



# HIGH COURT BULLETIN

Produced by the Legal Research Officer,  
High Court of Australia Library  
[2018] HCAB 3 (27 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
<a href="#"><i>Burns v Corbett &amp; Ors; Burns v Gaynor &amp; Ors; Attorney General for New South Wales v Burns &amp; Ors; Attorney General for New South Wales v Burns &amp; Ors; State of New South Wales v Burns &amp; Ors</i></a>	Constitutional Law
<a href="#"><i>Plaintiff M174/2016 v Minister for Immigration and Border Protection &amp; Anor</i></a>	Migration
<a href="#"><i>WET044 v The Republic of Nauru</i></a>	Migration

### 3: Cases Reserved

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

<a href="#"><i>Ancient Order of Foresters in Victoria Friendly Society Limited v Lifeplan Australia Friendly Society Limited &amp; Anor</i></a>	Equity
<a href="#"><i>UBS AG v Scott Francis Tyne as Trustee of the Argot Trust</i></a>	Procedure
<a href="#"><i>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</i></a>	Taxation
<a href="#"><i>Amaca Pty Limited v Latz; Latz v Amaca Pty Limited</i></a>	Torts

#### [4: Original Jurisdiction](#)

#### [5: Court of Disputed Returns](#)

#### [6: Section 40 Removal](#)

#### [7: Special Leave Granted](#)

<b>Case</b>	<b>Title</b>
<a href="#"><i>Work Health Authority v Outback Ballooning Pty Ltd &amp; Anor</i></a>	Constitutional Law
<a href="#"><i>Rodi v State of Western Australia</i></a>	Criminal Law
<a href="#"><i>McPhillamy v The Queen</i></a>	Evidence

#### [8: Cases Not Proceeding or Vacated](#)

<b>Case</b>	<b>Title</b>
<a href="#"><i>Govier v Uniting Church in Australia Property Trust (Q)</i></a>	Negligence

## 2: CASES HANDED DOWN

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

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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](#):  
[\[2018\] HCA 15](#)

**Judgment delivered:** 18 April 2018

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

#### Catchwords:

Constitutional law (Cth) – Chapter III – Where complaints made under *Anti-Discrimination Act* 1977 (NSW) came before Civil and Administrative Tribunal of New South Wales ("NCAT") – Where parties to disputes residents of different States – Where common ground that NCAT exercised State judicial power in hearing and determining disputes – Where common ground that NCAT not a "court of a State" – Whether Ch III of Constitution contains implication preventing any party to federal compact from conferring adjudicative authority in respect of matters listed in ss 75 and 76 of Constitution on organ of government, federal or State, other than a court referred to in Ch III.

Constitutional law (Cth) – Inconsistency between Commonwealth and State laws – Where *Civil and Administrative Tribunal Act* 2013 (NSW) purports to confer jurisdiction on NCAT to determine disputes between residents of different States – Whether State law alters, impairs or detracts from operation of *Judiciary Act* 1903 (Cth), s 39(2).

Words and phrases – "adjudicative authority", "administrative tribunal", "alter, impair or detract", "belongs to or is invested in", "constitutional implication", "court", "court of a State", "diversity jurisdiction", "federal Judicature", "federal jurisdiction", "inconsistency", "integrated national court system", "judicial power", "jurisdiction", "matter", "negative implication", "residents of different States", "State jurisdiction".

Constitution – Ch III, ss 51(xxxix), 71, 73(ii), 75, 76, 77, 106, 107, 108, 109.

*Judiciary Act* 1903 (Cth) – ss 38, 39.

*Anti-Discrimination Act* 1977 (NSW), ss 49ZT, 114.

*Civil and Administrative Tribunal Act* 2013 (NSW) – ss 28(2), 29(1), 32.

*Interpretation Act* 1987 (NSW) – s 31.

**Appealed from NSWSC (CA):** [\[2017\] NSWCA 3](#); (2017) 343 ALR 690; (2017) 316 FLR 448

**Held:** Appeals dismissed

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## Migration

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

**M174/2016:** [\[2018\] HCA 16](#)

**Judgment delivered:** 18 April 2018

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

### Catchwords:

Migration – Pt 2 Div 3 subdiv AB of *Migration Act* 1958 (Cth) – Where plaintiff applied for protection visa – Where plaintiff claimed real chance of harm due to being Christian – Where plaintiff claimed to attend church regularly – Where delegate of Minister for Immigration and Border Protection called reverend of church and reverend provided information on plaintiff's attendance at church – Where delegate did not provide plaintiff with information provided by reverend or invite plaintiff to comment on it – Where delegate refused to grant protection visa to plaintiff – Whether delegate failed to comply with s 57(2) of *Migration Act*.

