



HIGH COURT BULLETIN

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[2011] HCAB 01 (24 February 2011)

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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A: SUMMARY OF NEW ENTRIES

1: Cases Handed Down

Case	Title
<i>British American Tobacco Australia Services Limited v Laurie & Ors</i>	Courts and Judges
<i>Minister for Immigration & Citizenship v SZGUR & Anor</i>	Immigration

2: Cases Reserved

Case	Title
<i>Shoalhaven City Council v Firedam Civil Engineering Pty Limited</i>	Contracts
<i>Momcilovic v The Queen & Ors</i>	Criminal Law
<i>Westport Insurance Corporation & Ors v Gordian Runoff Limited</i>	Insurance

3: Original Jurisdiction

Case	Title
<i>Haskins v The Commonwealth</i>	Constitutional Law

4: Special Leave Granted

Case	Title
<i>Lithgow City Council v Jackson</i>	Evidence
<i>Michael Wilson & Partners Limited v Nicholls & Ors</i>	Practice and Procedure
<i>Australian Education Union v Department of Education and Children's Services</i>	Statutes
<i>Moloney t/as Moloney & Partners v Workers Compensation Tribunal</i>	Statutes
<i>American Express Wholesale Currency Services Pty Ltd v Commissioner of Taxation; American Express International Inc v Commissioner of Taxation</i>	Taxation and Duties

1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the January – February 2011 sittings.

Courts and Judges

British American Tobacco Australia Services Limited v Laurie & Ors

S138/2010: [\[2011\] HCA 2](#).

Judgment delivered: 9 February 2011.

Coram: French CJ, Gummow, Heydon, Kiefel and Bell JJ.

Catchwords:

Courts and judges — Bias — Reasonable apprehension of bias by reason of pre-judgment — Where judge previously made finding on same issue in unrelated interlocutory proceeding — Knowledge and characteristics to be attributed to fair-minded lay observer — Whether fair-minded lay observer taken to understand rules of evidence and procedure — Whether later statements of judge in recusal application relevant to fair-minded lay observer's assessment — *Livesey v New South Wales Bar Association* (1983) 151 CLR 288.

Words and phrases – "fair-minded lay observer", "reasonable apprehension of bias".

Appealed from NSW SC (CA): [2009] NSWCA 414.

Immigration

Minister for Immigration and Citizenship v SZGUR & Anor

S179/2010: [\[2011\] HCA 1](#).

Judgment delivered: 2 February 2011.

Coram: French CJ, Gummow, Heydon, Crennan and Kiefel JJ.

Catchwords:

Immigration — Refugees — Review by Refugee Review Tribunal ("RRT") — Where visa applicant's migration agent asked RRT to arrange "independent assessment of [applicant's] mental health, if required" — Section 427(1)(d) *Migration Act* 1958 (Cth) gave RRT

power to require Secretary to arrange for making of medical examination — Whether duty on RRT to consider exercising power under s 427(1)(d) — Whether general duty to inquire.

Words and phrases — "information".

Appealed from FCA: [2010] FCA 171; (2010) 114 ALD 112.

2: CASES RESERVED

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

Arbitration

See **Insurance**: *Westport Insurance Corporation & Ors v Gordian Runoff Limited*

Constitutional Law

Wainohu v State of New South Wales

S164/2010: [\[2010\] HCATrans 319](#).

Date heard: 2 December 2010 — *Judgment reserved*.

Coram: French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ.

Catchwords:

Constitutional law — Operation and effect of Commonwealth Constitution — Chapter III — Institutional integrity of State courts — Plaintiff member of Hells Angels Motorcycle Club (“Hells Angels”) — *Crimes (Criminal Organisations Control) Act 2009* (NSW) (“the Act”) provided for any judge of Supreme Court of NSW to be declared, with consent, “eligible Judge” for purposes of the Act — Commissioner of Police applied to eligible judge for declaration under the Act in respect of Hells Angels — Where some evidence classified “criminal intelligence” under the Act and withheld from legal representatives of Hells Angels — Where ex parte hearing held under the Act to allow eligible judge to determine whether certain evidence “properly classified” by Commissioner of Police — Where eligible judge under no obligation to give reasons — Whether the Act or any provision thereof undermines institutional integrity of Supreme Court of NSW — Whether the Act or any provision thereof outside legislative powers of Parliament of NSW — Whether eligible judge acts *persona designata* in exercising functions under the Act — *Crimes (Criminal Organisations Control) Act 2009* (NSW).

Constitutional law — Operation and effect of Commonwealth Constitution — Implied freedom of political communication — Section 26 of the Act created offence of associating with person the subject of control order made under the Act — Where associating defined to include any communication — Whether the Act burdens political communication and, if so, whether the Act reasonably

appropriate and adapted to serve a purpose compatible with representative and responsible government.

This writ of summons was filed in the original jurisdiction of the High Court.

Detective Senior Constable Hogan v Hinch
M105/2010: [\[2010\] HCATrans 284](#); [\[2010\] HCATrans 285](#).

Date heard: 2 & 3 November 2010 — *Judgment reserved*.

Catchwords:

Constitutional law — Operation and effect of Commonwealth Constitution — Restrictions on Commonwealth and State legislation — Rights and freedoms implied in Commonwealth Constitution — Freedom of political communication — Validity of legislation allowing courts to prohibit publication of names of serious sex offenders if in public interest to do so — Where applicant at public rally stated names of two offenders whose names were subject of suppression orders — *Serious Sex Offenders Monitoring Act 2005* (Vic) s 42.

Constitutional law — Operation and effect of Commonwealth Constitution — Chapter III of Constitution— Whether implication from Ch III that proceedings be conducted in public and details of proceedings be open to public except where interests of justice otherwise require — Whether “public interest” sufficient reason for not adhering to principle of open justice — State courts invested with judicial power of the Commonwealth — Validity of legislation allowing courts to prohibit publication of name of serious sex offenders if in public interest to do so — *Serious Sex Offenders Monitoring Act 2005* (Vic) s 42.

Removed from Melbourne Magistrates Court: X02916632.

See also **Criminal Law:** *Momcilovic v The Queen*

Contracts

Shoalhaven City Council v Firedam Civil Engineering Pty Limited
S216/2010: [\[2011\] HCATrans 11](#); [\[2011\] HCATrans 14](#).

Date heard: 2 & 4 February 2011 — *Judgment reserved*.

Coram: French CJ, Gummow, Heydon, Crennan, Kiefel and Bell JJ.

Catchwords:

Contracts — Building, engineering and related contracts — Settlement of disputes — Expert determination — Where express contractual obligation to give reasons in expert determination — Nature and extent of contractual obligation to give reasons — Whether expert determination contained inconsistency in reasons — Whether inconsistency in reasons means expert did not give reasons for determination as a whole — Whether inconsistency in reasons means contractual obligation not fulfilled and determination not binding on parties.

