct that occurs outside New South Wales.

**Appealed from NSWSC (CA):** [\[2017\] NSWCA 3](#); (2017) 316 FLR 448

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## Contracts

*Pipikos v Trayans*

**A30/2017:** [\[2017\] HCATrans 164](#)

**Date heard:** 18 August 2017 – *Special leave granted.*

**Catchwords:**

Contracts – Enforceability – Past performance – *Law of Property Act 1936* (SA) s 26 – Memorandum or note of agreement – Part performance – Where appellant alleges parties entered into oral agreement that appellant would pay share of deposit on property in exchange for respondent selling interest in another property – Where trial judge held no oral agreement existed – Where Full Court held agreement existed but unenforceable – Whether Full Court erred in failing to find appellant’s payment of deposit amounted to part performance sufficient to entitle appellant to enforce agreement – Whether Full Court erred in holding handwritten note not sufficient “memorandum or note” of agreement for purposes of s 26 – Whether Full Court erred in

holding appellant not entitled to enforce agreement in circumstances where respondent acknowledged agreement – Whether Full Court erred in failing to consider concessions in handwritten note to identify acts of part performance.

**Appealed from SASC (CA):** [\[2016\] SASCF 138](#); (2016) 126 SASR 436

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## Criminal Law

*Cecil v Director of Public Prosecutions (Nauru); Kepae v Director of Public Prosecutions (Nauru); Jeremiah v Director of Public Prosecutions (Nauru)*

**S117/2017, S118/2017, S119/2017:** [\[2017\] HCATrans 207](#)

**Date heard:** 20 October 2017 – *Special leave granted; appeals allowed instanter.*

### Catchwords:

Criminal law – *Nauru (High Court Appeals) Act 1976 (Cth) – Appeals Act 1972 (Nr)* – Appeal against sentence – Where applicants entered pleas of guilty to disturbing Parliament and other offences – Where District Court of Nauru sentenced two applicants to total of three months’ imprisonment and other applicant to total of six months’ imprisonment – Where Supreme Court of Nauru resentenced one applicant to 14 months’ imprisonment and other applicants to 22 months’ imprisonment – Whether Supreme Court erred in concluding it was not required to find error before substituting sentences – Whether Supreme Court erred by substituting sentences when no error found in decision of District Court and sentences not found to be manifestly inadequate.

**Appealed from Supreme Court of Nauru:** [\[2017\] NRSC 26](#)

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*DL v The Queen*

**A45/2016:** [\[2017\] HCATrans 215](#)

**Date heard:** 24 October 2017 – *Special leave granted.*

### Catchwords:

Criminal law – *Criminal Law Consolidation Act 1935 (SA) s 50* – Where appellant convicted of persistent sexual exploitation of child under s 50 of Act – Where trial judge found appellant sexually

assaulted victim “on numerous occasions over a period of some years” – Where Court of Criminal Appeal dismissed appeal – Whether Court of Criminal Appeal erred in failing to find trial judge gave inadequate reasons because failed to identify particular sexual offences separated by at least three days – Whether verdict unsafe, uncertain and/or unreasonable.

**Appealed from SASC (FC):** [\[2015\] SASFC 24](#)

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*The Queen v Falzon*

**M55/2017:** [\[2017\] HCATrans 212](#)

**Date heard:** 20 October 2017 – *Special leave granted.*

**Catchwords:**

Criminal law – Evidence – Admissibility – Drug trafficking – *Drugs, Poisons and Controlled Substances Act 1981 (Vic)* ss 71AC, 72A – Where respondent convicted of cultivating commercial quantity of cannabis contrary to s 72A and trafficking drug of dependence contrary to s 71AC(1) – Where trial judge admitted evidence of cash secreted in various locations at respondent’s home as “indicia of trafficking” – *Evidence Act 2008 (Vic)* ss 55(1), 137 – Where majority of Court of Appeal held substantial miscarriage of justice because trial judge erred in admitting evidence of cash found at respondent’s home – Whether Court of Appeal erred in concluding substantial miscarriage of justice.