Migration – Pt 7AA of *Migration Act* 1958 (Cth) – Where plaintiff "fast track review applicant" within meaning of *Migration Act* – Whether decision affected by jurisdictional error because of failure to comply with s 57(2) a "fast track reviewable decision" within meaning of Pt 7AA – Where "new information" defined as documents or information not before Minister when deciding to refuse to grant protection visa that Immigration Assessment Authority considers may be relevant – Power of Authority to get

new information – Power of Authority to consider new information – Obligation of Authority to invite applicant to comment on new information – Nature of review by Authority – Whether Authority's decision not to interview plaintiff and certain other persons or to have regard to certain information provided by plaintiff legally unreasonable.

Words and phrases – "condition of valid performance", "decision", "decision that is made in fact", "de novo consideration of the merits", "exceptional circumstances", "fast track reviewable decision", "jurisdictional error", "legally effective decision", "legally unreasonable", "new information", "not a valid decision", "not previously known", "personal information", "relevant information", "review material", "unreasonable failure to exercise power", "would be the reason, or part of the reason for refusing to grant a visa".

*Migration Act 1958 (Cth)* – ss 5, 46A, 54, 55, 56, 57, 69, Pt 7AA.

*Migration Regulations 1994 (Cth)* – reg 4. 43.

**Held:** Questions answered

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*WET044 v The Republic of Nauru*

**M132/2017:** [\[2018\] HCA 14](#)

**Judgment delivered:** 11 April 2018

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

**Catchwords:**

Migration – Refugees – Appeal as of right from Supreme Court of Nauru – Where Secretary of Nauru Department of Justice and Border Control determined appellant not refugee and not entitled to complementary protection – Where Refugee Status Review Tribunal affirmed Secretary's determination – Where Tribunal adopted reasoning of Secretary – Whether Tribunal failed to consider country information before it – Whether Tribunal acted in way that was procedurally unfair by failing to put to appellant nature and content of country information it relied upon.

Words and phrases – "appeal", "country information", "procedural fairness".

*Appeals Act 1972 (Nr)* – s 44(a).

*Refugees Convention Act 2012 (Nr)*.

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

**Held:** Appeal dismissed

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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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### 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):** [\[2016\] SASCFC 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):** [\[2015\] SASCF 24](#)

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*The Queen v Falzon*

**M161/2017:** [\[2018\] HCATrans 68](#)

**Date heard:** 19 April 2018

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

**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](#)

*Orders made on 19 April 2018 allowing appeal.  
Written reasons of the Court to be published at a future date.*

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## Equity

*Ancient Order of Foresters in Victoria Friendly Society Limited v Lifeplan Australia Friendly Society Limited & Anor*  
**A37/2017:** [\[2018\] HCATrans 64](#)

**Date heard:** 12 April 2018

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

**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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## Migration

*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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## 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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*UBS AG v Scott Francis Tyne as Trustee of the Argot Trust*

**B54/2017:** [\[2018\] HCATrans 67](#)

**Date heard:** 18 April 2018

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

**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 – Where majority of Full Federal Court allowed appeal – 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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## 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](#): [\[2018\] HCATrans 62](#); [\[2018\] HCATrans 63](#)

**Date heard:** 10 and 11 April 2018

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

### 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 66](#)

**Date heard:** 17 April 2018

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

**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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*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.

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### 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

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*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.

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### Constitutional Law

*Clubb v Edwards & Anor*

**M46/2018:** *Removed into High Court under s 40 of Judiciary Act 1903 (Cth) on 23 March 2018*

**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*

**H2/2018:** *Removed into High Court under s 40 of Judiciary Act 1903 (Cth) on 23 March 2018*

**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.

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### Constitutional Law

*Work Health Authority v Outback Ballooning Pty Ltd & Anor*

**D7/2017:** [\[2018\] HCATrans 69](#)

**Date heard:** 20 April 2018 – *Special leave granted.*

**Catchwords:**

Constitutional law – Inconsistency – *Work Health and Safety (National Uniform Legislation) Act 2011 (NT)* – Where hot air balloon passenger died from injuries suffered as result of scarf being sucked into inflation fan – Where appellant alleged first respondent breached s 32 of Act – Where magistrate dismissed complaint on basis *Air Navigation Act 1920 (Cth)*, *Civil Aviation Act 1988 (Cth)* and other Commonwealth regulation covered field of safety of air navigation – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in concluding federal civil aviation legislation excluded operation of *Work Health and Safety (National Uniform Legislation) Act 2011 (NT)*.

