



HIGH COURT BULLETIN

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[2023] HCAB 9 (21 November 2023)

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>GLJ v The Trustees of the Roman Catholic Church for the Diocese of Lismore</i>	Civil Procedure
<i>Benbrika v Minister for Home Affairs & Anor</i>	Constitutional Law
<i>Jones v Commonwealth of Australia & Ors</i>	Constitutional Law
<i>HCF v The Queen</i>	Criminal Law
<i>McNamara v The King</i>	Evidence
<i>Young & Anor v Chief Executive Officer (Housing)</i>	Leases and Tenancies

3: Cases Reserved

Case	Title
<u><i>Tesseract International Pty Ltd v Pascale Construction Pty Ltd</i></u>	Arbitration
<u><i>NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor</i></u>	Constitutional Law
<u><i>Hurt v The King; Delzotto v The King</i></u>	Criminal Law
<u><i>The King v Anna Rowan – A Pseudonym</i></u>	Criminal Law
<u><i>Lesianawai v Minister for Immigration, Citizenship and Multicultural Affairs</i></u>	Immigration

4: Original Jurisdiction

5: Section 40 Removal

6: Special Leave Granted

Case	Title
<u><i>CBI Constructors Pty Ltd & Anor v Chevron Australia Pty Ltd</i></u>	Arbitration
<u><i>Willmot v The State of Queensland</i></u>	Civil Procedure
<u><i>Dayney v The King</i></u>	Criminal Law
<u><i>Director of Public Prosecutions (Cth) v Kola</i></u>	Criminal Law
<u><i>Cook (A Pseudonym) v The King</i></u>	Evidence
<u><i>Toyota Motor Corporation Australia Limited (ACN 009 686 097) v Williams & Anor</i></u>	Trade Practices
<u><i>Williams & Anor v Toyota Motor Corporation Australia Limited (ACN 009 686 097)</i></u>	Trade Practices

7: Cases Not Proceeding or Vacated

8: Special Leave Refused

2: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the November 2023 sittings.

Civil Procedure

GLJ v The Trustees of the Roman Catholic Church for the Diocese of Lismore

[S150/2022](#): [\[2023\] HCA 32](#)

Judgment delivered: 1 November 2023

Coram: Kiefel CJ, Gageler, Steward, Gleeson and Jagot JJ

Catchwords:

Courts – Abuse of process – Permanent stay of proceedings – Where appellant commenced claim for damages for personal injury against respondent 52 years after alleged sexual assault by priest employed by respondent occurred – Where no limitation period for claims resulting from child sexual abuse under s 6A of *Limitation Act 1969* (NSW) – Whether death of alleged perpetrator and other critical witnesses is exceptional circumstance so trial of proceedings would be necessarily unfair – Whether proceeding in such circumstances an abuse of process justifying permanent stay of proceedings.

Courts – Appeals – Applicable standard of appellate review – Where party seeking permanent stay of proceedings – Where grant of permanent stay of proceedings requires determination of whether trial will be necessarily unfair or so unfairly and unjustifiably oppressive as to constitute an abuse of process – Whether question of abuse of process involves exercise of discretion and error of principle to be identified in accordance with *House v King* (1936) 55 CLR 499 – Whether question of trial constituting abuse of process has one correct answer and "correctness standard" in *Warren v Coombes* (1979) 142 CLR 531 applies.

Words and phrases – "abuse of process", "adversarial system", "applicable standard of appellate review", "child sexual abuse", "correctness standard", "discretion", "exceptional circumstances", "fair trial", "inherent, implied, or statutory jurisdiction of courts", "irreducible minimum standards of fairness", "limitation period", "necessary unfairness", "permanent stay of proceedings", "unfairly and unjustifiably oppressive", "unfairness or oppression".

Civil Procedure Act 2005 (NSW), s 67.

Limitation Act 1969 (NSW), s 6A.

Uniform Civil Procedure Rules 2005 (NSW), r 13.4(1)(c).

Appealed from NSWSC (CA): [\[2022\] NSWCA 78](#)

Held: Appeal allowed with costs.

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Constitutional Law

Benbrika v Minister for Home Affairs & Anor

M90/2022: [\[2023\] HCA 33](#)

Judgment delivered: 1 November 2023

Coram: Kiefel CJ, Gageler, Gordon, Edelman, Steward, Gleeson and Jagot JJ

Catchwords:

Constitutional law (Cth) – Judicial power of Commonwealth – Cessation of Australian citizenship – Where s 36D of *Australian Citizenship Act 2007* (Cth) ("Act") provided Minister for Home Affairs may make determination that person ceases to be Australian citizen if, among other matters, person has been convicted of offence against provision of Pt 5.3 of *Criminal Code* (Cth) (terrorism) and sentenced to period of imprisonment of at least 3 years in respect of conviction, and Minister satisfied conduct demonstrates repudiation of allegiance to Australia – Where s 36B of Act held in *Alexander v Minister for Home Affairs* (2022) 96 ALJR 560; 401 ALR 438 to be contrary to Ch III of *Constitution* for conferring upon Minister exclusively judicial function of adjudging and punishing criminal guilt – Where applicant citizen of Algeria and Australia – Where applicant convicted of and sentenced to term of imprisonment exceeding 3 years for offences against provisions of Pt 5.3 of *Criminal Code* – Where Minister determined pursuant to s 36D of Act that applicant cease to be Australian citizen – Where accepted, on authority of *Alexander*, that s 36D of Act properly characterised as punitive – Whether s 36D, like s 36B, contrary to Ch III of *Constitution* for conferring upon Minister exclusively judicial function of punishing criminal guilt – Whether Ch III prohibits reposing in Commonwealth Executive power to punish criminal guilt where court has adjudged criminal guilt – Whether prohibition subject to exception for involuntary deprivation of citizenship as punishment following conviction.

Words and phrases – "adjudging and punishing criminal guilt", "alien", "allegiance to Australia", "citizen", "citizenship", "citizenship cessation", "denationalisation", "deprivation of citizenship", "deprivation of liberty", "exercise of judicial power", "judicial

function", "people of the Commonwealth", "punishment", "punitive", "separation of powers", "terrorism", "terrorism-related conduct".

Constitution, Ch III.
Australian Citizenship Act 2007 (Cth), ss 36A, 36D.

Special case referred to the Full Court on 23 February 2023.

Held: Special case answered with costs.

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Jones v Commonwealth of Australia & Ors

B47/2022: [\[2023\] HCA 34](#)

Judgment delivered: 1 November 2023

Coram: Kiefel CJ, Gageler, Gordon, Edelman, Steward, Gleeson and Jagot JJ

Catchwords:

Constitutional law (Cth) – Powers of Commonwealth Parliament – Power to make laws with respect to naturalisation and aliens – Cessation of Australian citizenship – Where s 34(2)(b)(ii) of *Australian Citizenship Act 2007* (Cth) ("Act"), in context, provided Minister may revoke person's Australian citizenship acquired by conferral if, among other matters, person "convicted of a serious offence" within meaning of s 34(5) after making application to become Australian citizen – Where s 34(5) provided person "convicted of a serious offence" for purposes of s 34 if person convicted of offence against Australian law or foreign law for which person sentenced to death or to "serious prison sentence" and person committed offence before becoming Australian citizen – Where s 3 defined "serious prison sentence" as sentence of imprisonment for period of at least 12 months – Where plaintiff British and Australian citizen – Where plaintiff Australian citizen by virtue of certificate of Australian citizenship – Where plaintiff convicted of criminal offences relating to conduct before becoming Australian citizen and sentenced to more than 12 months' imprisonment – Where Minister revoked plaintiff's Australian citizenship under s 34(2) of Act – Whether s 34(2)(b)(ii) of Act supported by s 51(xix) of *Constitution* – Whether s 34(2)(b)(ii) law with respect to naturalisation.

Constitutional law (Cth) – Judicial power of Commonwealth – Cessation of Australian citizenship – Where precondition to Minister's power to revoke person's Australian citizenship under s 34(2)(b)(ii) of Act was, among other things, that person convicted of and sentenced to imprisonment for period of at least 12 months for offence committed before becoming Australian citizen – Whether s 34(2)(b)(ii) contrary to Ch III of *Constitution* for conferring upon

Minister exclusively judicial function of punishing criminal guilt – Whether s 34(2)(b)(ii) limited to what is reasonably capable of being seen as necessary for purpose of protecting integrity of naturalisation process.

Words and phrases – "alien", "cessation of citizenship", "citizen", "citizenship", "denationalisation", "denaturalisation", "deprivation of citizenship", "good character", "integrity of naturalisation process", "legitimate non-punitive purpose", "naturalisation", "naturalization", "people of the Commonwealth", "proportionality", "public interest", "punishing criminal guilt", "punishment", "punitive", "reasonable necessity", "revocation of citizenship", "statutory precondition".

Constitution, s 51(xix), Ch III.

Australian Citizenship Act 2007 (Cth), s 34.

Special case referred to the Full Court on 3 April 2023.

Held: Special case answered with costs.

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Criminal Law

HCF v The Queen

B50/2022: [\[2023\] HCA 35](#)

Judgment delivered: 15 November 2023

Coram: Gageler, Edelman, Steward, Gleeson and Jagot JJ

Catchwords:

Criminal practice – Appeal – Miscarriage of justice – Juror or jury misconduct – Where following trial by jury appellant convicted of six sexual offences – Where after entry of verdicts juror delivered note causing trial judge to authorise Sheriff to conduct investigation under s 70(7) of *Jury Act 1995* (Qld) – Where investigation revealed conduct involving juror undertaking internet research about definitions of and sentences for certain offences, juror informing other members of jury about research, and other members of jury not informing trial judge – Where conduct contrary to directions of trial judge – Whether conduct gave rise to miscarriage of justice.