**Appealed from VSC (CA):** [\[2017\] VSCA 74](#)

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*Irwin v The Queen*

**B48/2017:** [\[2017\] HCATrans 161](#)

**Date heard:** 18 August 2017 – *Special leave granted.*

**Catchwords:**

Criminal law – *Criminal Code 1899 (Qld)* s 23(1)(b) – Where appellant convicted of causing grievous bodily harm – Where appellant gave evidence of pushing complainant – Where Court of Appeal held complainant’s evidence could not rationally be accepted but dismissed appeal on basis it was open to jury to conclude ordinary person “could” reasonably have foreseen possibility of broken hip as result of push – Whether Court of Appeal erred in application of test under s 23(1)(b) by substituting “could” for

“would” – Whether Court of Appeal erred in failing to find verdict unreasonable.

**Appealed from QSC (CA):** [\[2017\] QCA 2](#)

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*Kalbasi v The State of Western Australia*

**P21/2017:** [\[2017\] HCATrans 113](#)

**Date heard:** 12 May 2017 – *Special leave granted on limited grounds.*

**Catchwords:**

Criminal law – Appeal against conviction – *Criminal Appeals Act 2004* (WA) s 30(4) – Where appellant convicted of attempt to possess prohibited drug with intent to sell or supply contrary to *Misuse of Drugs Act 1981* (WA) ss 6(1)(a), 33(1) – Where Court of Appeal concluded jury directions on intention erroneous as presumption of intent to sell or supply under s 11 of Act did not apply, but held no substantial miscarriage of justice – Whether Court of Appeal erred in finding no substantial miscarriage of justice and applying proviso – Whether *Weiss v The Queen* (2005) 224 CLR 300 should be revisited and/or qualified and/or overruled.

**Appealed from WASC (CA):** [\[2016\] WASCA 144](#)

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*Craig v The Queen*

**B24/2017:** [\[2017\] HCATrans 73](#)

**Date heard:** 7 April 2017 – *Special leave granted.*

**Catchwords:**

Criminal law – Murder – *Criminal Code 1899* (Qld) s 668E – Miscarriage of justice – Where appellant advised by trial counsel that if he gave evidence at trial, he would likely be cross-examined on prior convictions, including manslaughter conviction – Where appellant did not give evidence – Where proposed evidence would have been relevant to defence of provocation and would have raised self-defence – Where Court of Appeal held it was not likely that appellant would have been cross-examined on criminal history – Whether Court of Appeal erred in finding erroneous advice did not result in miscarriage of justice – Whether “alternative rational basis” for not giving evidence test appropriate where counsel gave erroneous advice – Whether denial of opportunity to make informed decision as to whether to give evidence amounts to “such a serious

breach of the presuppositions of the trial” that the proviso cannot apply.

**Appealed from QSC (CA):** [\[2016\] QCA 166](#)

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## Equity

*Ancient Order of Foresters in Victoria Friendly Society Limited v Lifeplan Australia Friendly Society Limited & Anor*

**A26/2017:** [\[2017\] HCATrans 210](#)

**Date heard:** 20 October 2017 – *Special leave granted on limited grounds.*

### Catchwords:

Equity – Account of profits – *Corporations Act* 2001 (Cth) ss 181-183, 1317H – Where appellant employed former employees of respondents – Where respondents brought claim against appellant for knowing assistance in former employees’ breaches of contractual and fiduciary duties and duties of confidence and involvement in contraventions of ss 181-183 – Where primary judge held appellant knowingly participated in breaches of fiduciary duties and duties of confidence but dismissed claim for account of profits on basis no profits attributable to use of confidential information or breaches of duties – Where Full Court held sufficient causal connection established and awarded account of profits in equity – Where Full Court also held facts constituting knowing participation amounted to involvement in contraventions of ss 181-183 and made same order for account of profits under s 1317H – Whether Full Court erred in finding sufficient causal connection – Whether Full Court erred in ordering account of profits calculated on basis of net present value of future potential profits where no profits actually made and without regard to accumulated losses incurred by appellant.

