



# HIGH COURT BULLETIN

Produced by the Legal Research Officer,  
High Court of Australia Library  
[2018] HCAB 5 (27 June 2018)

A record of recent High Court of Australia cases: decided, reserved for judgment, awaiting hearing in the Court's original jurisdiction, granted special leave to appeal, refused special leave to appeal and not proceeding or vacated

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## 1: SUMMARY OF NEW ENTRIES

### 2: Cases Handed Down

<b>Case</b>	<b>Title</b>
<a href="#"><i>DL v The Queen</i></a>	Criminal Law
<a href="#"><i>Lane v The Queen</i></a>	Criminal Law
<a href="#"><i>Minoque v State of Victoria</i></a>	Criminal Law
<a href="#"><i>Trkulja v Google LLC</i></a>	Defamation
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<a href="#"><i>Amaca Pty Limited v Latz; Latz v Amaca Pty Limited</i></a>	Negligence
<a href="#"><i>Rozenblit v Vainer &amp; Anor</i></a>	Procedure

3: Cases Reserved

<b>Case</b>	<b>Title</b>
<a href="#"><u><i>Mighty River International Limited v Hughes &amp; Ors; Mighty River International Limited v Mineral Resources Limited &amp; Ors</i></u></a>	Corporations
<a href="#"><u><i>Johnson v The Queen</i></u></a>	Criminal Law
<a href="#"><u><i>The Queen v Dennis Bauer (A Pseudonym) (No 2)</i></u></a>	Criminal Law
<a href="#"><u><i>ETA067 v The Republic of Nauru</i></u></a>	Migration
<a href="#"><u><i>HFM043 v The Republic of Nauru</i></u></a>	Migration
<a href="#"><u><i>WET052 v The Republic of Nauru</i></u></a>	Migration
<a href="#"><u><i>Commissioner of State Revenue v Placer Dome Inc</i></u></a>	Stamp Duty

4: Original Jurisdiction5: Section 40 Removal6: Special Leave Granted

<b>Case</b>	<b>Title</b>
<a href="#"><u><i>KN (deceased) and Others on behalf of the Tjiwarl and Tjiwarl#2 Native Title Claim Groups v State of Western Australia &amp; Ors</i></u></a>	Native Title
<a href="#"><u><i>Tjungarrayi &amp; Ors v State of Western Australia &amp; Ors</i></u></a>	Native Title

7: Cases Not Proceeding or Vacated

## 2: CASES HANDED DOWN

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

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### Criminal Law

*DL v The Queen*

**A38/2017:** [\[2018\] HCA 26](#)

**Judgment delivered:** 20 June 2018

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

**Catchwords:**

Criminal law – Trial by judge alone – Adequacy of reasons – Where appellant convicted of "[p]ersistent sexual exploitation of a child" – Where offence comprised of two or more acts of sexual exploitation separated by not less than three days – Where complainant alleged various acts of sexual exploitation over many years – Where alleged inconsistencies and implausibilities in complainant's evidence – Where trial judge regarded complainant as reliable witness as to "core allegations" – Whether trial judge's reasons inadequate because failed to identify two or more acts constituting offence – Whether trial judge's reasons inadequate because failed to explain process of reasoning.

Words and phrases – "adequacy of reasons", "basis for decision", "conflict between evidence", "credibility", "inadequacy of reasons", "inconsistencies in evidence", "process of reasoning", "reasons", "trial by judge alone".

*Criminal Law Consolidation Act 1935 (SA) – s 50(1).*

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

**Held:** Appeal dismissed

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*Lane v The Queen*

**S308/2017:** [\[2018\] HCA 28](#)

**Judgment delivered:** 20 June 2018

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

**Catchwords:**

Criminal law – Appeal against conviction – Application of proviso – Where appellant convicted of manslaughter – Where either of two acts of appellant may have caused death of deceased – Where trial judge erred in failing to direct jury as to requirement that it be unanimous as to specific act causing death – Whether "no substantial miscarriage of justice has actually occurred" – Whether absence of unanimity direction precluded application of proviso.

Words and phrases – "fundamental defect", "nature and effect of the error", "presuppositions of the trial", "proviso", "reasonable doubt", "substantial miscarriage of justice", "unanimity direction", "unanimous".