Words and phrases – "capacity to prejudice", "discharge a juror", "disobedience", "double might", "fair-minded lay observer", "independent research", "integrity of the jury system", "integrity of the trial process", "internet research", "irregularity", "juror misconduct", "jurors", "jury directions", "jury trial", "misbehaviour", "miscarriage of justice", "practical injustice", "procedural fairness",

"proviso", "reasonable apprehension of bias", "substantial miscarriage of justice".

Criminal Code (Qld), s 668E.

Jury Act 1995 (Qld), ss 50, 53, 54, 56, 60, 69A, 70.

Appealed from QLDSC (CA): [\[2021\] QCA 189](#)

Held: Appeal dismissed.

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Evidence

McNamara v The King

S143/2022: [\[2023\] HCA 36](#)

Judgment delivered: 15 November 2023

Coram: Gageler ACJ, Gordon, Steward, Gleeson, Jagot JJ

Catchwords:

Evidence – Criminal trial – Joint trial – Discretionary exclusion rule – Where appellant and co-accused convicted of murder and supplying large commercial quantity of methylamphetamine – Where appellant sought to lead evidence at trial that co-accused admitted participation in several homicides and other criminal violence to establish defence of duress – Where evidence excluded because unfairly prejudicial to co-accused – Where s 135(a) of *Evidence Act 1995* (NSW) permits court to refuse to admit evidence if probative value substantially outweighed by danger of unfair prejudice to "a party" – Whether "a party" includes co-accused in joint criminal trial.

Words and phrases – "a party", "discretionary exclusion", "evidence", "interests of justice", "joint criminal trial", "joint indictment", "jointly charged", "proceeding", "reasons of principle and policy", "right to adduce admissible evidence", "unfairly prejudicial".

Criminal Procedure Act 1986 (NSW), ss 21(2)(b), 29, 29A.

Evidence Act 1995 (NSW), ss 9, 135(a).

Appealed from NSWSC (CCA): [\[2021\] NSWCCA 160](#); (2021) 290 A Crim R 239

Held: Appeal dismissed.

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Residential Tenancies

Young & Anor v Chief Executive Officer (Housing)

[D5/2022](#): [\[2023\] HCA 31](#)

Judgment delivered: 1 November 2023

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

Catchwords:

Residential tenancies – Where s 122(1) of *Residential Tenancies Act 1999* (NT) ("Act") relevantly provided Civil and Administrative Tribunal of the Northern Territory ("Tribunal") may order compensation for loss or damage suffered by landlord or tenant under tenancy agreement be paid by other party because other party failed to comply with agreement – Where tenancy agreement between parties prescribed by Act – Where term of tenancy agreement imposed by s 49(1) of Act required landlord to take reasonable steps to provide and maintain locks and other security devices necessary to ensure premises and ancillary property were reasonably secure – Where premises had no back door for 68 months – Whether Tribunal empowered by s 122(1) to order landlord compensate tenant for loss or damage by way of distress and disappointment due to insecurity tenant felt because of landlord's breach of tenancy agreement – Whether s 122 incorporated common law principles of remoteness – Whether common law principles of remoteness precluded tenant from recovering compensation for distress and disappointment unless consequent upon physical inconvenience.

Words and phrases – "breach of contract", "causation", "compensation for loss or damage", "damages", "disappointment", "distress", "insecurity", "landlord", "peace of mind", "reasonable steps", "reasonably secure", "remoteness", "residential premises", "residential tenancy", "scope of duty", "security device", "statutory compensation", "tenancy agreement".

Residential Tenancies Act 1999 (NT), ss 49, 122.

Appealed from NT (CA): [\[2022\] NTCA 1](#)

Held: Appeal allowed with costs.

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3: CASES RESERVED

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

Arbitration

Tesseract International Pty Ltd v Pascale Construction Pty Ltd

A9/2023: [\[2023\] HCATrans 160](#)

Date heard: 15 November 2023

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Arbitration – Arbitral proceedings – Proportionate liability – Powers and duties of arbitrator -- Where appellant agreed to provide engineering consultancy services to respondent in relation to design and construction of warehouse – Where, under contract, if dispute between appellant and respondent arose, dispute could be submitted to arbitration – Where dispute arose where respondent alleged breach of contract, duty of care and misleading or deceptive conduct in contravention of s 18 of *Australian Consumer Law* – Where appellant denied allegations, but pleaded in alternative that any damages payable should be reduced by reason of proportionate liability provisions under Part 3 of *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA) and Part VIA of *Competition and Consumer Act 2010* (Cth) (collectively “proportionate liability regimes”) – Whether proportionate liability regimes amenable to arbitration – Whether s 28 of *Commercial Arbitration Act 2011* (SA) empowers arbitrator to apply proportionate liability regimes, or whether terms of legislation preclude arbitrator from doing so – Whether implied power conferred on arbitrator to determine parties’ dispute empowers arbitrator to apply proportionate liability regimes, or whether terms of legislation preclude arbitrator from doing so.

Appealed from SASC (CA): [\[2022\] SASCA 107](#); (2022) 140 SASR 395; (2022) 406 ALR 293

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Constitutional Law

NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor

S28/2023: [\[2023\] HCATrans 153](#); [\[2023\] HCATrans 154](#)

Date heard: 7 and 8 November 2023

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law (Cth) – Judicial power of the Commonwealth – Unlawful non-citizen in immigration detention – No real prospect of removal from Australia in reasonably foreseeable future – Whether provision for indefinite detention without judicial order infringes Chapter III of the *Constitution* – Whether detention involves an exercise of judicial power of the Commonwealth by the Executive – Whether detention is for a non-punitive purpose – Whether Court should overrule or distinguish *Al-Kateb v Godwin* (2004) 219 CLR 562.

Immigration – Unlawful non-citizens – Detention pending removal from Australia – No real prospect of removal from Australia in reasonably foreseeable future – Whether detention lawful under *Migration Act 1958* (Cth) – Whether detention is temporally limited by purpose of removal – Whether requirement to remove as soon as reasonably practicable implies time limit on detention – Whether position considered in *Al-Kateb* altered since decision in *Commonwealth v AJL20* (2021) 273 CLR 43 because of introduction of s 197C(3) of *Migration Act*.

Statutes – Acts of Parliament – Construction and interpretation – Presumption of legislative intention not to invade personal common law rights.

Special case referred to the Full Court on 6 June 2023.

Orders made on 8 November 2023 answering questions. Written reasons of the Court to be published at a future date.

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Contract

Karpik v Carnival PLC ARBN 107 998 443 & Anor

S25/2023: [\[2023\] HCATrans 99](#); [\[2023\] HCATrans 100](#)

Date heard: 3 and 4 August 2023

Coram: Gageler, Gordon, Edelman, Gleeson and Jagot JJ

Catchwords:

Contract – Construction – Class action waiver clause – Exclusive jurisdiction clause – Where representative proceedings brought under Pt IVA of *Federal Court of Australia Act 1976* (Cth) (“FCA Act”) against owner of cruise ship, *Ruby Princess* – Where class consisted of parties to either Australian terms and conditions, US terms and conditions or UK terms and conditions – Where US terms and conditions contained class action waiver clause, exclusive jurisdiction clause, and choice of law clause – Where Federal Court asked to determine whether US terms and conditions incorporated into Mr Ho’s contract and whether claim should in effect be stayed – Proper approach to construction of clauses.

Trade practices – Consumer law – Unfair terms – *Australian Consumer Law* (“ACL”), s 23 – Where primary judge held s 5(1)(g) of *Competition and Consumer Act 2010* (Cth) extends operation of s 23 of ACL to “engaging in conduct outside Australia... by bodies corporate... carrying on business in Australia” – Whether extraterritorial scope of s 23 of ACL applied to Mr Ho’s contract with second respondent – Whether class action waiver clause in Mr Ho’s contract void or unenforceable under s 23 of ACL.

Private international law – Enforcement – Exclusive jurisdiction clause – Where US terms and conditions contained exclusive jurisdiction clause in favour of US courts – Whether Mr Ho’s claim ought to be stayed pursuant to exclusive jurisdiction clause.

Representative proceedings – Class action – Waiver clause – Enforceability – Where primary judge and majority of Full Court held, because Pt IVA permissive, as group members can opt out under s 33J of FCA Act, parties are free to contractually waive right to participate in representative proceeding – Whether class action waiver clause in Mr Ho’s contract void or unenforceable for being contrary to Pt IVA of FCA Act.

Appealed from FCA (FC): [\[2022\] FCAFC 149](#); (2022) 294 FCR 524; (2022) 404 ALR 386; (2022) 163 ACSR 119

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Copyright

Real Estate Tool Box Pty Ltd & Ors v Campaigntrack Pty Ltd & Anor
S16/2023; [\[2023\] HCATrans 96](#)

Date heard: 1 August 2023

Coram: Gageler, Gordon, Edelman, Steward and Jagot JJ

Catchwords:

Copyright – Infringement – Authorisation – Where s 36(1) of *Copyright Act 1968* (Cth) provides copyright infringed by person who, not being owner of copyright, and without licence of owner, does in Australia, or “authorizes” doing in Australia of, any act comprised in copyright – Where s 36(1A) of *Copyright Act* sets out matters that must be taken into account in determining s 36(1) – Where Full Court found first, second, fifth and sixth appellants infringed copyright in works by authorising infringements of second respondent and other developers in developing system, and by authorising infringements of users in using system – Where Full Court found third and fourth respondents infringed copyright in works by authorising infringements of second respondent – Proper approach to construction of “authorizes” in s 36(1) of *Copyright Act* – Whether finding of authorisation of infringement of copyright under s 36(1) of *Copyright Act* requires mental element – Whether authorisation under s 36(1) of *Copyright Act* may be imposed on persons by imputing to them indifference on account of failure to inquire about supposed infringement.

