



HIGH COURT BULLETIN

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High Court of Australia Library
[2018] HCAB 2 (4 April 2018)

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
<i>Alley v Gillespie</i>	Constitutional Law
<i>Re Kakoschke-Moore</i>	Constitutional Law
<i>Re Lambie</i>	Constitutional Law
<i>Craig v The Queen</i>	Criminal Law
<i>Irwin v The Queen</i>	Criminal Law
<i>Kalbasi v Western Australia</i>	Criminal Law
<i>Clone Pty Ltd v Players Pty Ltd (In Liquidation) (Receivers & Managers Appointed) & Ors</i>	Equity
<i>Pike & Anor v Tighe & Ors</i>	Town Planning

3: Cases Reserved

Case	Title
<u>Pipikos v Trayans</u>	Contracts
<u>Collins v The Queen</u>	Criminal Law
<u>Hossain v Minister for Immigration and Border Protection & Anor</u>	Migration
<u>Minister for Immigration and Border Protection v SZVFW & Ors</u>	Migration
<u>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</u>	Migration
<u>Trkulja v Google Inc</u>	Torts

4: Original Jurisdiction

5: Court of Disputed Returns

Case	Title
<u>Re Gallagher</u>	Court of Disputed Returns

6: Section 40 Removal

Case	Title
<u>Attorney-General for the State of Victoria v Clubb & Anor; Clubb v Edwards & Anor</u>	Constitutional Law
<u>Preston v Avery & Anor</u>	Constitutional Law

7: Special Leave Granted

Case	Title
<u>Commissioner of Taxation for the Commonwealth of Australia v Tomaras & Ors</u>	Interpretation
<u>Comptroller General of Customs v Zappia</u>	Interpretation

<u><i>Williams v Wreck Bay Aboriginal Community Council & Anor</i></u>	Interpretation
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[8: Cases Not Proceeding or Vacated](#)

2: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the March 2018 sittings.

Constitutional Law

Alley v Gillespie

[S190/2017](#): [\[2018\] HCA 11](#)

Judgment delivered: 21 March 2018

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

Catchwords:

Constitutional law (Cth) – Parliamentary elections – Common informer action – Where plaintiff commenced common informer action in original jurisdiction of High Court – Where liability to penalty under *Common Informers (Parliamentary Disqualifications) Act* 1975 (Cth) requires determination of whether defendant incapable of sitting as member of House of Representatives – Whether High Court has jurisdiction to determine eligibility of member of House of Representatives in common informer action – Proper construction of s 46 of Constitution – Proper construction of s 47 of Constitution.

Words and phrases – "common informer", "common informer action", "Court of Disputed Returns", "declared by the Constitution", "declared by this Constitution", "exclusive cognisance", "incapable of being chosen or of sitting", "jurisdiction", "until the Parliament otherwise provides".

Constitution – ss 44(v), 45, 46, 47, 49.

Common Informers (Parliamentary Disqualifications) Act 1975 (Cth) – s 3.

Commonwealth Electoral Act 1918 (Cth) – s 376.

Held: Questions answered

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Re Kakoschke-Moore

[C30/2017](#): [\[2018\] HCA 10](#)

Reasons published: 21 March 2018

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

Catchwords:

Constitutional law (Cth) – Parliamentary elections – Reference to Court of Disputed Returns – Where Ms Skye Kakoschke-Moore and Mr Timothy Storer nominated for election as senator for State of South Australia as nominees of Nick Xenophon Team ("NXT") – Where Ms Kakoschke-Moore listed as third of four in order of NXT candidates, before Mr Storer – Where Ms Kakoschke-Moore returned as elected – Where Ms Kakoschke-Moore was British citizen at time of nomination – Where Ms Kakoschke-Moore subsequently renounced British citizenship – Where Mr Storer ceased to be member of NXT – Where Ms Kakoschke-Moore held incapable of being chosen or of sitting by reason of s 44(i) of Constitution – Whether vacancy in Senate should be filled by declaring Ms Kakoschke-Moore as elected – Whether Ms Kakoschke-Moore should be included in special count – Whether Mr Storer should be excluded from special count.

Words and phrases – "above the line", "electoral choice", "electoral process", "incapable of being chosen or of sitting", "political party", "process of being chosen", "special count", "true legal intent of the voters".

Constitution – ss 15, 44.

Commonwealth Electoral Act 1918 (Cth) – ss 162, 166, 168, 169, 181(2), 239, 269, 272, 360(1)(vi), 376.

Held: Questions answered

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Re Lambie

C27/2017: [\[2018\] HCA 6](#)

Reasons published: 14 March 2018

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

Catchwords:

Constitutional law (Cth) – Parliamentary elections – Reference to Court of Disputed Returns – Where Court held there was a vacancy in representation of Tasmania in Senate – Where Court made directions for special count of ballot papers to fill vacancy – Where orders sought following special count that Mr Steven Martin be declared elected as senator to fill vacancy – Where Mr Martin held offices of mayor and of councillor of local government corporation

under *Local Government Act 1993* (Tas) – Whether Mr Martin incapable of being chosen or of sitting as senator by reason of s 44(iv) of Constitution – Proper construction of s 44(iv) of Constitution – Where no dispute that office of mayor or of councillor is "office of profit" – Whether office of mayor or of councillor constitutes office of profit "under the Crown".

Words and phrases – "civil service", "conflict between duties", "conflict of duty and interest", "control over holding or profiting from holding", "employment by the Crown", "employment in the public service", "executive government", "executive influence", "from the Crown", "incapable of being chosen or of sitting", "office of profit", "public service", "under the Crown", "will of the executive government".

Constitution – ss 44(iv), 45(i), 48.

Commonwealth Electoral Act 1918 (Cth) – s 376.

Local Government Act 1993 (Tas).

Held: Question answered

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Criminal Law

Craig v The Queen

B24/2017: [\[2018\] HCA 13](#)

Judgment delivered: 21 March 2018

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

Catchwords:

Criminal law – Appeal against conviction – Murder and manslaughter – Intention to kill or cause grievous bodily harm – Incorrect advice – Where appellant's case was that he had not intended to kill or cause grievous bodily harm – Where appellant incorrectly advised that giving evidence would likely lead to cross-examination on prior convictions – Where chance of cross-examination on prior convictions possible but not likely due to s 15(2) of *Evidence Act 1977* (Q) – Where appellant's account of incident to his solicitor inconsistent with prior statements to police – Where appellant was correctly advised that giving evidence would likely lead to cross-examination on inconsistencies – Where appellant gave evidence on appeal that had he been physically and mentally well and absent the incorrect advice he would have given evidence at trial – Where no evidence to suggest trial would have

been conducted differently absent the incorrect advice – Whether no miscarriage of justice.