*Criminal Appeal Act 1912 (NSW) – s 6(1).*

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

**Held:** Appeal allowed

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*Minogue v State of Victoria*

**M2/2017:** [\[2018\] HCA 27](#)

**Judgment delivered:** 20 June 2018

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

**Catchwords:**

Criminal law – Parole – Where s 74AAA of *Corrections Act 1986 (Vic)* imposes conditions for making parole order for prisoner convicted and sentenced to imprisonment for murder of person who prisoner knew was, or was reckless as to whether person was, police officer – Where s 127A inserted into *Corrections Act 1986 (Vic)* stating s 74AAA applies regardless of whether prior to commencement of s 74AAA prisoner became eligible for parole, prisoner took steps to ask Adult Parole Board of Victoria ("Board") to grant parole, or Board began consideration of whether prisoner should be granted parole – Where prior to commencement of s 74AAA and s 127A plaintiff became eligible for parole and applied for parole and Board began consideration of whether plaintiff should be granted parole – Whether s 74AAA and s 127A apply to plaintiff.

Words and phrases – "non-parole period", "parole", "recklessness", "sentencing", "statutory construction".

*Charter of Human Rights and Responsibilities Act 2006 (Vic) – ss 10, 22, 28, 31, 32.*

*Corrections Act 1986 (Vic) – ss 74AAA, 127A.*

*Crimes Act 1958 (Vic) – s 3.*

**Held:** Questions answered

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## Defamation

*Trkulja v Google LLC*

**M88/2017:** [\[2018\] HCA 25](#)

**Judgment delivered:** 13 June 2018

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

**Catchwords:**

Defamation – Publication – Capacity to defame – Where application for summary dismissal of defamation proceeding – Where allegedly defamatory matter includes search results of internet search engine – Where allegedly defamatory matter includes autocomplete predictions of internet search engine – Whether respondent published allegedly defamatory matter – Whether matter capable of conveying allegedly defamatory imputations – Whether proceeding had no real prospect of success.

Words and phrases – "autocomplete", "capacity to defame", "composite publication", "defamation", "defamatory image", "no real prospect of success", "ordinary reasonable person", "publication", "search engine", "search results", "search terms", "summary dismissal", "summary judgment".

*Civil Procedure Act 2010 (Vic) – ss 62, 63.*

*Supreme Court (General Civil Procedure) Rules 2005 (Vic) – rr 7.01, 8.09.*

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

**Held:** Appeal allowed with costs

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## Migration

*CRI028 v Republic of Nauru*

**[M66/2017](#)**: [\[2018\] HCA 24](#)

**Judgment delivered:** 13 June 2018

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

### **Catchwords:**

Migration – Refugees – Appeal as of right from Supreme Court of Nauru – Where Secretary of Department of Justice and Border Control determined appellant not refugee – Where Refugee Status Review Tribunal affirmed Secretary's determination – Where appellant established well-founded fear of persecution – Where Tribunal found alternative "home area" – Whether Tribunal properly applied internal relocation principle – Whether Tribunal failed to consider family unity – Whether Supreme Court erred in affirming Tribunal's determination.

Words and phrases – "family unity", "home area", "in all the circumstances", "internal relocation principle", "reasonableness of relocation", "relocation".

*Appeals Act* 1972 (Nr) – s 44.

*Nauru (High Court Appeals) Act* 1976 (Cth) – s 5, Sched, Art 1.

*Refugees Convention Act* 2012 (Nr) – ss 3, 4, 5, 6, 22, 31, 34, 43, 44.

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

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

**Held:** Appeal allowed with costs

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## Negligence

*Amaca Pty Limited v Latz; Latz v Amaca Pty Limited*

**[A8/2018](#), [A7/2018](#)**: [\[2018\] HCA 22](#)

**Orders pronounced:** 11 May 2018

**Reasons delivered:** 13 June 2018

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

**Catchwords:**

Negligence – Personal injury – Damages – Assessment of present value of future loss – Where claimant diagnosed with terminal malignant mesothelioma post-retirement – Where claimant's life expectancy reduced – Where claimant receiving superannuation pension under *Superannuation Act 1988 (SA)* and age pension under *Social Security Act 1991 (Cth)* – Whether superannuation pension entitlement which would have been received during remainder of pre-illness life expectancy compensable loss – Whether age pension entitlement which would have been received during remainder of pre-illness life expectancy compensable loss – Whether reversionary pension payable under s 38(1)(a) of *Superannuation Act* to partner on claimant's death should be deducted from damages award.

Words and phrases – "age pension", "capital asset", "compensable loss", "compensatory principle", "loss of earning capacity", "lost years", "net present value", "offsetting or collateral benefit", "pension", "pre-illness life expectancy", "reversionary pension", "superannuation pension".

*Social Security Act 1991 (Cth)* – Pt 2. 2.

*Superannuation Act 1988 (SA)* – Pt 5.