Appealed from FCA (FC): [\[2022\] FCAFC 112](#); (2022) 292 FCR 512; (2022) 402 ALR 576; (2022) 167 IPR 411

Appealed from FCA (FC): [\[2022\] FCAFC 121](#)

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Corporations Law

Potts v National Australia Bank Limited (ABN 12 004 044 937)
S47/2023; S48/2023; [\[2023\] HCATrans 130](#); [\[2023\] HCATrans 131](#)

Date heard: 10 October 2023

Coram: Gageler, Gordon, Edelman, Steward and Gleeson JJ

Catchwords:

Corporations law – Proportionate liability – Where appellant Chief Financial Officer and director of Dick Smith Holdings Ltd (“DSH”) – Where National Australia Bank Ltd (“NAB”) became DSH’s financier

after entering into Syndicated Facility Agreement (“SFA”) – Where SFA contained representation as to accuracy of information provided by DSH to NAB – Where NAB relied on three causes of action for misleading conduct and appellant raised proportionate liability defences under ss 87CB of *Competition and Consumer Act 2010* (Cth), 1041L of *Corporations Act 2001* (Cth), and 12GP of *Australian Securities and Investments Commission Act 2001* (Cth), claiming DSH concurrent wrongdoer – Whether DSH concurrent wrongdoer – Whether, when determining if corporation, having regard to matters within its knowledge, engaged in misleading conduct by making representations in document authorised by board, issue should be determined solely by reference to matters within knowledge of board, rather than by reference to any knowledge attributable to corporation applying orthodox principles – Whether, when determining if corporation engaged in misleading conduct by making representations in document authorised by board, appropriate to exclude from consideration matters known to a particular member of board against whom allegations of misleading conduct been made, but not established.

Appealed from NSWSC (CA): [\[2022\] NSWCA 165](#); (2022) 371 FLR 349; (2022) 405 ALR 70; (2022) 163 ACSR 23

Orders made by consent on 10 October 2023 dismissing the appeal Potts & Anor v DSHE Holdings Ltd ACN 166 237 841 (receivers and managers appointed) (in liquidation) & Ors (S47/2023).

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Criminal Law

Bromley v The King

A40/2021: [\[2023\] HCATrans 62](#); [\[2023\] HCATrans 64](#)

Date heard: 17 and 18 May 2023

Coram: Gageler ACJ, Edelman, Steward, Gleeson and Jagot JJ

Catchwords:

Criminal law – Second or subsequent appeal – Further evidence – Where applicant and co-accused convicted of murder – Where, at trial, prosecution led evidence from eyewitness who suffered from schizoaffective disorder – Where applicant and co-accused appealed against convictions, including on ground that eyewitness’s evidence unsafe, but appeals dismissed and subsequent petitions for mercy refused – Where applicant sought to appeal pursuant to s 353A of *Criminal Law Consolidation Act 1935* (SA) – Where s 353A empowers Full Court to hear second or subsequent appeal against conviction by

person convicted on information if Court satisfied there “fresh and compelling evidence” that should, in “interests of justice”, be considered on appeal – Where applicant adduced expert evidence concerning reliability of eyewitness in light of mental illness – Where Court of Appeal refused application, holding new evidence not “fresh” or “compelling”, and not in “interests of justice” to consider new evidence – Whether new evidence “compelling” – Whether in “interests of justice” to consider applicant’s evidence.

Appealed from SASC (FC): [\[2018\] SASCF 41](#)

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Hurt v The King; Delzotto v The King

[C7/2023](#); [C8/2023](#); [S44/2023](#): [\[2023\] HCATrans 156](#)

Date heard: 9 November 2023

Coram: Gageler CJ, Edelman, Steward, Gleeson and Jagot JJ

Catchwords:

Criminal law – Sentencing – Mandatory minimum sentences – Sentencing discretion – Where s 16AAB of *Crimes Act 1914* (Cth) imposes minimum sentences for certain offences – Whether minimum sentence to be regarded as base of range of appropriate sentence or minimum permissible sentence – Proper approach to minimum sentences – Whether proper approach involves sentencing judge having regard to minimum from outset as prescribing bottom of range of appropriate sentence, consistent with *Bahar v The Queen* (2011) 45 WAR 100 – Whether proper approach involves sentencing judge exercising sentencing discretion in usual way and only if proposed sentence falls below minimum penalty that minimum penalty has effect, consistent with approach in *R v Pot, Wetangky and Lande* (Supreme Court (NT), 18 January 2011, unrep).

Appealed from ACTSC (CA) (C25/2022; C26/2022): [\[2022\] ACTCA 49](#); (2022) 18 ACTLR 272; (2022) 372 FLR 312

Appealed from NSWSC (CCA): [\[2022\] NSWCCA 117](#); (2022) 298 A Crim R 483

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Huxley v The Queen

[B19/2023](#): [\[2023\] HCATrans 113](#)

Date heard: 7 September 2023

Coram: Gageler, Gordon, Steward, Gleeson and Jagot JJ

Catchwords:

Criminal law – Jury direction – Witness evidence – Joint trial – Where appellant convicted by jury for murder after being charged on joint indictment which charged three others – Where direction given to jury in relation to witness’ evidence – Where witness’ evidence central to co-accused’s case and relevant to appellant’s – Where direction made that jury should only act upon witness’ evidence if satisfied beyond reasonable doubt that evidence truthful, reliable and accurate – Whether jury direction, that witness’ evidence in joint trial can only be used by jury if satisfied evidence of witness truthful, reliable and accurate beyond reasonable doubt, constituted miscarriage of justice.

Appealed from QLDSC (CA): [\[2021\] QCA 78](#)

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The King v Anna Rowan – A Pseudonym

M47/2023: [\[2023\] HCATrans 159](#)

Date heard: 14 November 2023

Coram: Gageler CJ, Gordon, Edelman, Jagot and Beech-Jones JJ

Catchwords:

Criminal law – Defence of duress – Duress of circumstances – Where respondent convicted of multiple sexual offences against daughters – Where respondent, at time of offending, residing with partner (“JR”), father of complainants, also convicted of sexual offences against complainants – Where respondent sought to raise defence of duress, relying on report recording JR’s controlling behaviour towards, and physical and sexual abuse of, respondent – Where, during periods covered by alleged offences, defence of duress covered by common law and then s 322O of *Crimes Act 1958* (Vic) – Where trial judge held not sufficient factual basis for duress to be left to jury – Where Court of Appeal found continuing or ever present threat could constitute duress and ordered re-trial – Whether law of duress applies in case of duress of circumstances, namely where accused has not been in receipt of specific threat enjoining them to engage in criminal act or suffer consequences, but accused still reasonably fears if they do not commit criminal act they will suffer such consequences.

Appealed from VSC (CA): [\[2022\] VSCA 236](#)

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The King v Rohan (a pseudonym)

M33/2023: [\[2023\] HCATrans 132](#)

Date heard: 12 October 2023

Coram: Gageler, Gordon, Edelman, Gleeson and Jagot JJ

Catchwords:

Criminal law – Liability – Primary – Derivative – Where s 323(1)(c) of *Crimes Act 1958* (Vic) provides that person is involved in commission of offence if person enters into agreement, arrangement or understanding with another person to commit offence – Where respondent jointly charged with co-offenders – Where respondent and co-offenders each found guilty by jury verdict, relevantly, of two charges of supplying drug of dependence to child (charges 1 and 2) (in relation to two complainants) and seven charges of sexual penetration of child under 12 (including charges 3, 7, 8 and 9) (in relation to one complainant) – Where Court of Appeal held respondent suffered substantial miscarriage of justice on charges 1, 2, 3, 7, 8 and 9, because jury not directed that it needed to be satisfied to criminal standard that respondent knew relevant complainants were under statutory prescribed age when respondent agreed with co-offenders that he would engage in criminal act – Whether, on proper construction, implied into s 323(1)(c) should be words “intentionally” and “knowing or believing facts that make proposed conduct offence”.

Appealed from VSC (CA): [\[2022\] VSCA 215](#)

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Immigration

Ismail v Minister for Immigration, Citizenship and Multicultural Affairs

M20/2023: [\[2023\] HCATrans 111](#)

Date heard: 6 September 2023

Coram: Gageler, Gordon, Edelman, Gleeson, Jagot JJ

Catchwords:

Immigration – Application for Return (Residence) (Class BB) (Subclass 155) visa (“Return visa”) – Character test – Family violence – Where delegate of Minister refused application for Return visa,

finding plaintiff did not pass character test on basis of his substantial criminal record, which included domestic violence offences – Where, having regard to *Direction No. 90 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* (“Direction 90”), delegate decided not to exercise power to grant plaintiff visa – Where plaintiff seeks orders for certiorari and mandamus, and consequential declarations – Whether delegate made jurisdictional error: (1) by failing to make inquiry as to critical fact, and/or failing to comply with para 8.3 of Direction 90, requiring decision-maker to make determination as to best interests of minor children; (2) in interpreting and/or applying para 8.2 of Direction 90 by giving weight to acts of family violence committed by plaintiff where weight also given to acts of family violence under other paras of Direction 90; (3) by interpreting and/or applying para 8.2 of Direction 90 as if it permitted weight to be given to family violence unconnected to protection and/or expectations of Australian community – Whether para 8.2 valid exercise of power under s 499(1) of *Migration Act 1958* (Cth).

Administrative law – Judicial review – Jurisdictional error – Direction 90 made under s 499 of *Migration Act*.