Appealed from NSW SC (CA): [2010] NSWCA 59.

Conveyancing

Marcolongo v Chen & Anor

S114/2010: [\[2010\] HCATrans 253](#).

Date heard: 30 September 2010 — *Judgment reserved*.

Coram: French CJ, Gummow, Heydon, Crennan and Bell JJ.

Catchwords:

Conveyancing — Invalid conveyance as a result of fraud — Intent to defraud creditors — Dishonest intent — Whether sufficient material upon which to conclude there was requisite intent to defraud appellant — Whether alienation of property with intent to defraud creditors requires real or actual honest intent — *Conveyancing Act 1919 (NSW) s 37A*.

Appealed from NSW SC (CA): (2009) 260 ALR 353; [2009] NSWCA 326; (2009) 14 BPR 27,153.

Criminal Law

Momcilovic v The Queen

M134/2010: [\[2011\] HCATrans 15](#); [\[2011\] HCATrans 16](#); [\[2011\] HCATrans 17](#).

Date heard: 8-10 February 2011 — *Judgment reserved*.

Coram: French CJ, Gummow, Heydon, Crennan, Kiefel and Bell JJ.

Catchwords:

Criminal law — Particular offences — Drug offences — Possession —
— Where person deemed to be in possession of drugs “upon any land or premises” occupied by person, unless person satisfies court to the contrary: *Drugs, Poisons and Controlled Substances Act 1981* (Vic) (“the Act”) s 5 — Whether s 5 of the Act creates legal onus on accused to disprove possession on balance of probabilities or evidential onus of adducing or pointing to evidence capable of raising a reasonable doubt about possession.

Criminal law — Appeal — Grounds of appeal — Conduct of trial judge — Misdirection or non-direction — Where drugs found in applicant’s home — Where applicant and her partner gave evidence that drugs were her partner’s and that applicant had no knowledge of them — Whether trial judge should have directed jury that prosecution must prove applicant’s knowledge of drugs in order to prove possession.

Human rights — Presumption of innocence — Statutory reversal of burden of proof of possession of drugs — Where *Charter of Human Rights and Responsibilities Act 2006* (Vic) (“Charter”) s 32 provides “[s]o far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights” — Whether s 5 of the Act construed in light of s 37 of Charter is compatible with right to presumption of innocence — Charter ss 7(2), 25(1), 32(1).

Statutes — Acts of Parliament — Interpretation — Whether necessary to construe statutory provision without regard to s 32 of Charter to achieve “ordinary” construction of provision — Whether s 32 of Charter to be applied after a statutory provision is measured against s 7(2) of Charter — Whether s 32 of Charter a “cardinal principle” of statutory construction or a measure of last resort.

Constitutional law — Operation and effect of Commonwealth Constitution — Commonwealth Constitution, Chapter III — Federal jurisdiction of State courts — Local limitations of State court — Whether s 32 of Charter confers a legislative function on State courts — Whether institutional integrity of State courts impaired — *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51.

Constitutional law — Operation and effect of Commonwealth Constitution — Inconsistency under s 109 of Commonwealth Constitution — Whether ss 5 and/or 71AC of the Act inconsistent with ss 13.1, 13.2 and 302.4 of the *Criminal Code 1995* (Cth) (“the Code”).

Constitutional law — Operation and effect of Commonwealth Constitution — Inconsistency under s 109 of Commonwealth Constitution — Whether s 300.4 of the Code evinces clear legislative intent not to cover the field — Whether Part 9.1 of the Code intended to exclude or limit concurrent operation of cognate State or Territory laws — *Dickson v The Queen* (2010) 270 ALR 1.

High Court and Federal Court — High Court of Australia — Appellate jurisdiction — Where relief sought includes order setting aside declaration of inconsistent interpretation under s 36 of Charter made by intermediate appellate court — Whether High Court has jurisdiction under s 73 of Constitution to grant relief sought.

Appealed from Vic SC (CA): (2010) 265 ALR 751; [2010] VSCA 50; [2010] ALMD 4185.

Lacey v Attorney-General of the State of Queensland

B40/2010: [\[2010\] HCATrans 317](#).

Date heard: 30 November 2010 — *Judgment reserved*.

Coram: French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ.

Catchwords:

Criminal law — Appeal and new trial — Appeal against sentence — Appeals by Crown — Principles applied by appellate court to Crown appeals — Rule in *House v The King* (1936) 55 CLR 499 — Whether s 669A of the *Criminal Code* 1899 (Qld) requires error on the part of the sentencing court before appellate jurisdiction enlivened — Whether inclusion of the words “unfettered discretion” in s 669A removes the requirement for error on the part of the sentencing court before appellate court can substitute an alternative sentence.

Appealed from Qld SC (CA): (2009) 197 A Crim R 399; [2009] QCA 274.

SKA v The Queen

S100/2010: [\[2010\] HCATrans 290](#).

Date heard: 9 November 2010 — *Judgment reserved*.

Coram: French CJ, Gummow, Heydon, Crennan and Kiefel JJ.

Catchwords:

Criminal law — Appeal and new trial — Verdict unreasonable or insupportable having regard to evidence — Test to be applied — Where appellate court had available to it videotape of interview of complainant played at trial — Where appellate court did not view videotaped evidence — Whether appellate court erred in application of test by not viewing videotaped evidence — *M v The Queen* (1994) 181 CLR 487.

Criminal law — Appeal and new trial — Verdict unreasonable or insupportable having regard to evidence — Opinion of trial judge —

Where inconsistencies in complainant's evidence — Where trial judge said "impossible to see how any jury acting reasonably could be satisfied beyond reasonable doubt" — Where appellate court made no reference to opinion of trial judge — Whether appellate court erred in not advertent to opinion of trial judge.

Appealed from NSW SC (CCA): [2009] NSWCCA 186.

Roach v The Queen

B41/2010: [\[2010\] HCATrans 288](#).

Date heard: 5 November 2010 — *Judgment reserved*.

Coram: French CJ, Hayne, Heydon, Crennan and Kiefel JJ.

Catchwords:

Criminal law — Evidence — Propensity, tendency and co-incidence — Admissibility and relevancy — Propensity evidence — Evidence of uncharged acts — Appellant convicted of one count of assault occasioning bodily harm — "Relationship evidence" — Principles from *Pfennig v The Queen* (1995) 182 CLR 461 ("*Pfennig*") — History of violence and of domestic relationship between appellant and complainant — Whether *Evidence Act* 1977 (Qld) ("the Act") s 132B allows admission of evidence of relevant history without application of *Pfennig* test — Whether requirement of fairness in admission of evidence in s 130 of the Act mandates application of *Pfennig* test to admission of relationship evidence — Whether unfair to admit evidence unless, as stated in *Phillips v The Queen* (2006) 225 CLR 303 at 308, when "viewed in the context of the prosecution case, there is no reasonable view of the [relationship] evidence consistent with the innocence of the accused".