Words and phrases – "criminal history", "cross-examination", "decision not to give evidence", "fair trial", "inconsistent evidence", "incorrect advice", "intent", "intoxication", "miscarriage of justice", "murder", "prior convictions".

Criminal Code (Q) – ss 644, 668E(1).

Evidence Act 1977 (Q) – s 15.

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

Held: Appeal dismissed

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Irwin v The Queen

B48/2017: [\[2018\] HCA 8](#)

Judgment delivered: 14 March 2018

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

Catchwords:

Criminal law – Appeal against conviction – Where appellant convicted of one count of unlawfully doing grievous bodily harm – Where complainant suffered broken hip in three places following confrontation with appellant – Where appellant gave evidence that he pushed complainant causing complainant to stumble backwards three or four metres and fall to ground – Where s 23(1) of *Criminal Code* (Q) provides person not criminally responsible for event that ordinary person would not reasonably foresee as possible consequence – Where Court of Appeal observed there were "equally open" interpretations of evidence – Whether jury verdict unreasonable or unsupported by evidence.

Criminal law – Appeal against conviction – Where s 23(1) of *Criminal Code* (Q) provides person not criminally responsible for event that ordinary person would not reasonably foresee as possible consequence – Where Court of Appeal found it open to jury to conclude ordinary person could have foreseen injury of kind suffered by complainant – Whether Court of Appeal applied incorrect test – Whether any difference between what ordinary person "could" and "would" reasonably foresee.

Words and phrases – "could have foreseen", "grievous bodily harm", "possibility", "probability", "unreasonable verdict", "verdict unsupported by evidence", "would have foreseen".

Criminal Code (Q) – s 23.

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

Held: Appeal dismissed

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Kalbasi v Western Australia

P21/2017: [\[2018\] HCA 7](#)

Judgment delivered: 14 March 2018

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

Catchwords:

Criminal law – Appeal against conviction – Application of proviso – Where appellant indicted for attempting to possess prohibited drug with intent to sell or supply to another – Where police replaced prohibited drug with another substance – Where trial judge and counsel erroneously assumed s 11 of *Misuse of Drugs Act* 1981 (WA) applied deeming possession of quantity of drugs sufficient to prove possession for purpose of sale or supply to another – Where jury erroneously directed that proof of possession of substitute "drugs" would suffice to prove intention to sell or supply to another – Where intention not otherwise live issue at trial – Where sole issue at trial was appellant's possession of substitute "drugs" – Where prosecution concedes erroneous direction as to intention but contends "no substantial miscarriage of justice has occurred" – Whether "no substantial miscarriage of justice has occurred" – Whether misdirection precluded application of proviso.

Words and phrases – "deemed intent", "error of outcome", "error of process", "fundamental defect", "fundamental error", "fundamentally flawed", "inevitability of result", "intention", "loss of a fair or real chance of acquittal", "miscarriage of justice", "negative proposition", "proviso", "reasonable jury", "substantial miscarriage of justice", "this jury".

Criminal Appeals Act 2004 (WA) – s 30.

Misuse of Drugs Act 1981 (WA) – ss 6(1)(a), 11, 33(1), 34.

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

Held: Appeal dismissed

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Equity

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

[A22/2017](#); [A23/2017](#): [\[2018\] HCA 12](#)

Judgment delivered: 21 March 2018

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

Catchwords:

Equity – Where judgment given by Supreme Court of South Australia, as varied by Full Court of Supreme Court of South Australia – Where successful party engaged in malpractice – Where malpractice later discovered – Where perfected judgment set aside – Where no pleading or proof of fraud – Nature of court's equitable power to set aside perfected judgment – Whether equitable power extends to malpractice not amounting to fraud – Whether power to set aside perfected judgment conditional upon unsuccessful party having exercised reasonable diligence to discover fraud or malpractice.

Procedure – Perfected judgment – Rescission – Where two applications brought to set aside judgment – Where judgment set aside for malpractice – Whether proper course application in original proceeding or fresh action.

Words and phrases – "actual fraud", "causation", "equitable jurisdiction", "equitable power", "equity", "finality", "fraud", "fresh action", "malpractice", "misconduct", "new trial", "not amounting to fraud", "perfected judgment", "perfected orders", "power", "proper application", "reasonable diligence", "setting aside".

Supreme Court Act 1935 (SA) – s 17(2)(a)(i).

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

Held: Appeal allowed

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Town Planning

Pike & Anor v Tighe & Ors

[B33/2017](#): [\[2018\] HCA 9](#)

Judgment delivered: 14 March 2018

Coram: Kiefel CJ, Bell, Keane, Gordon and Edelman JJ

Catchwords:

Town planning – Conditions on development – Where development approval permitted reconfiguration of lot into two lots – Where development approval subject to conditions – Where conditions included requirement to provide easement to allow access, on-site manoeuvring and connection of services and utilities – Where easement executed by registered proprietors of original lot did not comply with condition – Where Council approved survey plan to give effect to reconfiguration – Where titles for new lots created – Whether successor in title obliged to provide easement complying with condition.

Town planning – Enforcement orders – Where Planning and Environment Court of Queensland may make enforcement order if satisfied that development offence "has been committed" – Where development offence to "contravene" development approval – Whether successor in title committed development offence by failing to provide easement complying with condition.

Words and phrases – "binds the owner, the owner's successors in title and any occupier of the land", "contravene", "development", "development approval", "development offence", "enforcement order", "fail to comply with", "land", "lot", "the land the subject of the application to which the approval relates".

Acts Interpretation Act 1954 (Q) – s 36(1), Sched 1.

Sustainable Planning Act 2009 (Q) – ss 7, 10(1), 244(a), 245, 580, 601(1)(a), 604(1)(a), 605(1)(e), Sched 3.

Appealed from QSC (CA): [\[2016\] QCA 353](#); (2016) 225 LGERA 121

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.