**Appealed from FCA (FC):** [\[2017\] FCAFC 99](#)

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## Extradition

*Traljesic v Bosnia and Herzegovina & Anor*

**M60/2017:** [\[2017\] HCATrans 213](#)

**Date heard:** 20 October 2017 – *Special leave granted.*

**Catchwords:**

Extradition – Extradition objection – Interpretation – *Extradition Act* 1988 (Cth) s 7(c) – Where appellant convicted of two offences in Bosnia-Herzegovina and sentenced to term of imprisonment – Where appellant escaped from prison – Where Bosnia-Herzegovina sought extradition of appellant from Australia to serve remainder of sentence – Where magistrate determined appellant eligible for surrender and issued warrant under s 19(9) – Where appellant applied to Federal Court for review under s 21(1) – Where primary judge confirmed order – Where Full Court dismissed appeal – Whether Full Court erred in failing to find extradition objection – Whether person subjected to violence by other prisoners is “punished” for purposes of s 7(c).

**Appealed from FCA (FC):** [\[2017\] FCAFC 70](#)

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## Interpretation

*SAS Trustee Corporation v Miles*

**S150/2017:** [\[2017\] HCATrans 208](#)

**Date heard:** 20 October 2017 – *Special leave granted.*

**Catchwords:**

Interpretation – *Police Regulation (Superannuation) Act* 1906 (NSW) – Where respondent discharged from police force due to infirmities as result of being “hurt on duty” – Where respondent applied for increase in annual superannuation allowance – Where application rejected by trustee – Where trustee’s decision upheld by District Court – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in failing to construe s 10(1A)(b) in context – Whether s 10(1A)(b) authorises payment of additional superannuation allowance where incapacity not due to infirmity determined by Commissioner under s 10B(3) to have been caused by being “hurt on duty”.

**Appealed from NSWSC (CA):** [\[2017\] NSWCA 86](#)

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## Judicial Review

*Probuild Constructions (Aust) Pty Ltd v Shade Systems Pty Ltd & Anor*

**[S145/2017](#)**: [\[2017\] HCATrans 112](#)

**Date heard:** 12 May 2017 – *Special leave granted.*

**Catchwords:**

Jurisdiction – Error of law on face of record – *Building and Construction Industry Security of Payment Act 1999* (NSW) – Where adjudicator made determination under s 22(1) that progress payment to be paid by appellant – Where primary judge made order in nature of certiorari under *Supreme Court Act 1970* (NSW) s 69 quashing determination for error of law on face of record – Where Court of Appeal held relief not available to quash determination under Act for error of law on face of record – Whether Court of Appeal erred in holding that Supreme Court’s power to make orders in nature of certiorari for error of law on face of record ousted in relation to determinations under Act.

**Appealed from NSWSC (CA):** [\[2016\] NSWCA 379](#)

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*Maxcon Constructions Pty Ltd v Vadasz & Ors*

**[A17/2017](#)**: [\[2017\] HCATrans 112](#)

**Date heard:** 12 May 2017 – *Special leave granted.*

**Catchwords:**

Jurisdiction – Error of law on face of record – *Building and Construction Industry Security of Payment Act 2009* (SA) – Where adjudicator made determination that amount be paid by appellant – Where appellant sought judicial review of determination – Where Full Court considered it was required by *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89 to follow *Shade Systems Pty Ltd v Probuild Constructions (Aust) Pty Ltd (No 2)* [2016] NSWCA 379 (“*Probuild*”) – Whether Full Court erred in following *Probuild* and concluding that Act excluded judicial review on ground of error of law on face of record – Whether Full Court erred in holding that error of law in application of s 12 did not amount to jurisdictional error – Whether Full Court erred in holding that, if error enlivened Court’s jurisdiction to grant certiorari, appropriate order would be to partially set aside but partially preserve determination.