Appealed from Qld SC (CA): [2009] QCA 360.

Stubley v State of Western Australia

P29/2010: [\[2010\] HCATrans 269](#).

Date heard: 20 October 2010 – *Orders made on 20 October 2010.*

Written reasons of the Court to be published at a future date.

Catchwords:

Criminal law — Evidence — Admissibility and relevancy — Propensity evidence — Evidence of uncharged acts — Appellant former psychiatrist charged with offences relating to sexual activity with two former patients — Evidence of sexual activity with three further former patients adduced at trial — Whether trial judge erred in ruling evidence had significant probative value — *Evidence Act* 1906 (WA) s 31A.

Appealed from WA SC (CA): [2010] WASCA 36.

Braysich v The Queen

P32/2010: [\[2010\] HCATrans 268](#).

Date heard: 19 October 2010 — *Judgment reserved*.

Catchwords:

Criminal law — Particular offences — Financial transaction offences — Creating false or misleading appearance of active trading in securities — *Corporations Act 2001* (Cth) s 998(1) — Where “deeming” provision relied on by Crown — Where applicant deemed to have created false or misleading appearance of active trading by virtue of entering into or carrying out share transaction not involving change in beneficial ownership: s 998(5) — Where defence available if proved that purpose of transaction was not or did not include creating false or misleading appearance of active trading: s 998(6)— Where applicant did not expressly state in examination-in-chief that purpose was not to create false or misleading appearance of active trading — Where trial judge directed jury defence not available — Whether sufficient evidence to support defence — Whether direction to jury that defence unavailable correct.

Criminal law — Evidence — Where Crown adduced expert evidence to show that share trading transactions were likely to create a false or misleading appearance of active trading in order to rebut any defence applicant might raise — Where applicant sought to adduce expert evidence to refute Crown evidence — Where trial judge ruled defence not available — Whether applicant’s expert evidence admissible.

Appealed from WA SC (CCA): (2009) 260 ALR 719; (2009) 238 FLR 1; (2009) 74 ACSR 387; (2010) 27 ACLC 1678; [2009] WASCA 178.

Equity

Byrnes & Anor v Kendle

A23/2010: [\[2010\] HCATrans 322](#).

Date heard: 8 December 2010 — *Judgment reserved*.

Coram: French CJ, Gummow, Hayne, Heydon and Crennan JJ.

Catchwords:

Equity — Trusts and trustees — Powers, duties, rights and liabilities of trustees — Purchase or lease of trust property — Respondent husband held legal title to property but held half-share on trust for wife, the second appellant — Respondent leased property to his son but failed to collect rent — Where second appellant aware of failure to collect rent and did not object — Whether respondent had a duty as trustee of the property to collect rent — Whether second appellant was able to, and in fact did, consent to respondent's actions.

Appealed from SA SC (FC): [2009] SASC 385.

High Court and Federal Court

See **Criminal Law:** *Momcilovic v The Queen*

Human Rights

See **Criminal Law:** *Momcilovic v The Queen*

Insurance

Westport Insurance Corporation & Ors v Gordian Runoff Limited
S219/2010: [\[2011\] HCATrans 12](#); [\[2011\] HCATrans 13](#).

Date heard: 3 & 4 February 2011 — *Judgment reserved*.

Coram: French CJ, Gummow, Heydon, Crennan, Kiefel and Bell JJ.

Catchwords:

Insurance — Reinsurance — Application of *Insurance Act* 1902 (NSW) ("the Act") s 18B to reinsurance contracts.

Arbitration — The award — Appeal or judicial review — Grounds for remitting or setting aside — Error of law — Where arbitrators found s 18B(1) of the Act required appellant reinsurers to indemnify respondent reinsured in respect of certain claims made under insurance policy issued by respondent — Whether error of law to conclude that respondent's loss not caused by existence of relevant "circumstances" under s 18B(1) of the Act — Whether s 18B(1) of the Act applied to contracts — *Commercial Arbitration Act* 1984 (NSW) ss 38(5)(b)(i) and 38(5)(b)(ii).

Arbitration — The award — Appeal or judicial review — Grounds for remitting or setting aside — Whether arbitrators gave adequate

reasons for making the award — *Commercial Arbitration Act 1984* (NSW) s 29(1).

Appealed from NSW SC (CA): (2010) 267 ALR 74; (2010) 16 ANZ Insurance Cases 61-840; [2010] NSWCA 57.

Native Title

Edwards & Ors v Santos Ltd & Ors
S153/2010: [\[2010\] HCATrans 318](#).

Date heard: 1 December 2010 — *Judgment reserved*.

Coram: French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ.

Catchwords:

Native title — Permissible future acts — Where parties negotiating an indigenous land use agreement — Where defendants asserted during course of negotiations that grant of petroleum lease under *Petroleum Act 1923* (Qld) is a “future act” within meaning of *Native Title Act 1993* (Cth) (“the Act”) and so not subject to right to negotiate provisions of the Act and should not be part of indigenous land use agreement negotiations — Where plaintiffs disagreed and sought declaratory and injunctive relief in Federal Court of Australia — Whether plaintiffs required to prove native title in order to obtain such relief — Whether plaintiffs’ claim was one to enforce procedural rights under Pt 2 Div 3 of the Act or whether claim was to have Federal Court of Australia resolve dispute between parties to indigenous land use agreement — Application of *The Lardil Peoples v State of Queensland* (2001) 108 FCR 453.

This application to show cause was filed in the original jurisdiction of the High Court.

Real Property

Springfield Land Corporation (No 2) Pty Ltd & Anor v State of Queensland & Anor
B39/2010: [\[2010\] HCATrans 291](#).

Date heard: 10 November 2010 — *Judgment reserved*.

Coram: French CJ, Gummow, Hayne, Heydon and Crennan JJ.

Catchwords:

Real property — Compulsory acquisition of land — Compensation — Assessment — Adjoining land — Where parties agreed compensation would be determined using *Acquisition of Land Act 1963* (Qld) (“Act”) — Where disagreement as to compensation referred to arbitrator — Whether s 20(3) of the Act requires causal connection between enhancement in value and carrying out of purpose for which land was acquired — Whether characterisation of purpose for which land was acquired should be broad or narrow — Whether characterisation of purpose for which land was acquired a question of fact — Whether enhancement of value of land adjoining land compulsorily acquired which arose prior to and independently of expansion of purpose for which land was acquired can be set off against assessed compensation under s 20(3) of the Act — *Acquisition of Land Act 1963* (Qld).