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 247](#); [\[2017\] HCATrans 249](#)

Date heard: 5 and 6 December 2017

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

Catchwords:

Constitutional law – Constitution ss 75, 76, 77 – *Judiciary Act* 1903 (Cth) s 39(2) – 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 Administrative Decisions Tribunal of New South Wales (ADT) ordered Victorian resident to make apologies – Where New South Wales Civil and Administrative Tribunal (NCAT) dismissed complaints against Queensland resident – Where Court of Appeal held ADT and NCAT lacked jurisdiction to resolve complaints – 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 Court of Appeal erred in concluding person or body that is not “court of a State” unable to exercise judicial power to determine matters between residents of different States – 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) 343 ALR 690; (2017) 316 FLR 448

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Contracts

Pipikos v Trayans

[A30/2017: \[2018\] HCATrans 47](#)

Date heard: 15 March 2018

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

Catchwords:

Contracts – Enforceability – *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

Collins v The Queen

[B68/2017: \[2018\] HCATrans 53](#)

Date heard: 22 March 2018

Coram: Kiefel CJ, Bell, Keane, Gordon and Edelman JJ

Catchwords:

Criminal law – Appeal against conviction – Proviso – Where appellant convicted of three counts of sexual assault and one count of rape – Where trial judge directed jury inconsistency between complainant’s mother’s evidence at committal hearing and trial relevant to mother’s credibility but not complainant’s credibility –

Where Court of Appeal found trial judge misdirected jury – Where Crown did not submit proviso should apply – Where Court of Appeal applied proviso and dismissed appeal – Whether Court of Appeal erred in applying proviso.

Appealed from QSC (CA): [\[2017\] QCA 113](#)

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DL v The Queen

A38/2017: [\[2018\] HCATrans 22](#)

Date heard: 15 February 2018.

Coram: Kiefel CJ, Bell, Keane, Nettle and Edelman JJ

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 Court of Criminal Appeal erred in failing to find verdict unsafe, uncertain and/or unreasonable.

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

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Migration

Plaintiff M174/2016 v Minister for Immigration and Border Protection & Anor

M174/2016: [\[2017\] HCATrans 251](#)

Date heard: 7 December 2017

Coram: Gageler, Keane, Nettle, Gordon and Edelman JJ

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

conducted interview with pastor in relation to plaintiff's church attendance – Where delegate did not inform plaintiff – Where delegate refused to grant visa – Where Immigration Assessment Authority ("IAA") affirmed decision – Whether delegate failed to comply with s 57(2) of Act – If yes, whether failure to comply with s 57(2) had consequence that there was no decision capable of referral to IAA under s 473CA or essential precondition for valid exercise of power by IAA under s 473CC not satisfied – Whether IAA 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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CRI026 v Republic of Nauru

M131/2017: [\[2018\] HCATrans 8](#); [\[2018\] HCATrans 11](#)

Date heard: 7 and 8 February 2018

Coram: Kiefel CJ, Gageler 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 Supreme Court erred in failing to conclude Tribunal misapplied Nauruan law of complementary protection by applying "reasonable relocation" test – Whether Supreme Court erred in failing to conclude erroneous reference by Tribunal in decision to appellant as Tamil from Sri Lanka gave rise to error of law.

Appealed from Supreme Court of Nauru: [\[2017\] NRSC 67](#)

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CRI028 v Republic of Nauru

M66/2017: [\[2018\] HCATrans 19](#)

Date heard: 14 February 2018

Coram: Bell, Gordon 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 Supreme Court of Nauru dismissed appeal – Whether Supreme Court erred in failing to find Tribunal erred in identifying and applying law of “internal protection” or relocation.

Appealed from Supreme Court of Nauru: [\[2017\] NRSC 32](#)

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DWN027 v Republic of Nauru

M145/2017: [\[2018\] HCATrans 8](#); [\[2018\] HCATrans 11](#)

Date heard: 7 and 8 February 2018

Coram: Kiefel CJ, Gageler 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 Supreme Court erred in failing to conclude Tribunal misapplied Nauruan law of complementary protection by applying “reasonable relocation” test – Whether Supreme Court erred in failing to conclude Tribunal erred by failing to consider Nauru’s obligations under Convention on the Rights of the Child – Whether Supreme Court erred in failing to conclude Tribunal erred by failing to consider integer of appellant’s objections to relocation.

Appealed from Supreme Court of Nauru: [\[2017\] NRSC 77](#)

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EMP144 v Republic of Nauru

M151/2017: [\[2018\] HCATrans 8](#); [\[2018\] HCATrans 11](#)

Date heard: 7 and 8 February 2018

Coram: Kiefel CJ, Gageler 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 Supreme Court erred by failing to conclude Tribunal failed to consider objections to relocation under Refugees Convention – Whether Supreme Court erred in failing to conclude Tribunal denied appellant procedural fairness – Whether Supreme Court erred by failing to conclude Tribunal failed to consider integers of complementary protection claim – Whether Supreme Court erred in failing to conclude Tribunal misapplied Nauruan law of complementary protection by applying “reasonable relocation” test.

Appealed from Supreme Court of Nauru: [\[2017\] NRSC 73](#)

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Hossain v Minister for Immigration and Border Protection & Anor
S1/2018: [\[2018\] HCATrans 52](#)

Date heard: 21 March 2018

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

Catchwords:

Migration – *Migration Act 1958 (Cth)* – *Migration Regulations 1994 (Cth)* – Jurisdictional error – Where appellant applied for Partner (Temporary) (Class UK) visa under s 65 of Act – Where cl 820.211(2)(d)(ii) of sch 2 of Regulations required appellant to satisfy sch 3 criteria 3001, 3003 and 3004 unless Minister satisfied compelling reasons for not applying criteria – Where delegate of Minister refused visa on basis appellant did not satisfy item 3001 – Where Administrative Appeals Tribunal (“AAT”) affirmed delegate’s decision on basis no compelling reasons for not applying sch 3 criteria and appellant did not satisfy PIC 4004 as required by cl 820.223 of sch 2 – Where Federal Circuit Court quashed decision on basis AAT fell into jurisdictional error in confining itself to “compelling reasons” at time of application – Where majority of Full Federal Court allowed appeal, restoring AAT decision on basis AAT retained jurisdiction to determine discrete issue relating to PIC 4004 – Whether Full Federal Court erred in finding that, although AAT decision infected by jurisdictional error, AAT nevertheless retained jurisdiction to make decision.