**Appealed from NTSC (CA):** [\[2017\] NTCA 7](#); (2017) 326 FLR 1

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### Corporations

*Mighty River International Limited v Hughes & 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 872 – 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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*Rodi v State of Western Australia*

**P27/2017:** [\[2018\] HCATrans 71](#)

**Date heard:** 20 April 2018 – *Special leave granted.*

**Catchwords:**

Criminal law – Miscarriage of justice – Fresh evidence – *Criminal Appeals Act 2004 (WA)* – Where appellant convicted at trial of possession with intent to sell or supply contrary to s 6(1)(a) of *Misuse of Drugs Act 1981 (WA)* – Where prosecution witness gave evidence at trial about cannabis yields – Where witness' evidence inconsistent with witness' earlier evidence – Where majority of Court of Appeal characterised witness' earlier evidence as fresh evidence but dismissed appeal on basis no significant possibility appellant would have been acquitted if fresh evidence before jury – Whether majority of Court of Appeal erred in concluding no significant possibility of acquittal – Whether majority of Court of Appeal erred in holding that if prosecutor breached duty of disclosure, breach did not give rise to miscarriage of justice.

**Appealed from WASC (CA):** [\[2017\] WASCA 81](#); (2017) 51 WAR 96

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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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## Evidence

*McPhillamy v The Queen*

**S258/2017:** [\[2018\] HCATrans 73](#)

**Date heard:** 20 April 2018 – *Special leave granted on limited grounds.*

**Catchwords:**

Evidence – Tendency evidence – Where appellant charged with offences involving child sexual abuse – Where trial judge admitted tendency evidence – Where appellant convicted at trial – Where Court of Criminal Appeal dismissed appeal – Whether majority of Court of Criminal Appeal erred in holding tendency evidence had significant probative value – Whether majority of Court of Criminal Appeal erred in holding probative value of tendency evidence substantially outweighed prejudicial effect.

**Appealed from NSW (CA):** [\[2017\] NSWCCA 130](#)

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## Interpretation

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

**B9/2018:** [\[2018\] 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*  
**S91/2018:** [\[2018\] 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*  
**C5/2018:** [\[2018\] 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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## 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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## 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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## 8: CASES NOT PROCEEDING OR VACATED

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### Negligence

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

**B51/2017:** [\[2018\] HCATrans 65](#)

**Date heard:** 13 April 2018 – *Special leave revoked.*

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

**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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## 9: SPECIAL LEAVE REFUSED

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### Publication of Reasons: 11 April 2018

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<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Sandex	Bondir & Anor (M12/2018)	Family Court of Australia	Application dismissed <a href="#">[2018] HCASL 75</a>
2.	BZAAA	Minister for Immigration and Border Protection & Anor (S287/2017)	Federal Court of Australia [2017] FCA 1634	Application dismissed <a href="#">[2018] HCASL 76</a>
3.	Goni	Minister for Immigration and Border Protection & Anor (S305/2017)	Federal Court of Australia No MNC	Application dismissed <a href="#">[2018] HCASL 77</a>
4.	Singh	Minister for Immigration and Border Protection & Anor (S34/2018)	Federal Court of Australia [2017] FCA 1424	Application dismissed <a href="#">[2018] HCASL 78</a>

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## Publication of Reasons: 17 April 2018

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Maras	Lessee (A43/2017)	Full Court of the Supreme Court of South Australia [2017] SASCFC 154	Application dismissed with costs <a href="#">[2018] HCASL 79</a>
2.	Bodycorp Repairers Pty Ltd	Maisano & Ors (M152/2017)	Supreme Court of Victoria [2017] VSCA 252	Application dismissed with costs <a href="#">[2018] HCASL 80</a>
3.	Zandipour	The Queen (M156/2017)	Supreme Court of Victoria (Court of Appeal) [2017] VSCA 179	Application dismissed <a href="#">[2018] HCASL 81</a>
4.	Collins & Anor	Timbercorp Finance Pty Ltd (In Liquidation) & Anor (M4/2018)	Supreme Court of Victoria (Court of Appeal) [2017] VSCA 361	Application dismissed with costs <a href="#">[2018] HCASL 82</a>
5.	Idenix Pharmaceuticals LLC & Ors	Gilead Sciences Pty Ltd & Anor (S12/2018)	Full Court of the Federal Court of Australia [2017] FCAFC 196	Application dismissed with costs <a href="#">[2018] HCASL 83</a>
6.	Lodin	Lodin (S14/2018)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 327	Application dismissed with costs <a href="#">[2018] HCASL 84</a>
7.	Mailey & Ors	Sutherland Shire Council (S22/2018)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 343	Application dismissed with costs <a href="#">[2018] HCASL 85</a>