Appealed from Qld SC (CA): (2009) 171 LGERA 38; [2010] ALMD 5984; [2009] QCA 381.

Statutes

See **Criminal Law:** *Momcilovic v The Queen*

Taxation and Duties

Commissioner of Taxation v BHP Billiton Limited; Commissioner of Taxation v BHP Billiton Petroleum (North West Shelf) Pty Ltd; Commissioner of Taxation v Broken Hill Proprietary Company Pty Ltd; Commissioner of Taxation v BHP Billiton Minerals Pty Ltd M117/2010-M120/2010; M121/2010 and M123 2010; M122/2010; M124/2010 and M125/2010: [\[2010\] HCATrans 320](#); [\[2010\] HCATrans 321](#).

Date heard: 7 and 8 December 2010 — *Judgment reserved*.

Coram: French CJ, Gummow, Heydon, Crennan and Bell JJ.

Catchwords:

Taxation and duties — Income tax and related legislation — Deductions — BHP Billiton Finance Limited (“BHP Finance”) and BHP Billiton Direct Reduced Iron Pty Ltd (“BHP Direct”) wholly owned subsidiaries of BHP Billiton Limited — BHP Direct partly financed capital expenditure on processing plant with funds borrowed from BHP Finance — BHP Finance classified large portion of loans to BHP Direct as irrecoverable after carrying value of BHP Direct’s assets written down — BHP Direct able to claim capital allowance tax deductions for expenditure incurred on processing plant — Capital

allowance deductions reduced by appellant applying *Income Tax Assessment Act 1997* (Cth) Div 243 — Div 243 applies where “limited recourse debt” used to finance expenditure, debt not paid in full at time of discharge and debtor can deduct amount as capital allowance for year in which discharge occurs, or has done so for earlier year: s 243-15 — “Limited recourse debt” is debt where creditor’s rights of recovery against debtor limited to property purchased using borrowed funds or where creditors rights are capable of being so limited: s 243-20 — Whether loans from BHP Finance to BHP Direct were “limited recourse debts” by virtue of being capable of being so limited — *Income Tax Assessment Act 1997* (Cth) s 243-20(2).

Appealed from FCA FC: (2010) 182 FCR 526; (2010) 76 ATR 472; (2010) ATC 20-169; [2010] ALMD 5417; [2010] FCAFC 25.

Torts

Miller v Miller

P25/2010: [\[2010\] HCATrans 286](#).

Date heard: 4 November 2010 — *Judgment reserved*.

Catchwords:

Torts — Negligence — Defences to negligence — Duty of care — Duty of care in joint criminal exercise — Duty of care arising between driver and passenger — Motor vehicle accident — Unlawful use of motor vehicle — Appellant and two others stole car in which motor vehicle accident later occurred — Respondent not involved in theft of motor vehicle, but was driving vehicle at time of accident — Respondent pleaded guilty to dangerous driving causing death, dangerous driving causing grievous bodily harm and driving under influence of alcohol — Whether Court of Appeal erred in finding that respondent owed no duty of care to applicant as passenger where appellant was participant in theft of vehicle — Whether Court of Appeal erred in its application of *Gala v Preston* (1991) 172 CLR 243 which was distinguished by trial judge on its facts — Whether doctrine of joint illegal enterprise as defence to negligence requires restatement — *Imbree v McNeilly* (2008) 236 CLR 510 — *Cook v Cook* (1986) 162 CLR 376.

Appealed from WA SC (CA): [2009] Aust Torts Reports 82-040; [2009] WASCA 199; (2009) 54 MVR 367.

Kuhl v Zurich Financial Services & Anor

P31/2010: [\[2010\] HCATrans 267](#).

Date heard: 19 October 2010 — *Judgment reserved*.

Catchwords:

Torts — Negligence — Essentials of action for negligence — Duty of care — Reasonable foreseeability of damage — Where appellant injured while operating high-pressure vacuum hose — Where company insured by first respondent provided vacuum hose — Where appellant not employee of company — Whether duty of care owed by company to appellant — Whether risk of injury reasonably foreseeable — Whether any duty of care owed was breached — Where modifications made to hose system following injury to appellant — Whether subsequent changes to work system relevant to analysis of whether any duty of care breached — Where speculation as to precise mechanism whereby appellant injured — Whether evidence as to how, precisely, accident occurred necessary before causation can be found — *Nelson v John Lysaght (Australia) Ltd* (1975) 132 CLR 201.

Appealed from WA SC (CA): [2010] Aust Torts Reports 82-053; [2010] WASCA 50; (2010) 194 IR 74.

3: ORIGINAL JURISDICTION

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

Constitutional Law

Nicholas v The Commonwealth & Anor
S183/2010

Catchwords:

Constitutional law — Operation and effect of Commonwealth Constitution — Plaintiff convicted by Australian Military Court of offences under *Defence Force Discipline Act 1982* (Cth) (“the Act”) on 25 August 2008 and sentenced accordingly — High Court of Australia declared provisions of the Act establishing Australian Military Court invalid on 26 August 2009: *Lane v Morrison* (2009) 239 CLR 230 — On 22 September 2009 *Military Justice (Interim Measures) Act (No 2)* 2009 (Cth) (“Interim Measures Act”) came into operation — Part 2 of Sch 1 to Interim Measures Act applies to punishments purportedly imposed by Australian Military Court prior to High Court decision — Pursuant to item 5, Sch 1 to Interim Measures Act rights and liabilities of plaintiff declared to be, and always to have been, same as if punishments purportedly imposed by Australian Military Court had been properly imposed by general court martial and certain other conditions satisfied — Rights and liabilities declared to be subject to any review provided for by Sch 1, Pt 7 — No review sought by plaintiff — Whether item 5, Sch 1 to Interim Measures Act valid law of Commonwealth — *Military Justice (Interim Measures) Act (No 2)* 2009 (Cth) Sch 1, item 5.

This matter was filed in the original jurisdiction of the High Court.

Haskins v The Commonwealth
S8/2011

Catchwords:

Constitutional law — Operation and effect of Commonwealth Constitution — Plaintiff convicted by Australian Military Court of offences under *Defence Force Discipline Act 1982* (Cth) (“the Act”) on 11 December 2008 and sentenced accordingly — High Court of Australia declared provisions of the Act establishing Australian Military Court invalid on 26 August 2009: *Lane v Morrison* (2009) 239 CLR 230 — On 22 September 2009 *Military Justice (Interim Measures) Act (No 2)* 2009 (Cth) (“Interim Measures Act”) came

into operation — Part 2 of Sch 1 to Interim Measures Act applies to punishments purportedly imposed by Australian Military Court prior to High Court decision — Pursuant to item 5, Sch 1 to Interim Measures Act rights and liabilities of plaintiff declared to be, and always to have been, same as if punishments purportedly imposed by Australian Military Court had been properly imposed by general court martial and certain other conditions satisfied — Rights and liabilities declared to be subject to any review provided for by Sch 1, Pt 7 — No review sought by plaintiff — Whether Interim Measures Act provides lawful authority justifying detention of plaintiff — If so, whether items 3, 4, and 5 of Sch 1 to Interim Measures Act valid laws of Commonwealth — *Military Justice (Interim Measures) Act (No 2) 2009* (Cth) Sch 1, items 3, 4 and 5.