Appealed from FCA (FC): [\[2017\] FCAFC 82](#); (2017) 252 FCR 31

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Minister for Immigration and Border Protection v SZVFW & Ors
S244/2017: [\[2018\] HCATrans 44](#)

Date heard: 13 March 2018

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

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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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: [\[2018\] HCATrans 52](#)

Date heard: 21 March 2018

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

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 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](#); (2017) 251 FCR 143

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WET044 v Republic of Nauru

M132/2017: [\[2018\] HCATrans 18](#)

Date heard: 14 February 2018

Coram: Kiefel CJ, Gageler and Keane 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 appellant should be permitted to raise new grounds of appeal – Whether Tribunal erred by failing to consider submissions and country information with respect to risk of return as failed asylum seeker – Whether Tribunal denied appellant procedural fairness.

Appealed from Supreme Court of Nauru: [\[2017\] NRSC 66](#)

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Procedure

Rozenblit v Vainer & Anor

M114/2017: [\[2018\] HCATrans 13](#)

Date heard: 9 February 2018

Coram: Kiefel CJ, Bell, Keane, Gordon and Edelman JJ

Catchwords:

Procedure – Stay of proceeding – *Supreme Court (General Civil Procedure) Rules 2005 (Vic) r 63.03(3)* – Where appellant commenced proceeding in Supreme Court – Where appellant made applications for leave to file and serve amended statement of claim – Where applications refused with costs – Where costs unpaid because appellant impecunious – Where appellant made further application – 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 Court of Appeal erred in failing to find associate judge erred in making order to stay proceedings.

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

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Torts

Trkulja v Google Inc

M88/2017: [\[2018\] HCATrans 48](#)

Date heard: 20 March 2018

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

Catchwords:

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

Practice and procedure – Service outside jurisdiction – *Supreme Court (General Civil Procedure) Rules 2005 (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 – Whether Court of Appeal erred in holding no real prospect of success in proving respondent was publisher – Whether Court of Appeal erred in confining case to primary publisher rather than secondary publisher – Whether Court of Appeal erred in finding material not capable of conveying defamatory meaning.

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

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4: ORIGINAL JURISDICTION

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

Constitutional Law

Minogue v State of Victoria

[M2/2017](#): *Special Case*

Catchwords:

Constitutional law – Parole – *Corrections Act* 1986 (Vic) s 74AAA – Where plaintiff convicted of murder – Where victim was police officer – Where plaintiff sentenced to life imprisonment – Where non-parole period expired on 30 September 2016 – Where *Justice Legislation Amendment (Parole Reform and Other matters) Act* 2016 (Vic) inserted s 74AAA into *Corrections Act* – Where s 74AAA imposes conditions for making parole order for prisoner who murdered police officer – Where *Corrections Legislation Further Amendment Act* 2017 (Vic) inserted s 127A into *Corrections Act* – Where s 127A provides s 74AAA applies regardless of whether prior to commencement of s 74AAA prisoner became eligible for parole, prisoner took steps to ask Board to grant parole, or Board began consideration of whether prisoner should be granted parole – Whether s 74AAA applies where prior to commencement of s 74AAA, plaintiff became eligible for parole, plaintiff made application for parole, or Board decided to proceed with parole planning – Whether s 74AAA applies where plaintiff commenced proceeding prior to commencement of s 127A – Whether s 74AAA applies where knowledge or recklessness as to whether victim was police officer was not element of offence of which plaintiff convicted – Whether s 74AAA and/or s 127A invalid as unconstitutional.

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5: COURT OF DISPUTED RETURNS

Re Gallagher

C32/2017: [\[2018\] HCATrans 46](#)

Date heard: 14 March 2018

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

Catchwords:

Court of Disputed Returns – Constitution s 44(i) – Where Ms Gallagher elected to Senate in 2 July 2016 election – Where Ms Gallagher held dual citizenship of Australia and United Kingdom – Where Ms Gallagher applied to renounce British citizenship on 20 April 2016 – Where application received by Home Office on 26 April 2016 – Where Ms Gallagher ceased to be British citizen on 16 August 2016 – Whether by reason of s 44(i) there is vacancy in representation for Australian Capital Territory in Senate for place for which Ms Gallagher returned.

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6: SECTION 40 REMOVAL

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

Constitutional Law

Attorney-General for the State of Victoria v Clubb & Anor; Clubb v Edwards & Anor

M23/2018; M15/2018: *Removed into High Court under s 40 of Judiciary Act 1903 (Cth)*

Catchwords:

Constitutional law – Implied freedom of political communication – *Public Health and Wellbeing Act 2008 (Vic) s 185D* – Where s 185D prohibits engaging in “prohibited behaviour” within “safe access zone” – Where “prohibited behaviour” defined to include “communicating by any means in relation to abortions in a manner that is able to be seen or heard by a person accessing, or attempting to access, or leaving premises at which abortions are provided and is reasonably likely to cause distress or anxiety” – Where appellant convicted of charge under s 185D in Magistrates’ Court – Whether 185D impermissibly burdens implied freedom of political communication.

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Preston v Avery & Anor

H1/2018: *Removed into High Court under s 40 of Judiciary Act 1903 (Cth).*

Catchwords:

Constitutional law – Implied freedom of political communication – *Reproductive Health (Access to Termination) Act 2013 (Tas) s 9(2)* – Where s 9(2) prohibits protest in relation to terminations that is able to be seen or heard by person accessing or attempting to access premises at which terminations provided – Where appellant convicted in Hobart Court of Petty Sessions of contraventions of s 9(2) – Whether s 9(2) impermissibly burdens implied freedom of political communication.

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7: SPECIAL LEAVE GRANTED

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

Corporations

Mighty River International Limited v Mineral Resources Limited & Ors; Mighty River International Limited v Mineral Resources Limited & Ors

P7/2018, P8/2018: [\[2018\] HCATrans 26](#)

Date heard: 16 February 2018 – *Special leave granted.*

Catchwords:

Corporations – Deed of company arrangement – *Corporations Act* 2001 (Cth) ss 444A, 445G – Where company entered into deed of company arrangement – Where cl 8 provided no property of company available for distribution to creditors – Where appellant brought proceedings seeking declaration deed void or order setting deed aside – Where Supreme Court made declaration under s 445G(2) deed not void – Where Court of Appeal dismissed appeal – Whether Court of Appeal erred in holding deed complied with mandatory requirements of s 444A(4)(b) – Whether Court of Appeal erred in failing to hold deed void or invalid pursuant to s 445G(2).