Application for constitutional or other writ referred to the Full Court on 5 June 2023.

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Lesianawai v Minister for Immigration, Citizenship and Multicultural Affairs

[S12/2023](#): [\[2023\] HCATrans 161](#)

Date heard: 16 November 2023

Coram: Gageler CJ, Gordon, Edelman, Gleeson and Beech-Jones JJ

Catchwords:

Immigration – Cancellation of Class BF 154 Transitional (Permanent) visa (“visa”) – Character test – Plaintiff charged with offences before Children’s Court – Misunderstanding of law – Irrelevant considerations – Where between 1996 and 1998, plaintiff found guilty by Children’s Court of New South Wales of various offences – Where in 2010 plaintiff sentenced to terms of imprisonment for armed robbery offences – Where on 9 October 2013 delegate of defendant cancelled plaintiff’s visa under s 501(2) of *Migration Act 1958* (Cth) – Where there has been no merits review because plaintiff did not lodge application with Administrative Appeals Tribunal within prescribed time limits – Where proceedings were held in abeyance pending judgment in *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Thornton* [2023] HCA 17 –

Whether defendant acted on misunderstanding of law by treating plaintiff's sentences between 1996 and 1998 as criminal convictions
– Whether defendant took into account irrelevant consideration by having regard to plaintiff's offences between 1996 and 1998 and treating such conduct as criminal offending.

Application for constitutional or other writ referred to the Full Court on 14 July 2023.

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Restitution

Redland City Council v Kozik & Ors

B17/2023: [\[2023\] HCATrans 116](#); [\[2023\] HCATrans 121](#)

Date heard: 13 and 14 September 2023

Coram: Gageler, Gordon, Edelman, Steward and Jagot JJ

Catchwords:

Restitution – Unjust enrichment – Payment of public impost – Mistake of law – Restitutionary defence in public law – Where respondents plaintiffs in representative action against appellant seeking recovery of monies paid as ratepayers for charges wrongly levied by appellant – Where appellant accepts charges wrongly levied, but refuses to repay amount of charges expended for particular benefit of group of ratepayers – Where primary judge held appellant unable to raise restitutionary defences in circumstances where plaintiffs' claims brought as cause of action in debt and no contractual relationship arose – Where Court of Appeal majority found restitution claims available in circumstances where monies paid under invalid laws, but that ratepayers could not be considered to be unjustly enriched by repayment of monies – Whether defence of unjust enrichment available where payment of public impost made under mistake of law – Whether defence of unjust enrichment available where, though wrongly levied, charges expended to special benefit of group – Whether defence of unjust enrichment to be framed by reference to contractual principles of failure of consideration or by reference to material benefit derived.

Appealed from QLDSC (CA): [\[2022\] QCA 158](#); (2022) 11 QR 524; (2022) 252 LGERA 315

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Sentence

Xerri v The King

[S76/2023](#): [\[2023\] HCATrans 142](#)

Date heard: 18 October 2023

Coram: Gageler, Gordon, Steward, Gleeson and Jagot JJ

Catchwords:

Sentence – Maximum penalty – Where appellant sentenced in respect of offence of persistent sexual abuse of child contrary to s 66EA(1) of *Crimes Act 1900* (NSW) – Where maximum penalty at time of sentence was life imprisonment and a discounted sentence was assessed on that basis – Where maximum penalty at time of offending was 25 years imprisonment – Where s 66EA repealed and reconstituted by *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018* (NSW) – Where s 19(1) of *Crimes (Sentencing Procedure) Act 1999* (NSW) provides if Act increases penalty for offence, increased penalty applies only to offences committed after commencement of provision of Act increasing penalty – Where majority of NSW Court of Criminal Appeal held it correct for appellant to be sentenced on basis that maximum penalty life imprisonment – Whether maximum penalty life imprisonment or 25 years for purposes of sentencing – Whether s 66EA of *Crimes Act*, as amended, a “new offence” or existing offence that has been reformulated, refined and improved – Whether s 19(1) of *Crimes (Sentencing Procedure) Act* precludes retrospective application of increased maximum penalty for offence without express provision in offence as to disapplication of s 19(1).

Appealed from NSW (CCA): [\[2021\] NSWCCA 268](#); (2021) 292 A Crim R 355

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Shipping and Navigation

Carmichael Rail Network Pty Ltd as Trustee for the Carmichael Rail Network Trust v BBC Chartering Carriers GmbH & Co. KG & Anor

[B32/2023](#): [\[2023\] HCATrans 141](#)

Date heard: 17 October 2023

Coram: Gageler, Gordon, Steward, Gleeson and Jagot JJ

Catchwords:

Shipping and navigation – Bill of lading – Arbitration clause – Application for stay of proceedings in favour of arbitration – Anti-suit injunction – Where Art 3(8) of Hague-Visby Rules (given effect in Australia, with some modifications, in Sch 1A of *Carriage of Goods by Sea Act 1991* (Cth) (“Australian Hague Rules”)) relevantly provides any clause, covenant, or agreement in contract of carriage relieving carrier or ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in duties and obligations or lessening such liability otherwise than as provided in Rules, shall be null and void and of no effect – Where applicant consignee of domestic shipment of hardened steel rails from Whyalla to Mackay, under bill of lading drafted and issued by first respondent – Where applicant also entered into contracts with second respondent to supply rails, and to load them onto second respondent’s ship – Where, on arrival at Mackay, members of first respondent’s crew observed collapse had occurred, and steel rails damaged and unfit for use – Where bill of lading provided that any dispute arising thereunder shall be referred to arbitration in London – Where first respondent gave notice that it commenced arbitral proceedings seeking declaration it not liable for damage suffered by applicant, and inviting applicant to nominate arbitrator – Where applicant applied for anti-suit injunction restraining first respondent from taking further steps in purported arbitration – Where Full Court held arbitration clause contained in clause 4 of bill of lading valid – Proper test to apply to anti-suit injunction based on putatively invalid arbitration clause under Article 3(8) of the Australian Hague Rules – Whether for foreign jurisdiction clause to be held void as contrary to Art 3(8) of the Australian Hague Rules, shipper must prove conduct of foreign proceeding would be such as to lessen liability of carrier.

Appealed from FCA (FC): [\[2022\] FCAFC 171](#); (2022) 295 FCR 81; (2022) 406 ALR 431

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Statutes

Harvey & Ors v Minister for Primary Industry and Resources & Ors
D9/2022: [\[2023\] HCATrans 110](#)

Date heard: 5 September 2023

Coram: Gageler, Gordon, Edelman, Steward and Gleeson JJ

Catchwords:

Statutes – Interpretation – *Native Title Act 1993* (Cth), s 24MD(6B)(b) – Meaning of “right to mine” – Meaning of

“infrastructure facility” – Where first respondent intended to grant mineral lease (ML 29881) to third respondent under s 40(1)(b)(ii) of *Mineral Titles Act 2010* (NT) – Where land subject to proposed lease would be used for construction of “dredge spoil emplacement area” to deposit dredged material from loading facility located on adjacent land subject to mineral lease already held by third respondent – Whether proposed grant of ML 29881 is future act within s 24MD(6B)(b) of *Native Title Act*, being creation of right to mine for sole purpose of construction of infrastructure facility associated with mining.

Appealed from FCA (FC): [\[2022\] FCAFC 66](#); (2022) 291 FCR 263; (2022) 401 ALR 578

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Trade Practices

Mitsubishi Motors Australia Ltd & Anor v Begovic

M17/2023: [\[2023\] HCATrans 97](#)

Date heard: 2 August 2023

Coram: Gageler, Gordon, Steward, Gleeson and Jagot JJ

Catchwords:

Trade practices – Misleading or deceptive conduct – Where fuel consumption label affixed to new vehicle offered for sale – Where affixing of label required by *Motor Vehicle Standards Act 1989* (Cth) and *Vehicle Standard (Australian Design Rule 81/02 – Fuel Consumption Labelling for Light Vehicles) 2008* (“Standard”) – Where label displayed fuel consumption figures derived from standard testing of vehicle type – Where purchased vehicle unable to substantially achieve label figures under standard test – Where Court of Appeal held found label conveyed particular representation that fuel consumption figures substantially replicable in purchased vehicle (“testing replicability representation”) – Where Court of Appeal found affixing of fuel consumption label to respondent’s vehicle, and presenting and offering vehicle for sale with label affixed, appellants engaged in misleading or deceptive conduct in contravention of s 18 of *Australian Consumer Law* – Whether fuel consumption label made testing replicability representation – Whether conduct required by Standard can give rise to contravention of s 18 of *Australian Consumer Law*.

Appealed from VSC (CA): [\[2022\] VSCA 155](#); (2022) 403 ALR 558; (2022) 101 MVR 95

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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

Rehmat & Mehar Pty Ltd & Anor v Hortle
[M16/2023](#)

Catchwords:

Constitutional law – Powers of Commonwealth Parliament – States – Inconsistency between Commonwealth and State laws – Where first plaintiff operated restaurant in Victoria – Where Victorian Parliament passed *Fair Work (Commonwealth Powers) Act 2009* (Vic) (“Referral Act”), referring matters to Commonwealth Parliament for purposes of s 51(xxxvii) of *Constitution* – Where Commonwealth Parliament passed *Fair Work Act 2009* (Cth) – Where matters referred under Referral Act included administration of, inspection of, and enforcement of terms and conditions of employment for national system employers, covered under *Fair Work Act* – Where Restaurant Industry Award made under *Fair Work Act* and first plaintiff’s employees subject to Award – Where Victorian Parliament passed *Wage Theft Act 2020* (Vic) – Where defendant Commissioner of Wage Inspectorate Victoria, appointed under *Wage Theft Act* – Where defendant, following investigation, filed charges against first plaintiff alleging contravention of *Wage Theft Act* for non-payment of entitlements allegedly payable under Award – Whether *Fair Work Act* intended to be exhaustive statement of law applicable to national system employers – Whether there exists alteration, impairment, detraction and/or collision between *Wage Theft Act* and *Fair Work Act* – Whether *Wage Theft Act* invalid by operation of s 109 of *Constitution* to extent of inconsistency.