This matter was filed in the original jurisdiction of the High Court.

4: SPECIAL LEAVE GRANTED

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

Administrative Law

Australian Crime Commission v Stoddart & Anor

B71/2010: [\[2010\] HCATrans 292](#).

Date heard: Determined without oral argument — *Special leave granted*.

Catchwords:

Administrative law — First respondent summoned under *Australian Crime Commission Act* 2002 (Cth) ("the Act") s 28 — First respondent declined to answer questions in relation to husband's activities on basis of common law privilege against spousal incrimination — Whether distinct common law privilege against spousal incrimination exists — Whether privilege abrogated by s 30 of the Act — *Australian Crime Commission Act* 2002 (Cth) ss 28, 30.

Appealed from FCA FC: (2010) 185 FCR 409; (2010) 271 ALR 53; [2010] FCAFC 89; [2010] ALMD 6989.

Constitutional Law

Roy Morgan Research Pty Ltd v Commissioner of Taxation

M177/2010: [\[2010\] HCATrans 323](#).

Date heard: 10 December 2010 — *Special leave granted*.

Catchwords:

Constitutional law — Operation and effect of Commonwealth Constitution — Power with respect to taxation (Constitution, s 51(ii)) — Commonwealth legislative scheme imposing obligation upon employers to pay superannuation guarantee charge — Whether charge a tax — Whether charge imposed for public purposes — *Luton v Lessels* (2002) 210 CLR 333; *Australian Tape Manufacturers Association Ltd v Commonwealth* (1993) 176 CLR 480 — *Superannuation Guarantee Charge Act* 1992 (Cth) and *Superannuation Guarantee (Administration) Act* 1992 (Cth).

Appealed from FCA FC: (2010) 184 FCR 448; (2010) 268 ALR 232; [2010] FCAFC 52; (2010) 76 ATR 264; (2010) ATC 20-184.

Jemena Asset Management (3) Pty Ltd & Ors v Coinvest Limited
M127/2010: [\[2010\] HCATrans 228](#).

Date heard: 3 September 2010 — *Special leave granted on limited grounds.*

Catchwords:

Constitutional law — Operation and effect of Commonwealth Constitution — Inconsistency of laws under s 109 of Commonwealth Constitution — Commonwealth legislative scheme imposing obligation upon employers to pay for long service leave — State law imposing obligation upon employers in construction industry to contribute to fund for portable long service leave entitlements — Whether inconsistency between State and federal legislative schemes — Commonwealth Constitution s 109 — *Construction Industry Long Service Leave Act 1997 (Vic).*

Appealed from FCA FC: (2009) 180 FCR 576; (2009) 263 ALR 374; [2009] FCAFC 176; (2009) 191 IR 236; [2010] ALMD 2942.

Corporations

Australian Securities and Investments Commission v Lanepoint Enterprises Pty Ltd (Receivers and Managers Appointed)
P43/2010: [\[2010\] HCATrans 276](#).

Date heard: 21 October 2010 — *Special leave granted.*

Catchwords:

Corporations — Winding up — Winding up in insolvency — Where respondent presumed to be insolvent once receiver was appointed: *Corporations Act 2001 (Cth) s 459C* — Where respondent required to rebut presumption in an application for winding up in insolvency — Respondent disputed extent of indebtedness — Whether company should be wound-up on basis of disputed debt — Whether court may determine merits of disputed debt in course of winding up proceeding.

Appealed from FCA FC: (2010) 78 ACSR 487; (2010) 28 ACLC 10-035; [2010] FCAFC 49.

Criminal Law

Commonwealth Director of Public Prosecutions v Poniatowska

A20/2010: [\[2010\] HCATrans 304](#).

Date heard: 12 November 2010 — *Referred to an enlarged Court.*

Catchwords:

Criminal law — Offences — Respondent failed to declare \$71,000 in commission payments while receiving parenting benefit from Centrelink — Whether omitting to perform act a physical element of offence — Whether existence of legal duty or obligation to perform act, imposed by offence provision or other Commonwealth statute, determinative of question about physical element — *Criminal Code* 1995 (Cth) ss 4.3 and 135.2.

Words and phrases — “engages in conduct”.

Appealed from SA SC (FC): (2010) SASR 578; (2010) 240 FLR 466; (2010) 271 FLR 610; [2010] SASCFC 19; [2010] ALMD 7469.

White v Director of Public Prosecutions (WA)

P44/2010: [\[2010\] HCATrans 277](#).

Date heard: 21 October 2010 — *Special leave granted.*

Catchwords:

Criminal law — Procedure — Confiscation of proceeds of crime and related matters — Restraining or freezing order — Where applicants did not own and have effective control of property where offences committed — Where freezing orders made over applicants’ property in place of property where offences took place — Whether property where offences took place was “crime-used” property — Scope of court’s power to set aside a freezing order — *Criminal Property Confiscation Act* 2000 (WA) ss 22, 82, 146.

Words and phrases — “crime-used”, “criminal use”.

Appealed from WA SC (CA): (2010) 199 A Crim R 448; [2010] WASCA 47; [2010] WASCA 46.

Damages

Maurice Blackburn Cashman v Brown
M176/2010: [\[2010\] HCATrans 331](#).

Date heard: 10 December 2010 — *Special leave granted*.

Catchwords:

Damages — Statutory constraint on action for damages — Respondent former employee of applicant — Respondent made claim pursuant to *Accident Compensation Act 1985* (Vic) (“the Act”) for statutory compensation for non-economic loss arising from psychological injury suffered as result of actions of fellow employee — Victorian WorkCover Authority (“WorkCover”) accepted respondent had psychological injury arising out of employment with applicant — WorkCover referred medical questions to Medical Panel for opinion under s 67 of the Act — Medical Panel certified respondent had 30% permanent psychiatric impairment resulting from accepted injury — Respondent deemed by Act to have suffered “serious injury” and permitted to commence common law proceedings for damages as result — Proceedings commenced in County Court of Victoria — Applicant’s pleadings in defence contested causation and injury — Respondent pleaded in reply that applicant estopped from making assertion inconsistent with Medical Panel opinion — Whether defendant’s right to contest common law damages claims subject to the Act compromised by Medical Board opinion — Whether Medical Board opinion gives rise to issue estoppel for purposes of common law damages proceeding.