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

**Held:** Appeal by Amaca Pty Limited allowed in part; appeal by Latz dismissed

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## Procedure

*Rozenblit v Vainer & Anor*

**M114/2017:** [\[2018\] HCA 23](#)

**Judgment delivered:** 13 June 2018

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

**Catchwords:**

Practice and procedure – Victoria – Stay of proceeding – Where appellant commenced proceeding in Supreme Court of Victoria –

Where appellant made applications for leave to file and serve amended statement of claim – Where applications refused with costs taxed immediately – Where costs unpaid because appellant impecunious – Where appellant made further application – Where leave to amend statement of claim granted but proceeding stayed under *Supreme Court (General Civil Procedure) Rules 2015 (Vic)* r 63.03(3) until interlocutory costs orders paid – Whether primary judge erred in making order to stay proceedings.

Words and phrases – "conduct which falls for condemnation", "costs taxed immediately", "impecunious", "interlocutory costs order", "only practical way to ensure justice between the parties", "stay of proceeding", "strong grounds".

*Civil Procedure Act 2010 (Vic)* – ss 7, 8, 9, 65C, 65E.

*Supreme Court Act 1986 (Vic)* – ss 24, 25.

*Supreme Court (General Civil Procedure) Rules 2015 (Vic)* – rr 63.03(3), 63.20.1.

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

**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.

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### Contracts

*Pipikos v Trayans*

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

**Date heard:** 15 March 2018

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

**Catchwords:**

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

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

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### Corporations

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

**P7/2018, P8/2018:** [\[2018\] HCATrans 120](#)

**Date heard:** 19 June 2018

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

**Catchwords:**

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

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

*Orders made on 19 June 2018 dismissing appeals with costs.  
Written reasons of the Court to be published at a future date.*

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## Criminal Law

*DL v The Queen*

**S309/2017:** [\[2018\] HCATrans 83](#)

**Date heard:** 11 May 2018

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

**Catchwords:**

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

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

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*Johnson v The Queen*

**[A9/2018](#)**; [\[2018\] HCATrans 121](#)

**Date heard:** 20 June 2018

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

**Catchwords:**

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

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

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

**[M168/2017](#)**; **[M176/2017](#)**; **[M175/2017](#)**; **[M174/2017](#)**; [\[2018\] HCATrans 75](#); [\[2018\] HCATrans 78](#)

**Date heard:** 8 and 9 May 2018

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

**Catchwords:**

Criminal law – Stay of proceedings – *Australian Crime Commission Act 2002 (Cth)* – Investigations – Where Australian Federal Police (“AFP”) commenced investigation – Where appellants summoned by

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

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

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*The Queen v Dennis Bauer (A Pseudonym) (No 2)*

**M1/2018:** [\[2018\] HCATrans 111](#)

**Date heard:** 13 June 2018

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

**Catchwords:**

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

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

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*The Queen v Falzon*

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

**Date heard:** 19 April 2018

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

**Catchwords:**

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

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

*Orders made on 19 April 2018 allowing appeal.*

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

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## Equity

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

**A37/2017:** [\[2018\] HCATrans 64](#)

**Date heard:** 12 April 2018

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

**Catchwords:**

Equity – Account of profits – *Corporations Act 2001 (Cth)* ss 181-183, 1317H – Where appellant employed former employees of respondents – Where respondents brought claim against appellant for knowing assistance in former employees’ breaches of contractual and fiduciary duties and duties of confidence and involvement in contraventions of ss 181-183 – Where primary judge held appellant knowingly participated in breaches of fiduciary duties and duties of confidence but dismissed claim for account of profits on basis no profits attributable to use of confidential information or breaches of duties – Where Full Court held sufficient causal connection established and awarded account of profits in equity – Where Full Court also held facts constituting knowing participation amounted to involvement in contraventions of ss 181-183 and made same order for account of profits under s 1317H –

Whether Full Court erred in finding sufficient causal connection – Whether Full Court erred in ordering account of profits calculated on basis of net present value of future potential profits where no profits actually made and without regard to accumulated losses incurred by appellant.

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

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## Migration

*ETA067 v The Republic of Nauru*

**M167/2017:** [\[2018\] HCATrans 114](#)

**Date heard:** 14 June 2018

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

**Catchwords:**

Migration – *Nauru (High Court Appeals) Act 1976 (Cth)* – *Refugees Convention Act 2012 (Nr)* – Where appellant applied for refugee status determination – Where Secretary of Nauru Department of Justice determined appellant not refugee and not entitled to complementary protection – Where Refugee Status Review Tribunal affirmed Secretary’s determination – Where Supreme Court of Nauru dismissed appeal – Whether Supreme Court erred in failing to find Tribunal breached s 22(b) and s 40(1) of *Refugees Convention Act* by failing to consider evidence provided by appellant and failing to act in accordance with principles of natural justice.