Appealed from WASC (CA): [\[2017\] WASCA 152](#); (2017) 52 WAR 1; (2017) 323 FLR 8

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Costs

Coshott v Spencer & Ors

S4/2018: [\[2017\] HCATrans 263](#)

Date heard: 15 December 2017 – *Special leave granted.*

Catchwords:

Costs – *Civil Procedure Act* 2005 (NSW) s 98 – Exception in *London Scottish Benefit Society v Chorley* (1884) 13 QBD 87 – Solicitor acting as self-represented litigant – Where first respondent represented clients in Federal Court proceedings – Where clients and appellant bought application for assessment of costs claimed in

respect of Federal Court proceedings – Where costs assessor dismissed appellant’s application on basis appellant not “third party payer” within meaning of *Legal Profession Act 2004* (NSW) s 302A – Where District Court dismissed appeal against costs assessment – Where District Court ordered appellant pay costs of proceedings – Where costs assessor allowed first respondent professional costs for self-representation at costs appeal – Where Court of Appeal dismissed appeal against second costs assessment – Whether Court of Appeal erred in finding first respondent entitled to recover costs in respect of time spent in conduct of legal proceedings – Whether costs assessor has jurisdiction to determine if appellant “third party payer” within meaning of s 302A – Whether *Chorley* exception inapplicable because of *Civil Procedure Act 2005* (NSW) s 98.

Appealed from NSW (CA): [\[2017\] NSWCA 118](#)

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Criminal Law

DL v The Queen

S309/2017: [\[2017\] HCATrans 262](#)

Date heard: 15 December 2017 – *Special leave granted.*

Catchwords:

Criminal law – Appeal against sentence – *Muldrock* error – Miscarriage of justice – Where appellant convicted of murder – Where primary judge sentenced appellant to 22 years’ imprisonment with non-parole period of 17 years – Where appellant appealed sentence to Court of Criminal Appeal – Where Crown conceded in light of *Muldrock v The Queen* (2011) 44 CLR 120 that primary judge erred in application of standard non-parole period legislation – Where majority of Court of Criminal Appeal dismissed appeal, holding no lesser sentence warranted – Whether Court of Criminal Appeal denied appellant procedural fairness – Whether majority of Court of Criminal Appeal erred in substituting aggravated factual findings in absence of challenge to primary judge’s findings in circumstances where majority held findings open to primary judge.

Appealed from NSW (CA): [\[2017\] NSWCCA 58](#)

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Johnson v The Queen

A9/2018: [\[2018\] HCATrans 31](#)

Date heard: 16 February 2018 – *Special leave granted on limited grounds.*

Catchwords:

Criminal law – Evidence – Probative value – Doli incapax – Where jury convicted appellant of five counts of sexual offences against younger sister – Where Court of Criminal Appeal quashed convictions in respect of count 1 (“shed incident”) because prosecution failed to rebut presumption of doli incapax and count 3 (persistent sexual exploitation) because evidence did not identify any particular act – Where Court of Criminal Appeal upheld remaining convictions – Whether Court of Criminal Appeal erred by failing to set aside remaining convictions because evidence led in respect of counts 1 and 3 inadmissible in respect of other counts or permissible use not sufficiently identified – Whether Court of Criminal Appeal erred in failing to find substantial miscarriage of justice.

Appealed from SASC (FC): [\[2015\] SASCF 170](#)

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Lane v The Queen

S308/2017: [\[2017\] HCATrans 264](#)

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

Catchwords:

Criminal law – Appeal against conviction – Proviso – *Criminal Appeal Act 1912 (NSW) s 6(1)* – Where jury found appellant not guilty of murder but guilty of manslaughter – Where Crown alleged two discrete voluntary acts causing death – Where Court of Criminal Appeal held trial judge erred by failing to direct that jury must be unanimous as to at least one of acts upon which the Crown relied – Where majority of Court of Appeal held no substantial miscarriage of justice within meaning of s 6(1) – Whether majority of Court of Criminal Appeal erred in application of proviso.

Appealed from NSW (CA): [\[2017\] NSWCCA 46](#)

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Strickland (a pseudonym) v Commonwealth Director of Public Prosecutions & Ors; Tucker (a pseudonym) v Commonwealth Director of Public Prosecutions & Ors; Hodges (a pseudonym) v

Commonwealth Director of Public Prosecutions & Ors; Galloway (a pseudonym) v Commonwealth Director of Public Prosecutions & Ors

[M168/2017](#); [M176/2017](#); [M175/2017](#); [M174/2017](#): [\[2017\] HCATrans 238](#)

Date heard: 17 November 2017 – *Special leave granted on limited grounds.*

Catchwords:

Criminal law – Stay of proceedings – *Australian Crime Commission Act 2002 (Cth)* – Investigations – Where Australian Federal Police (“AFP”) commenced investigation – Where appellants summoned by Australian Crime Commission for compulsory examination – Where examiner failed to make non-publication direction under s 25A(9) of Act prohibiting publication of examination material concerning appellants to AFP and Commonwealth Director of Public Prosecutions – Where primary judge found examination conducted for improper purpose of assisting AFP and had unfair consequences for trial – Where primary judge ordered permanent stay of proceedings – Where Court of Appeal quashed order – Whether Court of Appeal erred in finding unlawful compulsory examination for purpose of achieving forensic advantage insufficient in circumstances to justify permanent stay of proceedings.

Appealed from VSC (CA): [\[2017\] VSCA 120](#)

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The Queen v Dennis Bauer (a pseudonym) (No 2)

[M1/2018](#): [\[2017\] HCATrans 269](#)

Date heard: 15 December 2017 – *Special leave granted.*

Catchwords:

Criminal law – Appeal against conviction – Sexual offences against child – Re-trial after appeal – Where trial judge permitted previously recorded evidence of complainant to be tendered – Whether Court of Appeal erred in finding trial judge erred in permitting previously recorded evidence to be tendered as evidence in re-trial – Tendency evidence – Whether Court of Appeal erred in holding substantial miscarriage of justice because of admission of tendency evidence – Proper approach to tendency evidence where prosecution seeks to prove tendency on evidence from complainant and source independent of complainant – Severance – Whether Court of Appeal erred in holding failure to sever charge 2 occasioned substantial miscarriage of justice – Whether Court of

Appeal erred in holding admission of previous statement of complaint occasioned substantial miscarriage of justice.