Appealed from Vic SC (CA): [2010] VSCA 206.

Defamation

Boland v Dillon; Cush v Dillon
S310/2010; S309/2010: [\[2010\] HCATrans 333](#).

Date heard: 10 December 2010 — *Special leave granted*.

Catchwords:

Defamation — Defences — Qualified privilege — Boland and respondent directors and Cush General Manager of Borders River-Gwydir Catchment Management Authority (“the CMA”) — Respondent told chairman of CMA that “[i]t is common knowledge among people in the CMA that [the applicants] are having an affair” — Common ground at trial that applicants not having affair and that respondent did not believe applicants having affair when comment

made — Respondent denied making comment — Jury found respondent made defamatory comment — Respondent advanced defence of qualified privilege founded on perceived need to inform chairman of “the rumour and the accusation” of affair — Whether common law defence of qualified privilege available to publisher of defamatory statement who denies making statement — Whether publication of imputations of affair between director and General Manager of body, rather than rumour of possible affair, can be published by another director to chairman on occasion of qualified privilege — Whether voluntary nature of defamatory imputations decisive against defence of qualified privilege.

Appealed from NSW SC (CA): [2010] NSWCA 165.

Energy and Resources

Jemena Gas Networks (NSW) Ltd v Mine Subsidence Board
S312/2010: [\[2010\] HCATrans 332](#).

Date heard: 10 December 2010 — *Special leave granted*.

Catchwords:

Energy and resources — Compensation for subsidence caused by mining — Applicant owned and operated gas pipeline — Coal mining in vicinity of pipeline caused subsidence — Subsidence insufficient to damage pipeline, but future mining expected to cause cumulative level of subsidence sufficient to damage pipeline — Applicant engaged in preventive and mitigation works to protect pipeline — Works concluded prior to commencement of mining expected to cause damaging subsidence — Claim for compensation for costs of works rejected by respondent — Whether compensation payable for costs incurred with respect to anticipated subsidence — Whether requirement of causation in *Mine Subsidence Compensation Act* 1961 (NSW) s 12A(1)(b) determined by reference to single mining event or by reference to ongoing extraction in accordance with mining plan — *Mine Subsidence Board v Wambo Coal Pty Ltd* (2007) 54 LGERA 60 — *Mine Subsidence Compensation Act* 1961 (NSW) s 12A(1)(b).

Appealed from NSW SC (CA): 175 LGERA 16; [2010] NSWCA 146; [2010] ALMD 7059.

Evidence

Dasreef Pty Limited v Nawaf Hawchar
S313/2010: [\[2010\] HCATrans 339](#).

Date heard: 10 December 2010 — *Special leave granted*.

Catchwords:

Evidence — Admissibility and relevance — Opinion evidence — Expert opinion — Expert with experience relevant to general topic of industrial dust gave opinion evidence to Dust Diseases Tribunal on concentration of silica in air — Whether expert disclosed facts, assumptions and reasoning in manner sufficient to make it plain to trial judge that expert opinion wholly or substantially based on expert's expertise in area of contention — Whether such disclosure necessary in order for evidence to be admissible — *Evidence Act 1995 (NSW) s 79*.

Appealed from NSW SC (CA): [2010] NSWCA 154.

Lithgow City Council v Jackson
S158/2010: [\[2010\] HCATrans 27](#).

Date heard: 11 February 2011 — *Special leave granted*.

Catchwords:

Evidence — Admissibility and relevance — Notes of ambulance officers ("Notes") — Whether Notes an opinion and inadmissible under *Evidence Act 1995 (NSW)* ("the Act") s 76 — Whether Notes a lay opinion and admissible under s 78 of the Act — Whether opinion of underlying matter or event includes perceptions of aftermath of matter or event — Meaning of "necessary" in s 78(b) of the Act — *Evidence Act 1995 (NSW) ss 76, 78*.

Appealed from NSW SC (CA): [2010] NSWCA 136.

Immigration

SZNX v Minister for Immigration and Citizenship & Anor; SZNKW v Minister for Immigration and Citizenship & Anor
S321/2010; S322/2010: [\[2010\] HCATrans 335](#).

Date heard: 10 December 2010 — *Special leave granted*.

Catchwords:

Immigration — Refugees — Review by Refugee Review Tribunal ("RRT") — Applicants claimed to be homosexual couple — RRT received anonymous facsimile stating SZKNW's claim to be homosexual "totally bogus" — Applicants advised of letter, but not given copy, at separate hearings before RRT — Letter included material particular to SZKNW, including passport number and departmental file number — Where applicants allege letter provided by disgruntled former migration agent — Whether RRT failed to comply with statutory requirement in s 424A of the *Migration Act* 1958 (Cth) ("the Act") to provide clear particulars of letter by not providing copy of letter and failing to advise letter contained departmental file number — Whether s 424AA of the Act engaged — *Migration Act* 1958 (Cth) ss 424AA, 424A.

Appealed from FCA: [2009] FCA 1407; [2010] FCA 55.

Practice and Procedure

Michael Wilson & Partners Limited v Nicholls & Ors
S236/2010: [\[2011\] HCATrans 28](#).

Date heard: 11 February 2011 — *Special leave granted*.

Catchwords:

Practice and procedure — Supreme Court procedure — Abuse of process — Applicant obtained judgment against respondents in New South Wales Supreme Court ("NSWSC") for knowing participation in breach of fiduciary duty by a non-party — London arbitrators subsequently issued interim award upholding breach of duties by non-party but denying compensation to applicant ("the Award") — Respondents not party to the Award — Whether abuse of process for applicant to seek to enforce judgment in NSWSC in face of the Award.

Practice and procedure — Courts and judges — Disqualification of judges for interest or bias — Apprehended bias — Application of lay observer test in *Johnson v Johnson* (2000) 201 CLR 488 — Whether lay observer test "unnecessary" and "wholly artificial" where judge personally apprehends bias — Whether conclusion of New South Wales Court of Appeal on trial judge's apprehensible bias justified on facts.

Practice and procedure — Waiver — Trial judge refused to recuse himself ("the recusal decision") and invited respondents to appeal the recusal decision — Respondents did not appeal the recusal decision until after trial and judgment adverse to respondents delivered — Whether the recusal decision an order or judgment —

Whether the recusal decision amenable to appeal — Whether respondents waived right to appeal the recusal decision by proceeding with trial.

Appealed from NSW SC (CA): (2010) 243 FLR 177; [2010] NSWCA 222.