Demurrer referred to the Full Court on 22 May 2023.

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5: SECTION 40 REMOVAL

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

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6: SPECIAL LEAVE GRANTED

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

Arbitration

CBI Constructors Pty Ltd & Anor v Chevron Australia Pty Ltd
P5/2023: [\[2023\] HCATrans 166](#)

Date heard: 17 November 2023 – *Special leave granted*

Catchwords:

Arbitration – Bifurcation of proceedings – Admissibility/jurisdiction dichotomy – *Functus officio* – Standard of supervisory court review – Where arbitration proceedings arose from contract under which appellants required to provide staff to carry out work at construction sites and respondent required to reimburse appellants for costs of providing staff – Where arbitral tribunal bifurcated proceedings principally on basis that first hearing would deal with liability and second hearing would deal with quantum – Where following first interim award appellants included additional pleading in repleaded case as to staff costs calculation (“Contract Criteria Case”) – Where respondent objected to Contract Criteria Case on basis of *res judicata*, issue estoppel, *Anshun* estoppel and Tribunal *functus officio* in respect of liability – Where Tribunal in second interim award declared appellants not prevented from advancing Contract Criteria Case by any estoppels and Tribunal not *functus officio* in respect of Contract Criteria Case – Where respondent applied to set aside second interim award pursuant to s 34(2)(a)(iii) of *Commercial Arbitration Act 2012* (WA) on ground beyond scope of parties’ submission to arbitration – Where Court of Appeal dismissed appeal – Whether Court of Appeal erred finding arbitral tribunal *functus officio* with respect to Contract Criteria Case for purpose of s 34(2)(a)(iii) – Whether Court erred finding standard of supervisory court’s review of scope of parties’ submission to arbitration in application to set aside arbitral award under s 34(2)(a)(iii) is de novo review in which supervisory court applies “correctness” standard of intervention.

Appealed from WASC (CA): [\[2023\] WASCA 1](#)

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Administrative Law

AB (a pseudonym) & Anor v Independent Broad-based Anti-corruption Commission

[M63/2023](#): [\[2023\] HCATrans 103](#)

Date heard: 11 August 2023 – *Special leave granted on limited grounds*

Catchwords:

Administrative law – Natural justice – Procedural fairness – Meaning of “adverse material” – Reasonable opportunity to respond to “adverse material” – Where first appellant senior officer of second appellant, a non-governmental body – Where between 2019 and 2021, respondent, Independent Broad-based Anti-corruption Commission (“IBAC”), conducted investigation – Where AB gave evidence in private examination conducted by IBAC – Where IBAC prepared draft special report containing adverse comments and opinions relating to appellants – Where IBAC provided redacted draft reports to appellants seeking response – Where IBAC agreed to provide transcripts of AB’s examination but not transcript of other witnesses – Where *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) contains procedural fairness protections in ss 162(2)-(4) regarding adverse findings about public bodies – Where AB commenced proceeding in Trial Division of Supreme Court of Victoria seeking judicial review remedies in relation to draft report on basis of infringement of natural justice – Where CD added to AB’s proceedings against IBAC seeking same relief – Where appellants were unsuccessful at trial, and on appeal in Victorian Court of Appeal – Whether Court of Appeal erred in concluding that “adverse material” in s 162(3) of *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) refers only to comments or opinions contained in draft report that are adverse to person, and not evidentiary material on which such comments or opinions are based.

Appealed from VSC (CA): [\[2022\] VSCA 283](#)

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Bankruptcy

Morgan & Ors v McMillan Investment Holdings Pty Ltd & Anor

[S119/2023](#): [\[2023\] HCATrans 122](#)

Date heard: 15 September 2023 – *Special leave granted*

Catchwords:

Bankruptcy – Pooling order – *Corporations Act 2001* (Cth), s 579E – Meaning of “particular property” – Where first applicant is liquidator of second and third applicants – Where first applicant sought order before primary judge that, inter alia, Australian Securities and Investments Commission (“ASIC”) reinstate registration of third applicant, and Court make pooling order pursuant to s 579E of *Corporations Act* in respect of second and third applicants – Where primary judge made orders that ASIC reinstate registration of third applicant, and that second and third applicants be pooled group for purpose of s 579E of *Corporations Act* – Where first respondent appealed to Full Court on question of whether pooling order should be set aside – Where Full Court found precondition in s 570E(1)(b)(iv) of *Corporations Act* not satisfied – Whether Full Court majority erred in finding precondition in s 579E(1)(b)(iv) of *Corporations Act* not satisfied in circumstances where second and third applicants jointly and severally owned “particular property”, being chose in action, at time of making pooling order, being immediately following reinstatement of third applicant – Whether Full Court majority impermissibly departed from clear and unambiguous language of s 601AH(5) of *Corporations Act*.

Appealed from FCA (FC): [\[2023\] FCAFC 9](#); (2023) 295 FCR 543; (2023) 407 ALR 328; (2023) 164 ACSR 129

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Civil Procedure

Willmot v The State of Queensland

B65/2023: [\[2023\] HCATrans 155](#)

Date determined: 9 November 2023 – *Special leave granted*

Catchwords:

Civil procedure – Stay of proceedings – Where appellant claimed damages as result of physical and sexual abuse which she claimed she suffered whilst State Child pursuant to *State Children Act 1911* (Qld) and under control of respondent by virtue of *Aboriginals Protection and Restriction of the Sale of Opium Act 1897* (Qld) – Where alleged perpetrators either deceased or in case of NW, 78 year old man who was 16 at time of alleged conduct – Where trial judge held case in exceptional category where permanent stay warranted – Where Court of Appeal upheld trial judge’s decision – Whether Court of Appeal erred in determining trial judge did not err in exercise of discretion to grant permanent stay of applicant’s proceeding.

Appealed from QLDSC (CA): [\[2023\] QCA 102](#)

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Constitutional Law

Attorney-General for the State of Tasmania v Casimaty & Anor

H3/2023: [\[2023\] HCATrans 139](#)

Date heard: 13 October 2023 – *Special leave granted*

Catchwords:

Constitutional law – Legislature – Privileges – Privilege of parliamentary debate and proceedings – Admissibility of report of parliamentary committee – Where proceedings concern road works at intersection – Where first respondent claims to hold interest in land at intersection – Where proposal by Department of State Growth to upgrade intersection considered and reported upon by Parliamentary Standing Committee on Public Works (“Committee”) in 2017 – Where second respondent engaged to construct new interchange – Where first respondent claims that works that second respondent was to perform not same as public works considered and reported upon by Committee – Where Attorney-General joined as second defendant and applied to, inter alia, strike out parts of statement of claim as offending parliamentary privilege – Where primary judge found cause of action could not proceed without court adjudicating upon 2017 report of Committee, which would contravene Article 9 of Bill of Rights – Where Full Court dismissed Attorney-General’s interlocutory application – Whether Full Court erred in construing s 15 and s 16 of *Public Works Committee Act 1914* (Tas) (“PWC Act”) as creating public obligation which falls outside parliamentary process and hence ambit of parliamentary privilege – Whether it would infringe parliamentary privilege for court to determine whether road works complied with s 16(1) of PWC Act by adjudicating upon whether road works that second respondent were engaged to undertake were different from road works reported on by Committee.

Appealed from TASSC (FC): [\[2023\] TASFC 2](#)

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Chief Executive Officer, Aboriginal Areas Protection Authority v Director of National Parks (ABN 13 051 694 963) & Anor

D3/2023: [\[2023\] HCATrans 68](#)

Date heard: 19 May 2023 – *Special leave granted*

Catchwords:

Constitutional law – Territories – Territory crown – Crown immunity – Where s 34(1) of *Northern Territory Aboriginal Sacred Sites Act 1989* (NT) (“Sacred Sites Act”) prescribes offence and penalty for carrying out work on sacred site – Where Director of National Parks arranged for contractor to perform work on walking track at Gunlom Falls, in Kakadu National Park in Northern Territory – Where track works in area amounting to “sacred site” – Where Director is corporation sole with perpetual succession established by s 15 of *National Parks and Wildlife Conservation Act 1975* (Cth) and continued in existence as body corporate by s 514A of *Environment Protection and Biodiversity Conservation Act 1999* (Cth) – Whether s 34(1) of Sacred Sites Act applies to Director.

Statutory interpretation – Statutory presumption – Presumption against imposition of criminal liability on executive – Where presumption considered in *Cain v Doyle* (1946) 72 CLR 409 – Proper approach to scope of presumption in *Cain v Doyle* – Whether presumption in *Cain v Doyle* applies to statutory corporations – Whether Sacred Sites Act expresses intention to apply to persons or bodies corporate associated with Commonwealth.