**Appealed from SASC (CA):** [\[2017\] SASCF 2](#); (2017) 127 SASR 193; (2017) 341 ALR 628

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## Migration

*Shrestha v Minister for Immigration and Border Protection & Anor;*  
*Ghimire v Minister for Immigration and Border Protection & Anor;*  
*Acharya v Minister for Immigration and Border Protection & Anor*  
**[M141/2017](#), [M142/2017](#), [M143/2017](#): [\[2017\] HCATrans 179](#)**

**Date determined:** 14 September 2017 – *Special leave granted.*

**Catchwords:**

Migration – *Migration Act* 1958 (Cth) s 116(1)(a) – Visa cancellation – Where appellants granted Class TU subclass 573 Higher Education Sector visas based on enrolments in bachelor degree and diploma courses – Where appellants’ enrolment in diploma courses ceased after appellants failed subjects – Where appellants’ enrolment in bachelor degree courses subsequently cancelled – Where Administrative Appeals Tribunal cancelled appellants’ visas under s 116(1)(a) – Where majority of Federal Court found decision affected by jurisdictional error but refused relief on basis of futility – Whether Federal Court erred in exercising discretion not to issue writs of certiorari.

**Appealed from FCA (FC):** [\[2017\] FCAFC 69](#)

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*Minister for Immigration and Border Protection v SZVFW & Ors*  
**[S244/2017](#): [\[2017\] HCATrans 191](#)**

**Date determined:** 14 September 2017 – *Special leave granted.*

**Catchwords:**

Migration – *Migration Act* 1958 (Cth) s 426A(1) – Where first and second respondents applied for Protection (Class XA) visas – Where Department refused applications – Where respondents filed application for review by Refugee Review Tribunal – Where application form contained postal address, mobile phone number and email address – Where Tribunal by letter addressed to postal address invited first and second respondents to provide further information – Where first and second respondents did not respond – Where Tribunal by further letter invited first and second respondents to appear before it – Where first and second respondents did not attend – Where Tribunal exercised power under s 426A(1) to affirm decision without taking further action – Where Federal Circuit Court held Tribunal’s decision unreasonable – Where

Full Court dismissed appeal – Whether Full Court erred by requiring Minister to establish *House v The King* (1936) 55 CLR 499 error – Whether Full Court erred by failing to find primary judge erred in concluding Tribunal’s decision unreasonable.

**Appealed from FCA (FC):** [\[2017\] FCAFC 33](#); (2017) 248 FCR 1

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## Negligence

*Govier v Uniting Church in Australia Property Trust (Q)*

**B51/2017:** [\[2017\] HCATrans 183](#)

**Date heard:** 15 September 2017 – *Special leave granted on limited grounds.*

**Catchwords:**

Negligence – Duty of care – Psychiatric injury – Where appellant employed by respondent – Where appellant attacked by co-worker – Where respondent informed appellant on day of attack that her conduct was under investigation – Where appellant too ill to attend investigative interviews – Where respondent asserted appellant refused to attend interviews and made preliminary findings against her – Where appellant’s employment subsequently terminated – Where appellant claimed damages for psychiatric injuries – Where trial judge held respondent owed no duty of care to appellant with respect to conduct of investigative process – Where Court of Appeal dismissed appeal – Whether Court of Appeal erred in concluding respondent did not owe appellant duty of care in respect of investigative process.