See also **Taxation and Duties:** *American Express Wholesale Currency Services Pty Ltd v Commissioner of Taxation; American Express International Inc v Commissioner of Taxation*

Restitution

Equuscorp Pty Ltd (formerly Equus Financial Services Ltd) v Haxton; Equuscorp Pty Ltd (formerly Equus Financial Services Ltd) v Bassat; Equuscorp Pty Ltd (formerly Equus Financial Services Ltd) v Cunningham Warehouse Sales Pty Ltd
M128/2010, M129/2010 and M130/2010-M132/2010: [\[2010\] HCATrans 231](#).

Date heard: 3 September 2010 — *Special leave granted*.

Catchwords:

Restitution — Restitution resulting from unenforceable, incomplete, illegal or void contracts — Recovery of money paid or property transferred — Respondents investors in tax driven blueberry farming schemes — Funds for farm management fees lent to investors by Rural Finance Ltd (“Rural”) — Applicant lent money to Rural — Rural subsequently wound up — Loan contracts between respondents and Rural assigned to applicant — Applicant’s enforcement of contractual debts statute-barred — Where parties agreed in court below loan contracts illegal and unenforceable — Whether total failure of consideration — Whether respondents’ retention of loan funds “unjust”.

Restitution — Assignment of rights of restitution — Where Deed of Assignment assigning Rural’s loans to applicant included assignment of “legal right to such debts ... and all legal and other remedies” — Whether rights of restitution able to be assigned — Whether rights of restitution assigned in this case.

Appealed from Vic SC (CA): (2010) 265 ALR 336; [2010] VSCA 1.

Statutes

Australian Education Union v Department of Education and Children's Services

A12/2010: [\[2011\] HCATrans 22](#).

Date heard: 11 February 2011 — *Special leave granted*.

Catchwords:

Statutes — Acts of Parliament — Interpretation — Statutory powers and duties — Conferral and extent of power — Particular words and phrases — General matters constrained by specific — Applicants teachers appointed under *Education Act 1972* (SA) ("the Act") s 9(4) — Where s 15 of the Act enabled Minister to appoint teachers "officers of the teaching service" — Where s 9(4) of the Act enabled Minister to appoint officers and employees "in addition to" officers of teaching service — Meaning of "in addition to" — Whether general power in s 9(4) constrained by specific power in s 15 — Whether within Minister's power to appoint teachers under s 9(4) of the Act or whether s 15 sole source of Executive power — *Education Act 1972* (SA) ss 9(4), 15.

Appealed from SASC (FC): [2010] SASC 161.

Peter Nicholas Moloney t/a Moloney & Partners v Workers Compensation Tribunal

A22/2010: [\[2011\] HCATrans 25](#).

Date heard: 11 February 2011 — *Special leave granted*.

Catchwords:

Statutes — Subordinate legislation — Validity — Where *Workers Rehabilitation Compensation Act 1986* (SA) ("the Act") s 88E(1)(f) authorised President of Workers Compensation Tribunal to make Rules regulating "costs" — Where s 88G of the Act regulated recovery of costs by worker's representative — Where *Workers Compensation Tribunal Rules 2009* r 31(2) restricted recovery of costs by worker's representative — Whether "costs" in s 88E(1)(f) of the Act includes solicitor-client costs or only party-party costs — Whether power conferred by s 88E(1)(f) limited by s 88G of the Act — Whether s 88G invalidates r 31(2) — *Workers Rehabilitation Compensation Act 1986* (SA) ss 88E(1)(f), 88G — *Workers Compensation Tribunal Rules 2009* r 31(2).

Appealed from SASC (FC): (2010) 108 SASR 1; [2010] SASCFC 17.

Taxation and Duties

American Express Wholesale Currency Services Pty Ltd v Commissioner of Taxation; American Express International Inc v Commissioner of Taxation
S238/2010; S239/2010: [\[2011\] HCATrans 26](#).

Date heard: 11 February 2011 — *Referred to an enlarged Full Court.*

Catchwords:

Taxation and duties — Goods and services tax — Applicants providers of charge cards and credit cards — Whether payments received by applicants from cardholders (liquidated damages and late payment fees) ("Default Fees") revenue from or consideration for a "financial supply" within meaning of *A New Tax System (Goods and Services Tax) Act 1999* (Cth) Div 40 and *A New Tax System (Goods and Services Tax) Regulations 1999* (Cth) ("Regulations") — Whether Default Fees revenue from provision, acquisition or disposal of an interest in or under "a debt, credit arrangement or right to credit, including a letter of credit": Item 2 of table to r 40-5.09(3) of Regulations — Whether Default Fees revenue from supply of or interest in or under "a payment system": Item 4 of the table to r 40-5.12 of Regulations.

Taxation and duties — Goods and services tax — Whether right to present a card as payment for goods and services and incur a corresponding obligation to pay at a later date an "interest" within meaning of r 40-5.09 of Regulations — Whether Default Fees paid for that "interest".

Procedure — Appeals — Amendment — Respondent granted leave to amend Notices of Appeal — Whether Full Court of Federal Court of Australia erred in granting leave.

Appealed from FCA FC: (2010) 187 FCR 398; (2010) 77 ATR 12; (2010) ATC 20-212; [2010] FCAFC 122.

Trade and Commerce

Insight Vacations Pty Ltd t/as Insight Vacations v Young
S273/2010: [\[2010\] HCATrans 305](#).

Date heard: 12 November 2010 — *Special leave granted.*

Catchwords:

Trade and commerce — *Trade Practices Act 1974* (Cth) (“TPA”) and related legislation — Consumer protection — Conditions and warranties in consumer transactions — Warranties — Whether s 74(2A) of TPA applies to State law authorising contractual provision limiting or precluding liability for breach of implied warranty of due care and skill in s 74(1) of TPA — Whether s 74(2A) of TPA only applies to State laws which limit or preclude liability for breach of implied warranty in s 74(1) of TPA by their own terms — Whether s 74(2A) of TPA picks up and applies s 5N(1) of *Civil Liability Act 2002* (NSW) (“CLA”) — Whether exclusion clause authorised by s 5N of CLA is contract term purporting to exclude, restrict or modify application of s 74(1) of TPA, within meaning of s 68 of TPA — *Trade Practices Act 1974* (Cth) ss 68, 74(2A) — *Civil Liability Act 2002* (NSW) s 5N.

Appealed from NSW SC (CA): (2010) 241 FLR 125; (2010) 268 ALR 570; [2010] Aust Torts Reports 82-061; [2010] ASAL 55-209; [2010] NSWCA 137; [2010] ALMD 6898; [2010] ALMD 7034.

5: CASES NOT PROCEEDING OR VACATED

The following cases in the High Court of Australia are not proceeding or have been vacated since High Court Bulletin 12 [2010] HCAB 12.

Constitutional Law

KPMG (a firm) v The Commonwealth & Anor

M66/2010: [\[2010\] HCATrans 151](#); [\[2011\] HCATrans 9](#).