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## Publication of Reasons: 18 April 2018

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Kowalski	Mitsubishi Motors Australia Staff Superannuation & Anor (A1/2018)	Supreme Court of South Australia [2017] SASCFC 175	Application dismissed <a href="#">[2018] HCASL 86</a>
2.	Hunter	Child Support Registrar (A6/2018)	Full Court of the Family Court of Australia	Application dismissed <a href="#">[2018] HCASL 87</a>
3.	Grewal & Anor	Minister for Immigration and Border Protection & Anor (M6/2018)	Federal Court of Australia [2017] FCA 1533	Application dismissed <a href="#">[2018] HCASL 88</a>
4.	CVJ16	Minister for Immigration and Border Protection & Anor (S33/2018)	Federal Court of Australia [2018] FCA 52	Application dismissed <a href="#">[2018] HCASL 89</a>

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## Publication of Reasons: 18 April 2018

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Groom	Police (A2/2018)	Full Court of the Supreme Court of South Australia [2017] SASCFC 161	Application dismissed <a href="#">[2018] HCASL 90</a>
2.	BZS15	Minister for Immigration and Border Protection & Anor (M181/2017)	Federal Court of Australia [2017] FCA 1349	Application dismissed <a href="#">[2018] HCASL 92</a>
3.	CAL16 & Anor	Minister for Immigration and Border Protection & Anor (S283/2017)	Federal Court of Australia [2017] FCA 1630	Application dismissed <a href="#">[2018] HCASL 93</a>
4.	Zhu & Anor	Minister for Immigration and Border Protection & Anor (S32/2018)	Federal Court of Australia [2018] FCA 68	Application dismissed <a href="#">[2018] HCASL 94</a>
5.	Singh	Minister for Immigration and Border Protection & Anor (A44/2017)	Federal Court of Australia [2017] FCA 1428	Application dismissed with costs <a href="#">[2018] HCASL 95</a>
6.	Stubbs	The Queen (C1/2018)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2017] ACTCA 58	Application dismissed <a href="#">[2018] HCASL 96</a>
7.	Barrett	TCN Channel Nine Pty Ltd (S313/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 304	Application dismissed with costs <a href="#">[2018] HCASL 97</a>
8.	South West Helicopters Pty Limited & Anor	Essential Energy (Formerly Country Energy) & Ors (S10/2018)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 312	Application dismissed with costs <a href="#">[2018] HCASL 98</a>
9.	South West Helicopters Pty Limited & Anor	Essential Energy & Ors (S11/2018)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 312	Application dismissed with costs <a href="#">[2018] HCASL 98</a>
10.	Valve Corporation	Australian Competition and Consumer Commission (S23/2018)	Full Court of the Federal Court of Australia [2017] FCAFC 224	Application dismissed with costs <a href="#">[2018] HCASL 99</a>
11.	Forrester	Smoje (S2/2018)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 308	Application dismissed <a href="#">[2018] HCASL 100</a>
12.	The Owners Strata Plan Number 57164	Yau & Anor (S21/2018)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 341	Application dismissed <a href="#">[2018] HCASL 101</a>
13.	Minister for Immigration and Border Protection	CRY16 & Anor (M7/2018)	Full Court of the Federal Court of Australia [2017] FCAFC 210	Application dismissed with costs <a href="#">[2018] HCASL 102</a>

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<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
14.	Blakeley & Ors	CGU Insurance Limited & Ors (M9/2018)	Supreme Court of Victoria (Court of Appeal) [2017] VSCA 378	Application dismissed with costs <a href="#">[2018] HCASL 103</a>
15.	Dimitrov	The Supreme Court of Victoria & Ors (S291/2017)	High Court of Australia [2017] HCA 51	Application dismissed with costs <a href="#">[2018] HCASL 104</a>

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## 20 April 2018: Sydney

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Brisbane Youth Service Inc	Beven (B57/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 211	Application dismissed with costs <a href="#">[2018] HCATrans 72</a>
2.	Transport Accident Commission of Victoria	Yarham & Ors (S8/2018)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 301	Application dismissed with costs <a href="#">[2018] HCATrans 74</a>

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**20 April 2018: Sydney**

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<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Andalong	O'Neill (D8/2017)	Supreme Court of the Northern Territory [2017] NTSC 77	Application dismissed <a href="#">[2018] HCATrans 70</a>

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