**Appealed from QSC (CA):** [\[2017\] QCA 12](#)

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*Briggs v State of New South Wales*

**S144/2017:** [\[2017\] HCATrans 109](#)

**Date heard:** 12 May 2017 – *Special leave granted.*

**Catchwords:**

Negligence – *Works Compensation Act* 1987 (NSW) – Breach of duty – Where appellant suffered psychological injury due to exposure to traumatic events in course of duties as police officer – Where appellant told supervisor he was “struggling” and applied for

“theoretical demotion” – Where appellant interviewed by Professional Standards Command while on sick leave – Whether Court of Appeal erred in finding respondent did not breach duty of care by failing to make enquiries as to appellant’s reasons for seeking demotion – Whether Court of Appeal erred in formulation of content of duty of care – Whether Court of Appeal erred in finding respondent did not breach duty of care in manner in which professional standards enquiry conducted while appellant was on sick leave.

**Appealed from NSWSC (CA):** [\[2016\] NSWCA 344](#); (2016) 264 IR 309; (2016) Aust Tort Reports 82-319

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## Procedure

*UBS AG v Scott Francis Tyne as Trustee of the Argot Trust & Anor*  
**B54/2017:** [\[2017\] HCATrans 184](#)

**Date heard:** 15 September 2017 – *Special leave granted on limited grounds.*

**Catchwords:**

Procedure – *Federal Court of Australia Act 1976 (Cth) s 37M* – Abuse of process – Where appellant commenced proceedings in High Court of Singapore in 2010 against first respondent and another party – Where respondents and other party subsequently commenced proceedings in Supreme Court of New South Wales – Where Supreme Court proceedings permanently stayed in 2013 – Where respondents commenced proceedings in Federal Court in 2014 raising same factual matters – Where proceedings permanently stayed by primary judge as abuse of process – Whether majority of Full Federal Court erred in failing to take into account manifest unfairness to appellant and effect of proceedings in bringing administration of justice into disrepute – Whether majority erred in failing to take into account Singapore proceedings in determining whether abuse of process.

**Appealed from FCA (FC):** [\[2017\] FCAFC 5](#); (2017) 341 ALR 415

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*Rozenblit v Vainer & Anor*

**M114/2017:** [\[2017\] HCATrans 167](#)

**Date heard:** 18 August 2017 – *Special leave granted on limited grounds.*

**Catchwords:**

Procedure – *Supreme Court (General Civil Procedure) Rules 2005* (Vic) r 63.03(3) – Access to courts – Impecuniosity – Where appellant made applications to file and serve amended statement of claim – Where applications refused with costs – Where appellant made further application for leave to cure drafting deficiencies – Where associate judge granted leave to file and serve amended statement of claim but ordered proceeding be stayed under r 63.03(3) until appellant paid interlocutory costs orders – Where Court of Appeal dismissed appeal – Whether in circumstances where appellant unable to meet interlocutory costs orders and no finding appellant conducted litigation in manner amounting to harassment or because of collateral purpose, Court of Appeal erred in failing to find not open to associate judge to make order under r 63.06(3) or exercise inherent jurisdiction to stay proceeding.

**Appealed from VSC (CA):** [\[2017\] VSCA 52](#)

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*Clone Pty Ltd v Players Pty Ltd (In Liquidation) (Receivers & Managers Appointed) & Ors*

**A22/2017; A23/2017:** [\[2017\] HCATrans 130](#)

**Date heard:** 16 June 2017 – *Special leave granted on limited grounds.*

**Catchwords:**

Procedure – Jurisdiction to set aside judgment – Whether power of Supreme Court to set aside perfected orders in its equitable jurisdiction extends to malpractice not amounting to fraud – Where document lodged by first respondent was contained in files of fifth respondent – Where primary judge found that appellant’s legal advisers engaged in “serious malpractice” by recklessly failing to discover document – Where primary judge found that first respondent failed to exercise reasonable diligence in searching for document – Where primary judge ordered new trial on basis that there was “real possibility” that issue would have been decided differently – Whether Court of Appeal erred in formulation and application of principles that inform jurisdiction to set aside perfected judgment on ground of malpractice for failure to disclose document.