Appealed from NTSC (FC): [\[2022\] NTSCFC 1](#)

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Commonwealth of Australia v Yunupingu (on behalf of the Gumatj Clan or Estate Group) & Ors

D5/2023: [\[2023\] HCATrans 143](#)

Date determined: 19 October 2023 – *Special leave granted*

Catchwords:

Constitutional law – *Constitution*, s 51(xxxi) – Acquisition of property on just terms – Extinguishment of native title – Where principal proceeding is application for compensation under *Native Title Act 1993* (Cth) for alleged effects of grants or legislative acts on native title in period after Northern Territory became territory of Commonwealth in 1911 and before enactment of *Northern Territory Self-Government Act 1978* (Cth) – Whether Full Court erred by failing to find that just terms requirement contained in s 51(xxxi) of *Constitution* does not apply to laws enacted pursuant to s 122 of *Constitution*, including *Northern Territory (Administration) Act 1910* (Cth) and Ordinances made thereunder – Whether *Wurridjal v Commonwealth* (2009) 237 CLR 309 should be re-opened – Whether Full Court erred in failing to find that, on facts set out in appellant’s statement of claim, neither vesting of property in all minerals on or below surface of land in claim area in Crown, nor grants of special mineral leases capable of amounting to acquisitions of property under

s 51(xxxi) of *Constitution* because native title inherently susceptible to valid exercise of Crown's sovereign power to grant interests in land and to appropriate to itself unalienated land for Crown purposes.

Native title – Extinguishment – Reservations of minerals – Whether Full Court erred in failing to find that reservation of “all minerals” from grant of pastoral lease “had the consequence of creating rights of ownership” in respect of minerals in Crown, such that Crown henceforth had right of exclusive possession of minerals and could bring an action for intrusion.

Appealed from FCA (FC): [\[2023\] FCAFC 75](#); (2023) 410 ALR 231

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Contract

Cessnock City Council (ABN 60 919 148 928) v 123 259 932 Pty Ltd (ACN 123 259 932)

S115/2023: [\[2023\] HCATrans 125](#)

Date heard: 15 September 2023 – *Special leave granted*

Catchwords:

Contract – Breach of contract – Remedies – Damages – Reliance damages – Recoupment presumption – Where dispute arose from plan to develop airport at Cessnock – Where applicant operated as both commercial party and relevant planning authority – Where applicant lodged development applicant for consolidation of airport land into lots 1 and 2 – Where respondent was company that hoped to build hanger on lot 2 – Where on 26 July 2007, applicant executed agreement whereby it promised to grant respondent lease of part of airport – Where respondent spent around \$3.7 million constructing hangar – Where on 29 June 2011, applicant told respondent that it would not be proceeding with subdivision of airport as it could not afford to connect proposed lots to sewerage system – Where primary judge held applicant breached parties' agreement by not committing funds to connect proposed lots to sewerage, but only awarded nominal damages – Where primary judge distinguished case from *Amann Aviation and McRae v Commonwealth Disposals Commission* (1951) 84 CLR 377, such that recoupment presumption did not arise, and even if such presumption had arisen, applicant had rebutted it – Where Court of Appeal held recoupment presumption was engaged, and presumption had not been rebutted – Whether Court of Appeal erred in concluding presumption arose that respondent would have at least recouped its wasted expenditure if contract had been performed – Whether presumption arises where contract has inherent contingency that no net profit would be made.

Appealed from NSWSC (CA): [\[2023\] NSWCA 21](#); (2023) 110 NSWLR 464

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Criminal Law

Dayney v The King

B29/2023: [\[2023\] HCATrans 174](#)

Date heard: 21 November 2023 – *Special leave granted*

Catchwords:

Criminal law – Appeal against conviction – Self-defence against provoked assault – *Criminal Code* (Qld), s 272 – Where appellant involved in violent altercation resulting in death of another individual – Where appellant convicted of murder – Where appellant successfully appealed conviction – Where s 272 of *Criminal Code* (Qld) affords defence of self-defence against provoked assault – Where majority in first appeal held final clause of s 272(2) ousts protection afforded by s 271(1) only where force used in self-defence results in death or grievous bodily harm – Where minority held final clause of s 272(2) applies to modify effect of first two clauses in s 272(2) – Where jury in retrial directed in accordance with majority’s interpretation of s 272 and appellant convicted of murder – Where appellant appeals second time on ground minority’s interpretation of s 272(2) in first appeal is correct and decision of majority plainly wrong – Whether Court of Appeal erred in holding final clause of s 272(2) constitutes standalone exception to protection afforded by self-defence against provoked assault – Proper meaning of “before such necessity arose”.

Appealed from QLDSC (CA): [\[2023\] QCA 62](#)

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Director of Public Prosecutions (Cth) v Kola

A11/2023: [\[2023\] HCATrans 165](#)

Date heard: 17 November 2023 – *Special leave granted*

Catchwords:

Criminal law – Drug offences – Scope of conspiracy – Misdirection and non-direction – Where respondent charged with conspiring to import commercial quantity of border controlled drug contrary to ss 1.5(1) and 307.1(1) of *Criminal Code* (Cth) – Where Crown case

respondent agreed with others to conduct being engaged in, which if successful, would result in commercial quantity of cocaine being imported from Panama to Australia – Where no direct evidence of quantity of cocaine agreed to import – Where Crown relied on inferences to support case amount of cocaine to be imported 2kg or more – Where trial judge directed jury elements to be proven beyond reasonable doubt included substance imported pursuant to agreement commercial quantity – Where approach to directing juries about elements of conspiracy offence differs in Victoria, New South Wales and present South Australian case – Whether Court of Appeal erred in concluding element of offence of conspiracy to import commercial quantity that conspirators agree to conduct which, if executed would have resulted in importation of commercial quantity where conspirators knew or intended agreement would result in importation of product of that weight.

Appealed from SASC (CA): [\[2023\] SASCA 50](#)

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Obian v The King

M77/2023: [\[2023\] HCATrans 135](#)

Date heard: 13 October 2023 – *Special leave granted*

Catchwords:

Criminal law – Reopening of prosecution case – Substantial miscarriage of justice – Proper test for re-opening under s 233(2) *Criminal Procedure Act 2009* (Vic) – Where appellant charged with three counts of trafficking in not less than commercial quantity of 1,4-butanediol (“1,4-BD”), which is drug of dependence except when possessed or used “for a lawful industrial purpose and not for human consumption” – Where defence case was that appellant imported and used 1,4-BD in course of his cleaning business – Where prosecution case was appellant imported and possessed 1,4-BD for purposes of sale for human consumption – Where after close of prosecution case, appellant gave evidence, which included admitting hiring HiAce van but did so on behalf of another person – Where part-way through appellant’s cross-examination, prosecution granted leave to re-open its case to call evidence from surveillance operatives to rebut aspects of appellant’s evidence about his hiring of van – Where majority of Court of Appeal refused appellant’s application for leave to appeal against conviction – Whether trial judge erred in permitting prosecution to reopen prosecution case under s 233(2) of *Criminal Procedure Act* and that substantial miscarriage of justice occurred as result.

Appealed from VSC (CA): [\[2023\] VSCA 18](#)

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Evidence

Cook (A Pseudonym) v The King
S65/2023: [\[2023\] HCATrans 169](#)

Date heard: 21 November 2023 – *Special leave granted*

Catchwords:

Evidence – Admissibility of evidence about complainant’s sexual experience or activity – Temporal limitations – Where appellant convicted of sexual offences against child – Where issue arose prior to trial regarding admissibility of evidence relating to complainant’s complaint of sexual assault by another member of her family – Where common ground evidence of other offences probative and appellant sought to adduce the evidence in their defence – Where s 293 of *Criminal Procedure Act 1986* (NSW) provides evidence of sexual experience inadmissible subject to exceptions – Where trial judge ruled evidence of other offences inadmissible in appellant’s trial – Whether Court of Criminal Appeal erred in constructing s 293(4) – Whether Court erred in holding permissible to mislead jury by cross-examination in order to attempt to counteract unfairness occasioned by exclusion of s 293 evidence – Whether Court erred in ordering appellant be retried – Whether Court erred in refusing to stay proceedings.

Appealed from NSW (CCA): [\[2022\] NSWCCA 282](#)

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Immigration

LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor
M70/2023: [\[2023\] HCATrans 117](#)

Date determined: 14 September 2023 – *Special leave granted*

Catchwords:

Immigration – Visas – Cancellation – Direction 90 – Materiality – Where applicant convicted of criminal offences and sentenced to term of imprisonment – Where applicant’s visa cancelled under s 501(3A) of *Migration Act 1958* (Cth) – Where applicant applied under s 501CA(4) to have cancellation revoked – Where Minister required

Tribunal under s 499(1) of *Migration Act* to comply with certain directions as to how evaluative discretionary power should be exercised – Where Direction 90 requires Tribunal to consider “seriousness” of conduct – Where delegate decided not to revoke cancellation under s 501CA of *Migration Act* – Where Administrative Appeals Tribunal and primary judge affirmed delegate’s decision – Where Full Court found Tribunal erred in purporting to consider certain matters set out in cl 8.1.1 of Direction 90 – Where Full Court found each error immaterial – Whether Full Court erred in concluding each of second respondent’s multiple failures to comply as required by s 499(2A) of *Migration Act* with Direction 90 were not material to Tribunal’s decision – Whether Full Court erred in failing to conclude that, cumulatively, Tribunal’s multiple non-compliances with Direction 90 were material – Proper approach to materiality of jurisdictional error.

Appealed from FCA (FC): [\[2023\] FCAFC 64](#); (2023) 297 FCR 1

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Miller v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor

S120/2023: [\[2023\] HCATrans 126](#)

Date heard: 15 September 2023 – *Special leave granted*

Catchwords:

Immigration – Visas – Cancellation – Invalid applications – Application for review of decision of Administrative Appeals Tribunal (“Tribunal”) – Requirements under s 29(1) of *Administrative Appeals Tribunal Act 1975* (Cth) for application for review of migration decision – Where applicant filed document in Tribunal seeking review of delegate’s decision not to revoke cancellation of his visa under s 501CA(4) of *Migration Act 1958* (Cth) – Where in courts below, Minister accepted application complied with all requirements in s 29(1) of *Administrative Appeals Tribunal Act* other than requirement in s 29(1)(c) to “contain a statement of reasons for the application” – Where at directions hearing on 1 April 2021, Tribunal requested applicant provide by 9 April 2021 email stating reasons for application – Where on that day, applicant’s migration agent emailed reasons – Where primary judge and Full Court held that statement required by s 29(1)(c) essential to validity of application and thus Tribunal’s jurisdiction – Where Full Court held that 9 April 2021 email stating reasons sent outside nine-day period specified by s 500(6B) of *Migration Act 1958* (Cth) “perfected” application out of time – Whether Full Court erred in concluding second respondent did not have jurisdiction to determine applicant’s application filed on 24 March 2021.