Appealed from VSC (CA): [\[2017\] VSCA 176](#)

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The Queen v Falzon

M161/2017: [\[2017\] 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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Equity

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

A37/2017: [\[2017\] 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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Interpretation

Commissioner of Taxation for the Commonwealth of Australia v Tomaras & Ors

B65/2017: [\[2018\] HCATrans 56](#)

Date heard: 23 March 2018 – *Special leave granted.*

Catchwords:

Interpretation – Crown immunity – *Family Law Act 1975* (Cth) s 90AE – Presumption that statutory provisions expressed in general terms do not bind Crown – Where wife commenced proceedings against husband seeking alteration of property interests including order under s 90AE substituting husband for wife in respect of indebtedness to Commissioner – Where Full Family Court held s 90AE conferred power to make order – Whether Full Family Court erred in concluding presumption Crown not bound by statute did not apply in construction of s 90AE – If yes, whether Full Family Court erred in concluding presumption would have been rebutted – Whether Full Family Court erred in failing to conclude neither Commissioner nor Commonwealth “creditor” or “third party” for purposes of s 90AE.

Appealed from Fam CA (FC): [\[2017\] FamCAFC 216](#)

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Comptroller General of Customs v Zappia

S252/2017: [\[2018\] HCATrans 51](#)

Date determined: 21 March 2018 – *Special leave granted.*

Catchwords:

Interpretation – *Customs Act 1901 (Cth) s 35A* – Where respondent employed as general manager of company operating warehouse – Where cigarettes stolen from warehouse – Where respondent served with notice under s 35A of Act requiring payment of amount of duty payable on stolen cigarettes – Where Administrative Appeals Tribunal dismissed application for review of decision to issue notice – Where Full Federal Court allowed appeal – Whether majority of Full Court erred in holding employee of entity holding license to warehouse dutiable goods not capable of being “person who has, or has been entrusted with, the possession, custody or control of dutiable goods” within meaning of s 35A(1) – Whether majority of Full Court erred in holding that on proper construction of s 35A(1), statutory demand issued by appellant to respondent invalid and of no effect.

Appealed from FCA (FC): [\[2017\] FCAFC 147](#)

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SAS Trustee Corporation v Miles

S260/2017: [\[2017\] 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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Williams v Wreck Bay Aboriginal Community Council & Anor

C28/2017: [\[2018\] HCATrans 50](#)

Date determined: 21 March 2018 – *Special leave granted.*

Catchwords:

Interpretation – Concurrent operation – Where Council leased property to appellant under residential tenancy agreement – Where appellant commenced proceedings in ACT Civil and Administrative Tribunal seeking orders for repairs and compensation – Where Tribunal referred questions of law to Supreme Court for determination – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in concluding ACT laws retain subordinate status when applied to Jervis Bay Territory by force of s 4A of *Jervis Bay Territory Acceptance Act 1915* (Cth) – Whether Court of Appeal erred in concluding ss 8 and 9 of *Residential Tenancies Act 1997* (ACT) not capable of operating concurrently with *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* (Cth) such that ss 8 and 9 do not apply to “Aboriginal Land” for purposes of s 46 of *Aboriginal Land Grant (Jervis Bay Territory) Act*.

Appealed from ACT (CA): [\[2017\] ACTCA 46](#); (2017) 12 ACTLR 207; (2017) 326 FLR 58

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Migration

Minister for Immigration and Border Protection v SZMTA & Anor
S36/2018: [\[2018\] HCATrans 34](#)

Date heard: 16 February 2018 – *Special leave granted*.

Catchwords:

Migration – Procedural fairness – *Migration Act 1958* (Cth) s 438(2) – Where first respondent applied for Protection (Class XA) visa – Where application refused by delegate – Where first respondent applied to Administrative Appeals Tribunal for review of decision – Where delegate notified Tribunal s 438(2)(a) applied to certain documents because given in confidence to Minister or Department – Where Tribunal did not inform first respondent of notification – Where copies of documents previously provided to first respondent – Where Federal Circuit Court dismissed application for judicial review – Where Federal Court allowed appeal on basis Tribunal denied first respondent procedural fairness – Whether Federal Court erred in relying on possibility Tribunal may not have had regard to certain information because of notification under s 438(2) in finding Tribunal denied first respondent procedural fairness – Whether Federal Court erred in holding Tribunal denied first respondent procedural fairness in circumstances where documents in possession of first respondent prior to Tribunal hearing.

Appealed from FCA (FC): [\[2017\] FCA 1055](#)

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Native Title

Northern Territory of Australia v Alan Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples & Anor; Commonwealth of Australia v Alan Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples & Anor; Alan Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples v Northern Territory of Australia & Anor

D1/2018; D2/2018; D3/2018: [\[2018\] HCATrans 28](#)

Date heard: 16 February 2018 – *Special leave granted.*

Catchwords:

Native title – Extinguishment – Compensation for extinguishment – *Native Title Act* 1993 (Cth) – Where claim brought against Commonwealth and Northern Territory for extinguishment of non-exclusive native title rights and interests in Timber Creek – Where primary judge awarded claim group compensation for economic value of extinguished rights, interest, and solatium for loss or impairment of rights and interests – Where Full Court held primary judge erred in assessing value of extinguished rights and concluded value of rights was 65% of value of freehold title – Whether Full Court’s assessment of economic value of rights erroneous or manifestly excessive in light of restrictions and limitations on rights – Whether Full Court erred in failing to find primary judge erred in awarding interest as part of compensation under s 51(1) of Act and not as interest on compensation – Whether Full Court erred in assessing interest by reference to 65% of value of freehold title – Whether Full Court erred in failing to find primary judge erred in assessing compensation for non-economic loss – Whether Full Court erred in failing to find primary judge’s assessment of compensation for non-economic loss manifestly excessive – Whether Full Court erred in finding commercial agreements entered into by claimants containing solatium-type payments irrelevant to assessment of compensation.