**Appealed from SASC (CA):** [\[2016\] SASCFC 134](#); (2016) 127 SASR 1

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## Real Property

*Pike & Anor v Tighe & Ors*

**B33/2017:** [\[2017\] HCATrans 127](#)

**Date heard:** 16 June 2017 – *Special leave granted.*

### Catchwords:

Real property – Statutory interpretation – *Sustainable Planning Act* 2009 (Qld) – Where second respondent granted approval for reconfiguration of original lot into Lots 1 and 2 – Where approval subject to condition that easement for “pedestrian and vehicle access, on-site manoeuvring and connection of services and utilities” be registered for benefit of Lot 2 – Where registered easement does not permit “on-site manoeuvring and connection of services and utilities” – Where first respondents registered owners of Lot 1 and appellants registered owners of landlocked Lot 2 – Whether Court of Appeal erred in concluding that power to make enforcement order under s 604(1) arose only upon Planning and Environment Court being satisfied that first respondents committed development offence against s 580(1) – Whether Court of Appeal erred in failing to conclude that condition of development approval imposed continuing obligation despite reconfiguration approval by registration of survey plan.

**Appealed from QSC (CA):** [\[2016\] QCA 353](#)

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## Taxation

*The Commissioner of Taxation of the Commonwealth of Australia v Thomas; The Commissioner of Taxation of the Commonwealth of Australia v Martin Andrew Pty Ltd; The Commissioner of Taxation of the Commonwealth of Australia v Thomas Nominees Pty Ltd; The Commissioner of Taxation of the Commonwealth of Australia v Thomas*

**B25/2107; B26/2107; B27/2107; B28/2107:** [\[2017\] HCATrans 206](#)

**Date heard:** 20 October 2017 – *Special leave granted.*

### Catchwords:

Taxation – Franking credits – *Income Tax Assessment Act* 1997 (Cth) pt 3-6 div 207 – Where trustee resolved to apply net income of trust fund to benefit of two beneficiaries on assumption franking

credits could be treated as separate category of income from dividends to which credits attached – Where Commissioner of Taxation notified trustee of intention to commence audit – Where trustee sought directions from Queensland Supreme Court under *Trusts Act 1973 (Qld) s 96* as to proper construction of trust deed and resolutions – Where Commissioner notified of proceedings but did not seek to become party – Where Supreme Court declared trustee resolutions effective to achieve franking credit distributions – Where Commissioner of Taxation issued amended notices of assessment – Where primary judge upheld amended assessments – Where Full Court allowed appeal – Whether Full Court erred in concluding Commissioner bound by declarations made by Supreme Court – Whether Full Court erred in concluding franking credits may be distributed on a different basis to income from dividends.

**Appealed from FCA (FC):** [\[2017\] FCAFC 57](#); (2017) 2017 ATC 20-612

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## Torts

*Trkulja v Google Inc*

**M88/2017:** [\[2017\] HCATrans 129](#)

**Date heard:** 16 June 2017 – *Special leave granted.*

### Catchwords:

Torts – Defamation – Publication – Respondent internet search engine – Search results – Images – Text – Autocomplete predictions – Whether respondent “published” matter relied on by applicant.

Practice and procedure – Service outside jurisdiction – *Supreme Court (General Civil Procedure) Rules 2015 (Vic) r 7.01(1)(i) and (j)* – Where respondent served in United States – Where Court of Appeal held service should be set aside because no real prospect of success in providing that respondent was publisher – Whether Court of Appeal erred in confining case to primary publisher rather than secondary.

**Appealed from VSC (CA):** [\[2016\] VSCA 333](#); (2016) 342 ALR 504

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## 6: CASES NOT PROCEEDING OR VACATED