Appealed from FCA (FC): [\[2022\] FCAFC 183](#); (2022) 295 FCR 254

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Minister for Immigration, Citizenship and Multicultural Affairs v McQueen

P2/2023: [\[2023\] HCATrans 107](#)

Date heard: 11 August 2023 – *Application for special leave to appeal referred to Full Court*

Catchwords:

Immigration – Visas – Mandatory cancellation – Representations to Minister to revoke cancellation – Relying on Departmental summary or synthesis of documents – Where respondent’s visa mandatorily cancelled pursuant to s 501(3A) of *Migration Act 1958* (Cth) – Where s 501CA requires Minister to invite person affected by mandatory cancellation to “make representations to the Minister”, and empowers Minister to revoke such cancellation if “person makes representations in accordance with the invitation” and Minister satisfied, inter alia, that there is another reason why the original decision should be revoked – Where following notification of visa cancellation respondent submitted documents and former Minister personally decided not to revoke cancellation – Where primary judge found former Minister did not consider representation by respondent – Where Full Court upheld finding, and concluded that where Minister exercises power under s 501CA(4), Minister required to read actual documents submitted, and that Minister cannot rely on Departmental synthesis or summary of those documents – Whether Minister when required by statute to consider documents may rely on Departmental synthesis or summary of those documents.

Appealed from FCA (FC): [\[2022\] FCAFC 199](#); (2022) 292 FCR 595

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Private International Law

Greylag Goose Leasing 1410 Designated Activity Company & Anor v P.T. Garuda Indonesia Ltd

S135/2023: [\[2023\] HCATrans 144](#)

Date determined: 19 October 2023 – *Special leave granted*

Catchwords:

Private international law – Jurisdiction – Immunities – *Foreign State Immunities Act 1985* (Cth) (“FSIA”) – Where s 9 of FSIA provides immunity for foreign States from proceedings in Australian courts, except as provided by FSIA – Where s 14(3)(a) of FSIA provides exception for proceedings concerning “bankruptcy, insolvency or the winding up of a body corporate” – Where appellants instituted proceedings to wind up respondent – Where respondent is separate entity of foreign State under FSIA – Where primary judge and Court of Appeal held s 14(3)(a) did not apply, because it applied only to insolvency or winding up of body corporate other than separate entity of foreign State – Whether Court of Appeal erred in construing s 14(3)(a) as not applying to proceedings in so far as they concern winding up, including in insolvency, of body corporate that is separate entity of foreign State.

Appealed from NSWSC (CA): [\[2023\] NSWCA 134](#); (2023) 410 ALR 371

Taxation

Godolphin Australia Pty Ltd ACN 093921021 v Chief Commissioner of State Revenue

S130/2023: [\[2023\] HCATrans 136](#)

Date heard: 13 October 2023 – *Special leave granted*

Catchwords:

Taxation – Land tax – Assessments – Exemption for land used for primary production – Where appellant runs thoroughbred stud operation – Where appellant also engages in associated agricultural activities such as raising cattle and growing lucerne – Where no dispute that appellant’s broad use or activities on land involved maintenance of horses and that use dominated over any other use of land – Where s10AA(1) of *Land Tax Management Act 1956* (NSW) provides exemption for “land that is rural land from taxation if it is land used for primary production” – Where s10AA(3)(b) provides that “land used for primary production” means land the dominant purpose of which is for “the maintenance of animals (including birds), whether wild or domesticated, for the purpose of selling them or their natural increase or bodily produce” – Where Court of Appeal found appellant failed to establish exempt purpose was dominant including that non-exempt purpose was not merely incidental and subservient to exempt purpose – Whether Court of Appeal erred in concluding that requirement of dominance in s 10AA(3)(b) applies to both use and purpose – Whether Court of Appeal should have concluded that where dominant use of land involves same physical activity for two or more complementary or overlapping purposes, one of which satisfies s 10AA(3)(b) and does not prevail over other purpose, it is unnecessary to demonstrate separately that exempt purpose is

dominant purpose – Whether Court of Appeal should have concluded that appellant’s use of land for maintenance of animals was for purpose of selling animals, their progeny and bodily produce.

Appealed from NSWSC (CA): [\[2023\] NSWCA 44](#); (2023) 115 ATR 490

Torts

Bird v DP (a pseudonym)

M82/2023: [\[2023\] HCATrans 145](#)

Date heard: 20 October 2023 – *Special leave granted*

Catchwords:

Torts – Personal Injury – Sexual assault – Vicarious liability – Where trial concerned allegations of sexual assaults against respondent by Catholic Priest in 1971, when respondent was five years of age – Where respondent sued Diocese of Ballarat through current Bishop, who was nominated defendant – Where respondent’s negligence case failed, but appellant, representing Diocese, found to be vicariously liable for Priest’s sexual assaults – Whether Court of Appeal erred in holding that appellant could be vicariously liable for tortfeasor’s wrong where express finding that tortfeasor not in employment relationship with appellant and was no finding that tortious conduct occurred as part of any agency relationship between tortfeasor and appellant – Where in circumstances Court finds relationship between appellant and tortfeasor gives rise to relationship of vicarious liability, whether Court of Appeal erred in concluding, based on general and non-specific evidence accepted, that conduct of tortfeasor was conduct for which appellant ought be liable as having provided both opportunity and occasion for its occurrence.

Appealed from VSC (CA): [\[2023\] VSCA 66](#); (2023) 69 VR 408; (2023) 323 IR 174

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Mallonland Pty Ltd ACN 051 136 291 & Anor v Advanta Seeds Pty Ltd ACN 010 933 061

B60/2023: [\[2023\] HCATrans 138](#)

Date heard: 13 October 2023 – *Special leave granted*

Catchwords:

Torts – Negligence – Pure economic loss – Duty of care – Where appellants and other group members commercial sorghum growers

who between 2010 and 2014 conducted business of planting and commercial cultivation and sale of sorghum – Where they purchased, via distributors and resellers, “MR43 Elite” sorghum seeds manufactured by respondent, which were contaminated – Where MR43 sold in bags with “Conditions of Sale and Use” printed, including generic disclaimer – Where trial judge and Court of Appeal found that respondent did not owe duty of care to appellants – Whether Court of Appeal erred in failing to find respondent owed duty of care to appellants as end users of respondent’s product, to take reasonable care to avoid risk that such end users who used product as intended would sustain economic losses by reason of hidden defects in those goods – Whether Court of Appeal erred in finding that presence of disclaimer of liability on product packaging negated any assumption of responsibility by respondent so as to preclude duty of care on part of manufacturer arising, and thereby overwhelming consideration of all other salient features – Whether Court of Appeal erred by proceeding on basis that potential for farmers to avail themselves of contractual and statutory protection in dealings with distributors, and absence of statutory protection of farmers as consumers in Commonwealth consumer protection legislation, were matters which supported not expanding protection available to persons in position of applicants by recognising duty of care.

Appealed from QLDSC (CA): [\[2023\] QCA 24](#)

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Trade Practices

Productivity Partners Pty Ltd (trading as Captain Cook College) (ACN 085 570 547) & Anor v Australian Competition and Consumer Commission & Anor

S118/2023: [\[2023\] HCATrans 118](#)

Date determined: 14 September 2023 – *Special leave granted*

Catchwords:

Trade Practices – Consumer law – Unconscionable conduct – Statutory unconscionability under s 21 of *Australian Consumer Law* (“ACL”) – Where first applicant carried on business providing vocational education and training courses to students – Where second applicant is parent company of first applicant – Where students enrolled in courses by first applicant were eligible for funding support under Commonwealth government scheme (VET-FEE HELP) – Where first applicant engaged agents to market to or recruit potential students – Where changes made to VET-FEE HELP scheme by Commonwealth to protect students from risk of

misconduct by agents and providers – Where prior to 7 September 2015, first applicant had several controls in enrolment system which it implemented to ameliorate risk of unethical or careless conduct of agents with respect to enrolments – Where first applicant removed those controls after suffering declining enrolments – Where primary judge and Full Court held first applicant engaged in unconscionable conduct in contravention of s 21 of ACL – Whether Full Court ought to have held that primary judge erred in holding first applicant engaged in unconscionable conduct within meaning of s 21 of ACL, which claim was framed, and considered by trial judge, without reference to factors prescribed by s 22 of ACL – Whether Full Court erred in holding first applicant’s conduct of removing two system controls and operating enrolment system without those controls, in absence of intention that risks ameliorated by those controls eventuate, constituted unconscionable conduct in contravention of s 21 – Whether Full Court erred in holding second applicant knowingly concerned or party to first applicant’s contravention of s 21.