Appealed from FCA (FC): [\[2017\] FCAFC 106](#); (2017) 346 ALR 247

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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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Probate

Nobarani v Mariconte

[S270/2017](#): [\[2017\] HCATrans 236](#)

Date heard: 17 November 2017 – *Special leave granted.*

Catchwords:

Probate – Appeal against grant of probate – Procedural fairness – Where respondent sought grant of probate of will dated 5 December 2013 – Where earlier will left share of jewellery and personal effects to appellant – Where appellant lodged caveat against grant of probate – Where primary judge granted probate – Where Court of Appeal found appellant denied procedural fairness at trial – Where majority of Court of Appeal held re-trial should not be ordered – Whether majority of Court of Appeal erred in failing to order re-trial – Whether intermediate appellate court can assess whether party denied procedural fairness would be unsuccessful if

new trial ordered – Whether appellant lacked sufficient interest to challenge grant of probate.

Appealed from NSW (CA): [\[2017\] NSWCA 124](#)

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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) 250 FCR 341; (2017) 341 ALR 415

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Stamp Duty

Commissioner of State Revenue v Placer Dome Inc
P6/2018: [\[2018\] HCATrans 25](#)

Date heard: 16 February 2018 – *Special leave granted.*

Catchwords:

Stamp duty – *Stamp Act 1921 (WA) s 76ATI* – Assessment – Acquisition of shares – Where Commissioner assessed stamp duty payable for share acquisition on basis value of respondent’s land was value of all respondent’s property less value of “non-land assets” – Where Tribunal affirmed Commissioner’s decision – Where Court of Appeal allowed appeal on basis Tribunal failed to distinguish between value of respondent’s land and value of respondent’s business – Whether Court of Appeal erred in holding Tribunal erred in failing to apply “conventional *Spencer* principles” in valuing land – Whether Court of Appeal erred in concluding evidence supported finding respondent’s business had material goodwill.

Appealed from WASC (CA): [\[2017\] WASCA 165](#)

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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

[B60/2017](#); [B61/2017](#); [B62/2017](#); [B63/2017](#): [\[2017\] 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) 105 ATR 413; (2017) 2017 ATC 20-612

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Torts

Amaca Pty Limited v Latz; Latz v Amaca Pty Limited
A8/2018, A7/2018: [\[2018\] HCATrans 24](#)

Date heard: 16 February 2018 – *Special leave granted.*

Catchwords:

Torts – Personal injury – Damages – Future economic loss – Where primary judge concluded plaintiff’s mesothelioma caused by asbestos emanating from products manufactured by defendant – Where primary judge awarded damages for loss of expectation of receiving age pension and superannuation pension during “lost years” – Where majority of Full Court held primary judge correctly awarded damages for future economic loss but reduced allowance for superannuation pension – Whether majority of Full Court erred in failing to find primary judge erred in awarding damages for future economic loss during “lost years” – Whether Full Court erred in including allowance for loss of expectation of receiving age pension and superannuation pension – Whether Full Court erred in deducting benefit payable to partner upon death from allowance for loss of expectation of receiving superannuation pension.

Appealed from SASC (FC): [\[2017\] SASCF 145](#); (2017) 129 SASR 61

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8: CASES NOT PROCEEDING OR VACATED

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9: SPECIAL LEAVE REFUSED

Publication of Reasons: 14 March 2018

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	AMR16 & Anor	Minister for Immigration and Border Protection & Anor (M177/2017)	Federal Court of Australia [2017] FCA 1344	Application dismissed [2018] HCASL 29
2.	Toura	Minister for Immigration and Border Protection & Anor (M180/2017)	Federal Court of Australia [2017] FCA 1405	Application dismissed [2018] HCASL 30
3.	Josan	Minister for Immigration and Border Protection & Anor (M184/2017)	Federal Court of Australia [2017] FCA 1418	Application dismissed [2018] HCASL 31
4.	McGuinness	Heffernan (P64/2017)	Supreme Court of Western Australia (Court of Appeal) [2017] WASCA 194	Application dismissed [2018] HCASL 32
5.	SZUOU	Minister for Immigration and Border Protection & Anor (S285/2017)	Federal Court of Australia [2017] FCA 1410	Application dismissed [2018] HCASL 33
6.	BKU16	Minister for Immigration and Border Protection & Anor (S297/2017)	Federal Court of Australia [2017] FCA 1402	Application dismissed [2018] HCASL 34
7.	BNR16 & Ors	Minister for Immigration and Border Protection & Anor (S300/2017)	Federal Court of Australia [2017] FCA 1476	Application dismissed [2018] HCASL 35
8.	CPM16 & Anor	Minister for Immigration and Border Protection & Anor (S306/2017)	Federal Court of Australia [2017] FCA 1475	Application dismissed [2018] HCASL 36
9.	Harchandani	Minister for Immigration and Border Protection & Anor (S9/2018)	Federal Court of Australia [2017] FCA 1395	Application dismissed [2018] HCASL 38
10.	Olivieri	The Queen (S15/2018)	Supreme Court of New South Wales (Court of Criminal Appeal) [2016] NSWCCA 169	Application dismissed [2018] HCASL 39
11.	Ewen	The Queen (S259/2017)	Supreme Court of New South Wales (Court of Criminal Appeal) [2015] NSWCCA 117	Application dismissed [2018] HCASL 40
13.	Casano	Antipov & Anor (S279/2017)	Family Court of Australia	Application dismissed with costs [2018] HCASL 41

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
14.	Cranney	The Queen (S281/2017)	Supreme Court of New South Wales (Court of Criminal Appeal) [2017] NSWCCA 234	Application dismissed [2018] HCASL 42

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Publication of Reasons: 21 March 2018