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### Constitutional Law

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

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

**Catchwords:**

Constitutional law – Section 92 – *Environment Protection (Industrial Waste Resource) Regulations 2009 (Vic)* – Where reg 26(3) prohibits interstate transport of prescribed industrial waste for destruction/deposit unless interstate facility has better environmental performance standards – Contract to dispose of contaminated soil in Victoria by transporting to and disposing of in South Australia – Where second plaintiff obtained approval from South Australian Environment Protection Authority (“EPA”) for treatment of soil in South Australia – Where first plaintiff sought approval from EPA Victoria for transport of waste from Victoria to South Australia – Where approval refused because EPA Victoria not satisfied waste would be deposited at facility in South Australia with better environmental performance standards than in Victoria – Whether reg 26 or 26(3) *Environment Protection (Industrial Waste Resource) Regulations 2009 (Vic)* contrary to s 92 and therefore invalid – Whether protectionist effect of reg 26(3) can be inferred from discriminatory burden imposed on interstate trade – Whether objects of reg 26(3) must be actual motivating objects of the regulation.

*Hearing vacated (1 February 2017).  
Case not proceeding.*

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## 7: SPECIAL LEAVE REFUSED

### Publication of Reasons: 11 October 2017

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Re Endresz (C10/2017)		High Court of Australia [2017] HCATrans 145	Application dismissed <a href="#">[2017] HCASL 240</a>
2.	Daniell	Nounnis & Anor (B42/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 150	Application dismissed <a href="#">[2017] HCASL 241</a>
3.	Karam	Palmone Shoes Pty Ltd (M94/2017)	Supreme Court of Victoria (Court of Appeal) [2017] VSCA 145	Application dismissed <a href="#">[2017] HCASL 242</a>
4.	Young	Roads and Maritime Services & Anor (S203/2017)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 238	Application dismissed <a href="#">[2017] HCASL 243</a>
5.	SZUXR	Minister for Immigration and Border Protection & Anor (S205/2017)	Federal Court of Australia [2017] FCA 763	Application dismissed <a href="#">[2017] HCASL 244</a>
6.	Tilley	Office of the Children's Guardian (S212/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 174	Application dismissed <a href="#">[2017] HCASL 245</a>
7.	Randall	City of Canada Bay Council (S214/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 1	Application dismissed <a href="#">[2017] HCASL 246</a>
8.	BKB16	Minister for Immigration and Border Protection & Anor (S224/2017)	Federal Court of Australia [2017] FCA 1019	Application dismissed <a href="#">[2017] HCASL 247</a>
9.	Greenway	The Corporation of the Synod of the Diocese of Brisbane (B32/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 103	Application dismissed with costs <a href="#">[2017] HCASL 248</a>
10.	Iluka Resources Limited	Bonham (H3/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 95	Application dismissed with costs <a href="#">[2017] HCASL 249</a>

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
11.	George	The Queen (M95/2017 & M96/2017)	Supreme Court of Victoria (Court of Appeal) [2017] VSCA 152	Application dismissed <a href="#">[2017] HCASL 250</a>
12.	Duncan	Addenbrooke Pty Limited & Ors (S157/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 76	Application dismissed with costs <a href="#">[2017] HCASL 251</a>
13.	Guan & Ors	Linfield Developments Pty Ltd & Ors (S161/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 99	Application dismissed with costs <a href="#">[2017] HCASL 252</a>
14.	Reihana	QCAT Client Services Manager & Ors (B37/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 117	Application dismissed <a href="#">[2017] HCASL 253</a>
15.	Manning	Queensland Police Service (B41/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 151	Application dismissed <a href="#">[2017] HCASL 254</a>
16.	Waldon	Kipley (H4/2017)	Full Court of the Family Court of Australia	Application dismissed <a href="#">[2017] HCASL 255</a>
17.	Plaintiff M34/2017	Minister for Immigration and Border Protection & Anor (M99/2017)	High Court of Australia [2017] HCA Trans 141	Application dismissed <a href="#">[2017] HCASL 256</a>
18.	van der Feltz	Legal Practice Board of Western Australia (P31/2017)	Supreme Court of Western Australia (Court of Appeal) WASCA 113	Application dismissed <a href="#">[2017] HCASL 257</a>
19.	Neil	Legal Profession Complaints Committee (P37/2017)	Supreme Court of Western Australia (Court of Appeal) [2017] WASCA 109	Application dismissed <a href="#">[2017] HCASL 258</a>
20.	ADO15	Minister for Immigration and Border Protection & Anor (S162/2016)	Federal Court of Australia [2016] FCA 766	Application dismissed <a href="#">[2017] HCASL 259</a>