Date: *Matter discontinued by parties.*

Catchwords:

Constitutional law — Operation and effect of Commonwealth Constitution — Powers with respect to property — Power to acquire property on just terms— Acquisition of property — Where Australian Securities and Investment Commission (“ASIC”) has power to cause proceedings to be brought in the name of a company for recovery of damages or property in certain circumstances — Where ASIC caused proceedings to be brought against plaintiff in the name of various companies — Whether the commencement of proceedings in the name of a company by ASIC effects an acquisition of property on other than just terms — Commonwealth Constitution s 51(xxxi) — *Australian Securities and Investment Commission Act 2001 (Cth) s 50.*

This writ of summons was filed in the original jurisdiction of the High Court.

Criminal Law

Bowers & Anor v Director of Public Prosecutions (WA)

P45/2010: [\[2010\] HCATrans 277](#).

Date: *Matter discontinued by parties.*

Catchwords:

Criminal law — Procedure — Confiscation of proceeds of crime and related matters — Restraining or freezing order — Where applicants did not own and have effective control of property where offences committed — Where freezing orders made over applicants’ property in place of property where offences took place — Whether property

where offences took place was “crime-used” property — Scope of court’s power to set aside a freezing order — *Criminal Property Confiscation Act 2000 (WA)* ss 22, 82, 146.

Words and phrases — “crime-used”, “criminal use”.

Appealed from WA SC (CA): (2010) 199 A Crim R 448; [2010] WASCA 47; [2010] WASCA 46.

6: SPECIAL LEAVE REFUSED

Canberra: 9 February 2011

(Publication of reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
BRGAD of 2009 & Anor	Minister for Immigration and Citizenship & Anor (B64/2010)	Federal Court of Australia [2010] FCA 1053	Application dismissed [2011] HCASL 1
Fuller	Stephen Toms & Ors (B66/2010)	Supreme Court of Queensland (Court of Appeal) [2010] QCA 283	Application dismissed [2011] HCASL 2
MZYER	Minister for Immigration and Citizenship & Anor (M87/2010)	Federal Court of Australia [2010] FCA 522	Application dismissed [2011] HCASL 3
MZYFJ	Minister for Immigration and Citizenship & Anor (M103/2010)	Federal Court of Australia [2010] FCA 721	Application dismissed [2011] HCASL 4
Patel	Minister for Immigration and Citizenship & Anor (M136/2010)	Federal Court of Australia [2010] FCA 918	Application dismissed [2011] HCASL 5
Karam	Palmone Shoes Pty Ltd (M140/2010; M141/2010)	Supreme Court of Victoria (Court of Appeal) [2010] VSCA 253	Application dismissed [2011] HCASL 6
In the matter of an application by John Richard Walsh	(M146/2010)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application dismissed [2011] HCASL 7
Serobian & Anor	Commonwealth Bank of Australia (S210/2010)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 181	Application dismissed [2011] HCASL 8
SZOAM & Ors	Minister for Immigration and Citizenship & Anor (S211/2010)	Federal Court of Australia [2010] FCA 864	Application dismissed [2011] HCASL 9
SZLIC	Minister for Immigration and Citizenship & Anor (S221/2010)	Federal Court of Australia [2008] FCA 790	Application dismissed [2011] HCASL 10
SZOGV	Minister for Immigration and Citizenship & Anor (S220/2010)	Federal Court of Australia [2010] FCA 936	Application dismissed [2011] HCASL 11

SZ NXT & Ors	Minister for Immigration and Citizenship & Anor (S222/2010)	Federal Court of Australia [2010] FCA 955	Application dismissed [2011] HCASL 12
Samootin	Official Trustee In Bankruptcy & Ors (S223/2010)	Full Court of the Federal Court of Australia [2010] FCAFC 113	Application dismissed [2011] HCASL 13
SZOBS & Anor	Minister for Immigration and Citizenship & Anor (S226/2010)	Federal Court of Australia [2010] FCA 1000	Application dismissed [2011] HCASL 14
Macatangay	State of New South Wales (S232/2010)	Supreme Court of New South Wales (Court of Appeal) (no media neutral citation)	Application dismissed [2011] HCASL 15
Rahman	Riordan & Anor (S242/2010)	Supreme Court of New South Wales (Court of Appeal) (no media neutral citation)	Application dismissed [2011] HCASL 16
Johal	Johal (M95/2010)	Family Court of Australia (no media neutral citation)	Application dismissed with costs [2011] HCASL 17
Devers	Kindilan Society (M98/2010)	Full Court of the Federal Court of Australia [2010] FCAFC 72	Application dismissed with costs [2011] HCASL 18

Canberra: 11 February 2011

(Heard in Canberra by video link to Adelaide)

Civil

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Merrell Associates Ltd	H L (Qld) Nominees Pty Ltd & Anor (A18/2010)	Full Court of the Supreme Court of South Australia [2010] SASC 155	Special leave refused with costs [2011] HCATrans 19
Sands	Channel Seven Adelaide Pty Limited & Anor (A17/2010)	Full Court of the Supreme Court of South Australia [2010] SASC 202	Special leave refused with costs [2011] HCATrans 20
Employment Services Australia Pty Ltd	Poniatowska & Anor (A21/2010)	Full Court of the Federal Court of Australia [2010] FCAFC 92	Special leave refused with costs [2011] HCATrans 21
Tasmanian Sandstone Quarries Pty Ltd	Legalcom Pty Ltd (A19/2010)	Full Court of the Supreme Court of South Australia [2010] SASCFC 6	Special leave refused with costs [2011] HCATrans 23

Criminal

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Orman	The Queen (M144/2010)	Supreme Court of Victoria (Court of Appeal)	Special leave refused [2011] HCATrans 18

Papadopoulos	The Queen (A24/2010)	Supreme Court of South Australia (Court of Criminal Appeal) [2010] SASCFC 30	Special leave refused [2011] HCATrans 24
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Sydney: 11 February 2011

Civil

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Oates & Anor	Pegela Pty Limited & Anor	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 186	Special leave refused with costs [2011] HCATrans 29
Attorney General of New South Wales	Laurie & Ors (S218/2010)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 199	Special leave refused with costs [2011] HCATrans 31

Criminal

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Tran	The Queen (S213/2010)	Supreme Court of New South Wales (Court of Criminal Appeal) [2008] NSWCCA 194	Special leave refused [2011] HCATrans 30
PWD	The Queen (S237/2010)	Supreme Court of New South Wales (Court of Criminal Appeal) [2010] NSWCCA 209	Special leave refused [2011] HCATrans 32
RWB	The Queen (S229/2010)	Supreme Court of New South Wales (Court of Criminal Appeal) [2010] NSWCCA 147	Special leave refused [2011] HCATrans 34