Appealed from FCA (FC): [\[2023\] FCAFC 54](#); (2023) 297 FCR 180

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Toyota Motor Corporation Australia Limited (ACN 009 686 097) v Williams & Anor; Williams & Anor v Toyota Motor Corporation Australia Limited (ACN 009 686 097)

S37/2023; S38/2023: [\[2023\] HCATrans 162](#)

Date heard: 17 November 2023 – *Special leave granted*

Catchwords:

Trade Practices – Consumer law – Measure of damages for failure to comply with guarantee of acceptable quality – Where representative proceedings concerned 264,170 Toyota motor vehicles with diesel engines sold to Australian consumers – Where vehicles supplied with defective diesel particulate filter system – Where appellant introduced effective solution known as “2020 field fix” – Where 2020 field fix effective in remedying defect and its consequences in all relevant vehicles – Where primary judge found on “common sense approach” breach of s 54 *Australian Consumer Law* (“ACL”) resulted in reduction in value of all vehicles by 17.5% – Where primary judge ordered reduction in damages under s 272(1)(a) of ACL be awarded to all group members who had not opted out, had not received 2020 field fix and first consumer had not sold it during relevant period – Where Full Court set aside order awarding reduction in value damages and reassessed reduction in value to be 10% before taking into account availability of 2020 field fix – Whether Full Court erred in finding damages for reduction in value recoverable when no ongoing reduction in value due to availability of free repair – Whether Full Court erred in failing to find damages for breach of guarantee of

acceptable quality always to be assessed by reference to true value of goods at time of supply - Whether assessment of damages imports discretion exercisable under standard of appropriateness to assess reduction in value of goods at some later time or make adjustment downwards to reflect future event unknown at date of supply.

Appealed from FCA (FC): [\[2023\] FCAFC 50](#); (2023) 296 FCR 514; (2023) 408 ALR 582

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Wills v Australian Competition and Consumer Commission & Ors
S116/2023: [\[2023\] HCATrans 119](#)

Date determined: 14 September 2023 – *Special leave granted*

Catchwords:

Trade Practices – Consumer law – Unconscionable conduct – Statutory unconscionability under s 21 of *Australian Consumer Law* (“ACL”) – Knowing concern in unconscionable conduct – Accessorial liability – Where second respondent carried on business providing vocational education and training courses to students – Where third respondent parent company of second respondent – Where applicant was Chief Operating Officer of third respondent, and for period Chief Executive Officer of second respondent – Where students enrolled in courses by second respondent were eligible for funding support under Commonwealth government scheme (VET-FEE HELP) – Where second respondent engaged agents to market to or recruit potential students – Where changes made to VET-FEE HELP scheme by Commonwealth to protect students from risk of misconduct by agents and providers – Where prior to 7 September 2015, second respondent had several controls in enrolment system which it implemented to ameliorate risk of unethical or careless conduct of agents with respect to enrolments – Where second respondent removed those controls after suffering declining enrolments – Where primary judge and Full Court held second respondent engaged in unconscionable conduct in contravention of s 21 of ACL – Where primary judge held applicant was knowingly concerned in contravention of prohibition second respondent’s unconscionable conduct – Where Full Court majority allowed one of applicant’s grounds of appeal in part, that applicant did not know all of matters essential to contravention until he was acting CEO – Whether Full Court majority erred in finding that applicant had requisite knowledge to be liable as accessory to contravention of s 21, notwithstanding applicant did not have knowledge that conduct involved taking advantage of consumers or was otherwise against conscience – Whether Full Court majority erred in finding that applicant satisfied participation element for accessorial liability by (i) applicant’s conduct before he had knowledge of essential matters which make

up contravention; together with (ii) applicant's continued holding of position of authority, but no identified positive acts after applicant had requisite knowledge.

Appealed from FCA (FC): [\[2023\] FCAFC 54](#); (2023) 297 FCR 180

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7: CASES NOT PROCEEDING OR VACATED

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8: SPECIAL LEAVE REFUSED

Publication of Reasons: 9 November 2023 (Canberra)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Myer	The King (B47/2023)	Supreme Court of Queensland (Court of Appeal) [2023] QCA 144	Application dismissed [2023] HCASL 161
2.	Luck	VP Jack A Henderson (M34/2023)	Application for removal	Application dismissed with costs [2023] HCASL 162
3.	In the matter of an application by Zhanyu Zhong for leave to appeal (M64/2023)		High Court of Australia [2023] HCATrans 098	Application dismissed [2023] HCASL 163
4.	Mr SCVG	Estate of KLD & Anor (S96/2023)	Federal Circuit and Family Court of Australia (Division 1)	Application dismissed [2023] HCASL 164
5.	Viterra Malt Pty Ltd (ACN 096 519 658) & Ors	Cargill Australia Limited (ACN 004 684 173) & Anor (M56/2023)	Supreme Court of Victoria (Court of Appeal) [2023] VSCA 157	Application dismissed with costs [2023] HCASL 165
6.	Qaumi	The King (S54/2023)	Supreme Court of New South Wales (Court of Criminal Appeal) [2019] NSWCCA 60	Application dismissed [2023] HCASL 166
7.	Qaumi	The King (S61/2023)	Supreme Court of New South Wales (Court of Criminal Appeal) [2019] NSWCCA 60	Application dismissed [2023] HCASL 167
8.	Gapes	State of Queensland (B44/2023)	Supreme Court of Queensland (Court of Appeal) [2023] QCA 45	Application dismissed [2023] HCASL 168
9.	Sayed	Principal Registrar of the High Court & Ors (M41/2023)	Application for constitutional or other writ	Application dismissed with costs [2023] HCASL 169
10.	Sayed	Justice Michael Hugh O'Bryan & Ors (M44/2023)	High Court of Australia (unreported)	Application dismissed [2023] HCASL 170
11.	Ghosh	Ghosh (M66/2023)	Supreme Court of Victoria (Court of Appeal) [2023] VSCA 77	Application dismissed [2023] HCASL 171

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
12.	Antoon & Anor	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (C10/2023)	Federal Court of Australia [2023] FCA 717	Application dismissed with costs [2023] HCASL 172
13.	Meletsis & Anor	Yeo in his capacity as the Joint Trustee of the Bankrupt Estate of Tom Karas & Ors (M55/2023)	Full Court of the Federal Court of Australia [2023] FCAFC 93	Application dismissed with costs [2023] HCASL 173
14.	BDT17	Minister for Immigration and Border Protection & Anor (S72/2023)	Federal Court of Australia [2023] FCA 452	Application dismissed with costs [2023] HCASL 174
15.	Ezekiel-Hart	Council of the Law Society of the ACT (C11/2023)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2023] ACTCA 29	Application dismissed [2023] HCASL 175
16.	Tucker (also known as Toby Tucker)	Commissioner of State Revenue (M46/2023)	Supreme Court of Victoria (Court of Appeal) [2023] VSCA 125	Application dismissed [2023] HCASL 176
17.	Ms Webb	Mr Simpson & Anor (S95/2023)	Federal Circuit and Family Court of Australia (Division 1)	Application dismissed [2023] HCASL 177
18.	Compass Group Healthcare Hospitality Services Pty Ltd & Anor	United Workers' Union (A12/2023)	Full Court of the Federal Court of Australia [2023] FCAFC 92	Application dismissed with costs [2023] HCASL 178
19.	Henderson	Director of Public Prosecutions (SA) (A13/2023)	Supreme Court of South Australia (Court of Appeal) [2023] SASCA 42	Application dismissed [2023] HCASL 179
20.	Marrogi	The King (M48/2023)	Supreme Court of Victoria (Court of Appeal) [2023] VSCA 83	Application dismissed [2023] HCASL 180
21.	Burrows	Macpherson & Kelley Lawyers (Sydney) Pty Ltd ACN 127 962 298 (S91/2023)	Federal Court of Australia [2023] FCA 622	Application dismissed with costs [2023] HCASL 181

17 November 2023: Canberra and by video link

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Leigh	Bruder Expedition Pty Ltd (ACN 603 551 579) (B6/2023)	Supreme Court of Queensland (Court of Appeal) [2022] QCA 267	Application refused with costs [2023] HCASL 167
2.	Probuild Constructions (Aust) Pty Ltd (subject to a deed of company arrangement) ACN 095250945 & Ors	Allianz Australia Insurance Limited ACN 000122850 (S40/2023)	Supreme Court of New South Wales (Court of Appeal) [2023] NSWCA 56	Application refused with costs [2023] HCASL 163
3.	Anchorage Capital Master Offshore Ltd & Ors	Bakewell & Anor (S62/2023)	Supreme Court of New South Wales (Court of Appeal) [2023] NSWCA 88	Application refused with costs [2023] HCASL 164

21 November 2023: Canberra and by video link

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	OS MCAP Pty Ltd ACN 626 224 655	Construction, Forestry, Maritime, Mining and Energy Union (B24/2023)	Full Court of the Federal Court of Australia [2023] FCAFC 51	Application refused with costs [2023] HCATrans 170
2.	Haliotis Fisheries Pty Ltd (ACN 061 835 452) & Ors	Mapa Pearls Pty Ltd (ACN 604 308 821) & Ors (M38/2023)	Supreme Court of Victoria (Court of Appeal) [2023] VSCA 108	Application refused with costs [2023] HCATrans 172
3.	Wass	Director of Public Prosecutions (NSW) & Ors (S57/2023)	Supreme Court of New South Wales (Court of Appeal) [2023] NSWCA 71	Application refused [2023] HCATrans 171
4.	Commonwealth of Australia, represented by the Department of Employment and Workplace Relations	Resilient Investment Group Pty Ltd ACN 128 547 580 & Ors (S75/2023)	Supreme Court of New South Wales (Court of Appeal) [2023] NSWCA 118	Application refused with costs [2023] HCATrans 173
5.	Verde Terra Pty Limited & Ors	Central Coast Council ABN 73149644003 & Anor (S78/2023)	Supreme Court of New South Wales (Court of Appeal) [2023] NSWCA 121	Application refused with costs [2023] HCATrans 168