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## Publication of Reasons: 12 October 2017

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	BBE15	Minister for Immigration and Border Protection & Anor (B13/2017)	Federal Court of Australia [2017] FCA 111	Application dismissed <a href="#">[2017] HCASL 260</a>
2.	ANA15	Minister for Immigration and Border Protection & Anor (M29/2017)	Federal Court of Australia [2017] FCA 92	Application dismissed <a href="#">[2017] HCASL 261</a>
3.	MZAHK	Minister for Immigration and Border Protection & Anor (M85/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 87	Application dismissed <a href="#">[2017] HCASL 262</a>
4.	Corica & Anor	Shire of Mundaring (P32/2017)	Supreme Court of Western Australia (Court of Appeal) [2017] WASCA 42	Application dismissed <a href="#">[2017] HCASL 263</a>
5.	ACL15	Minister for Immigration and Border Protection & Anor (S263/2016)	Federal Court of Australia [2016] FCA 1318	Application dismissed <a href="#">[2017] HCASL 264</a>
6.	AOI15	Minister for Immigration and Border Protection & Anor (S280/2016)	Federal Court of Australia [2016] FCA 1342	Application dismissed <a href="#">[2017] HCASL 265</a>
7.	SZSRR	Minister for Immigration and Border Protection & Anor (S110/2017)	Federal Court of Australia [2017] FCA 328	Application dismissed <a href="#">[2017] HCASL 266</a>
8.	SZTIS	Minister for Immigration and Border Protection & Anor (S164/2017)	Federal Court of Australia [2017] FCA 545	Application dismissed <a href="#">[2017] HCASL 267</a>
9.	Fitzgerald	Deloitte Services Pty Ltd (S198/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 139	Application dismissed <a href="#">[2017] HCASL 268</a>
10.	Stone & Anor	Chappel & Anor (A27/2017)	Full Court of the Supreme Court of South Australia [2017] SASCFC 72	Application dismissed with costs <a href="#">[2017] HCASL 269</a>
11.	Kencian & Anor	Watney (B35/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 116	Application dismissed with costs <a href="#">[2017] HCASL 270</a>

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
12.	Tesic	Minister for Immigration and Border Protection (B36/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 93	Application dismissed with costs <a href="#">[2017] HCASL 271</a>
13.	Cook & Anor	Modern Mustering Pty Ltd & Ors (D2/2017)	Supreme Court of the Northern Territory (Court of Appeal) [2017] NTCA 1	Application dismissed with costs <a href="#">[2017] HCASL 272</a>
14.	AIS15	Minister for Immigration and Border Protection & Anor (S220/2016)	Federal Court of Australia [2016] FCA 978	Application dismissed with costs <a href="#">[2017] HCASL 273</a>
15.	Perish	The Queen (S153/2017)	Supreme Court of New South Wales (Court of Criminal Appeal) [2016] NSWCCA 89	Application dismissed <a href="#">[2017] HCASL 274</a>
16.	The Queen	Tran & Anor (S159/2017)	Supreme Court of New South Wales (Court of Criminal Appeal) [2017] NSWCCA 93	Application dismissed <a href="#">[2017] HCASL 275</a>

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**20 October 2017: Melbourne**

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<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Commonwealth of Australia	FJ (a pseudonym) (M58/2017)	Supreme Court of Victoria (Court of Appeal) [2017] VSCA 84	Application dismissed with costs <a href="#">[2017] HCATrans 211</a>

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**20 October 2017: Sydney**

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<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Wu	Ling (S143/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 322 and [2016] NSWCA356	Application dismissed with costs <a href="#">[2017] HCATrans 209</a>

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