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	McDonald	The State of South Australia & Anor (A41/2017)	Supreme Court of South Australia [2017] SASCFC 146	Application dismissed [2018] HCASL 43
2.	McDonald & Anor	Minister for Education and Child Development & Ors (A42/2017)	Supreme Court of South Australia [2017] SASCFC 146	Application dismissed [2018] HCASL 43
3.	Darrell Morgan Featherstone as Trustee under Instrument Number 710924208	Ashala Model Agency Pty Ltd (in liquidation) & Anor (B69/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 260	Application dismissed [2018] HCASL 44
4.	Demy-Geroe	Giffing & Ors (B71/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 228	Application dismissed [2018] HCASL 45
5.	CSJ15	Minister for Immigration and Border Protection & Anor (M187/2017)	Federal Court of Australia [2107] FCA 1463	Application dismissed [2018] HCASL 46
6.	CVK16	Minister for Immigration and Border Protection & Anor (P1/2018)	Federal Court of Australia [2017] FCA 1434	Application dismissed [2018] HCASL 47
7.	SZRKL	Minister for Immigration and Border Protection & Anor (S274/2017)	Federal Court of Australia [2017] FCA 1309	Application dismissed [2018] HCASL 48
8.	SZTAP	Minister for Immigration and Border Protection & Anor (S293/2017)	Federal Court of Australia [2017] FCA1370	Application dismissed [2018] HCASL 49
9.	ADD15	Minister for Immigration and Border Protection & Anor (S294/2017)	Federal Court of Australia [2017] FCA 1369	Application dismissed [2018] HCASL 50
10.	AKQ17	Minister for Immigration and Border Protection & Anor (S312/2017)	Federal Court of Australia [2017] FCA 1454	Application dismissed [2018] HCASL 51
11.	AQN16	Minister for Immigration and Border Protection & Anor (S314/2017)	Federal Court of Australia [2017] FCA 1360	Application dismissed [2018] HCASL 52
12.	DDC16	Minister for Immigration and Border Protection & Anor (S316/2017)	Federal Court of Australia [2017] FCA 1356	Application dismissed [2018] HCASL 53
13.	DCV16	Minister for Immigration and Border Protection & Anor (B79/2017)	Federal Court of Australia [2017] FCA 1458	Application dismissed [2018] HCASL54
14.	BYD16	Minister for Immigration and Border Protection & Anor (B1/2018)	Federal Court of Australia [2017] FCA 1535	Application dismissed [2018] HCASL 55

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
15.	O'Sullivan	Barker J & Ors (P62/2017)	High Court of Australia	Application dismissed [2018] HCASL 56
16.	SZVXE & Ors	Minister for Immigration and Border Protection & Anor (S289/2017)	Federal Court of Australia [2017] FCA 1423	Application dismissed [2018] HCASL 57
17.	Majak	Rose & Anor (S290/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 279	Application dismissed [2018] HCASL 58
18.	Majak	Rose & Ors (S292/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 104	Application dismissed [2018] HCASL 58
19.	DCW16	Minister for Immigration and Border Protection & Anor (S295/2017)	Federal Court of Australia [2017] FCA 1442	Application dismissed [2018] HCASL 59
20.	CNT16	Minister for Immigration and Border Protection & Anor (S296/2017)	Federal Court of Australia [2017] FCA 1430	Application dismissed [2018] HCASL 60
21.	BFU15	Minister for Immigration and Border Protection & Anor (S298/2017)	Federal Court of Australia [2017] FCA 1446	Application dismissed [2018] HCASL 61
22.	SZQES	Minister for Immigration and Border Protection & Anor (S299/2017)	Federal Court of Australia [2017] FCA 1440	Application dismissed [2018] HCASL 62
23.	SZVIE	Minister for Immigration and Border Protection & Anor (S304/2017)	Federal Court of Australia [2017] FCA 1361	Application dismissed [2018] HCASL 63
24.	CHY16	Minister for Immigration and Border Protection & Anor (S317/2017)	Federal Court of Australia [2017] FCA 1390	Application dismissed [2018] HCASL 64
25.	CNY15	Minister for Immigration and Border Protection & Anor (S7/2018)	Federal Court of Australia [2017] FCA 1456	Application dismissed [2018] HCASL 65
26.	Murphy	The Queen (B70/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 267	Application dismissed [2018] HCASL 66
27.	QNI Metals Pty Ltd	North Queensland Pipeline No 1 Pty Ltd (B74/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 297	Application dismissed with costs [2018] HCASL 67
28.	QNI Metals Pty Ltd	North Queensland Pipeline No 2 Pty Ltd (B75/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 297	Application dismissed with costs [2018] HCASL 67

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
29.	QNI Resources Pty Ltd	North Queensland Pipeline No 1 Pty Ltd (B76/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] QCA 297	Application dismissed with costs [2018] HCASL 67
30.	QNI Resources Pty Ltd	North Queensland Pipeline No 2 Pty Ltd (B77/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] QCA 297	Application dismissed with costs [2018] HCASL 67
31.	Clinton Robbins (A Pseudonym)	The Queen (M162/2017)	Supreme Court of Victoria (Court of Appeal) [2017] VSCA 288	Application dismissed [2018] HCASL 68
32.	Weihena Liyanage	Minister for Immigration and Border Protection & Anor (M178/2017)	Federal Court of Australia [2017] FCA 1333	Application dismissed with costs [2018] HCASL 69
33.	Kuek	Phillips (M182/2017)	Supreme Court of Victoria (Court of Appeal) [2017] VSCA 322	Application dismissed with costs on an indemnity basis [2018] HCASL 70
34.	Coshott	Prentice & Anor (S301/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 229	Application dismissed with costs [2018] HCASL 71
35.	Handley	The Queen (B64/2017)	Supreme Court of Queensland (Court of Appeal) [2011] QCA 361	Application dismissed [2018] HCASL 72
36.	Southern Colour (Vic) Pty Ltd	Parr & Anor (M164/2017)	Supreme Court of Victoria (Court of Appeal) [2017] VSCA 301	Application dismissed with costs [2018] HCASL 73

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Publication of Reasons: 23 March 2018

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	In the matter of an application by Jerrod James Conomy for leave to appeal (P63/2017)		High Court of Australia	Application dismissed [2018] HCASL 74

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23 March 2018: Sydney

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Byrne	The Queen (M153/2017)	Supreme Court of Victoria (Court of Appeal) [2017] VSCA 253	Application dismissed [2018] HCATrans 59
2.	Port of Newcastle Operations	The Australian Competition Tribunal & Ors (S236/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 124	Application dismissed with costs [2018] HCATrans 55
3.	Obeid	The Queen (S249/2017)	Supreme Court of New South Wales (Court of Criminal Appeal) [2017] NSWCCA 221	Application dismissed [2018] HCATrans 54
4.	Comcare	Roslyn Starkey (S253/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 151	Application dismissed with costs [2018] HCATrans 57
5.	Tamarama Fresh Juices Australia Pty Ltd & Ors	Commissioner of Taxation (S254/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 154	Application dismissed with costs [2018] HCATrans 58

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