**Appealed from Supreme Court of Nauru:** [\[2017\] NRSC 99](#)

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*HFM043 v The Republic of Nauru*

**M146/2017:** [\[2018\] HCATrans 113](#)

**Date heard:** 14 June 2018

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

**Catchwords:**

Migration – *Nauru (High Court Appeals) Act 1976 (Cth)* – *Refugees Convention Act 2012 (Nr)* – Where appellant applied for refugee

status determination – Where Secretary of Nauru Department of Justice determined appellant not refugee and not entitled to complementary protection – Where Refugee Status Review Tribunal affirmed Secretary’s determination – Where appellant appealed to Supreme Court – Where appellant granted derivative status and issued Refugee Determination Record based on marriage to refugee while Supreme Court judgment reserved – Where Supreme Court concluded Tribunal erred in law but dismissed appeal on basis remittal to Tribunal would be futile – Whether Supreme Court erred in exercising discretion not to remit matter to Tribunal.

**Appealed from Supreme Court of Nauru:** [\[2017\] NRSC 76](#)

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

**Date heard:** 21 March 2018

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

**Catchwords:**

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

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

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

**Date heard:** 13 March 2018

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

**Catchwords:**

Migration – *Migration Act* 1958 (Cth) s 426A(1) – Where first and second respondents applied for Protection (Class XA) visas – Where Department refused applications – Where respondents filed application for review by Refugee Review Tribunal – Where application form contained postal address, mobile phone number and email address – Where Tribunal by letter addressed to postal address invited first and second respondents to provide further information – Where first and second respondents did not respond – Where Tribunal by further letter invited first and second respondents to appear before it – Where first and second respondents did not attend – Where Tribunal exercised power under s 426A(1) to affirm decision without taking further action – Where Federal Circuit Court held Tribunal’s decision unreasonable – Where Full Court dismissed appeal – Whether Full Court erred by requiring Minister to establish *House v The King* (1936) 55 CLR 499 error – Whether Full Court erred by failing to find primary judge erred in concluding Tribunal’s decision unreasonable.

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

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*Shrestha v Minister for Immigration and Border Protection & Anor*;  
*Ghimire v Minister for Immigration and Border Protection & Anor*;  
*Acharya v Minister for Immigration and Border Protection & Anor*  
[M141/2017](#), [M142/2017](#), [M143/2017](#): [\[2018\] HCATrans 52](#)

**Date heard:** 21 March 2018

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

**Catchwords:**

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



**Appealed from FCA (FC):** [\[2017\] FCAFC 69](#); (2017) 251 FCR 143

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*WET052 v The Republic of Nauru*

**S267/2017:** [\[2018\] HCATrans 115](#)

**Date heard:** 15 June 2018

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

**Catchwords:**

Migration – *Nauru (High Court Appeals) Act 1976 (Cth)* – *Refugees Convention Act 2012 (Nr)* – Where appellant applied for refugee status determination – Where Secretary of Nauru Department of Justice determined appellant not refugee and not entitled to complementary protection – Where Refugee Status Review Tribunal affirmed Secretary’s determination – Where Supreme Court of Nauru dismissed appeal – Whether Supreme Court erred in failing to find Tribunal’s adverse credibility finding illogical and without probative foundation or unreasonable – Whether Supreme Court erred in failing to find Tribunal failed to consider integer of claims to protection and/or consider claims cumulatively.

**Appealed from Supreme Court of Nauru:** [\[2017\] NRSC 96](#)

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## Probate

*Nobarani v Mariconte*

**S270/2017:** [\[2018\] HCATrans 87](#)

**Date heard:** 17 May 2018

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

**Catchwords:**

Probate – Appeal against grant of probate – Procedural fairness – Where respondent sought grant of probate of will dated 5 December 2013 – Where earlier will left share of jewellery and personal effects to appellant – Where appellant lodged caveat against grant of probate – Where primary judge granted probate – Where Court of Appeal found appellant denied procedural fairness at trial – Where majority of Court of Appeal held re-trial should not

be ordered – Whether majority of Court of Appeal erred in failing to order re-trial – Whether intermediate appellate court can assess whether party denied procedural fairness would be unsuccessful if new trial ordered – Whether appellant lacked sufficient interest to challenge grant of probate.

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

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## Procedure

*UBS AG v Scott Francis Tyne as Trustee of the Argot Trust*  
**B54/2017:** [\[2018\] HCATrans 67](#)

**Date heard:** 18 April 2018

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

### Catchwords:

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

**Appealed from FCA (FC):** [\[2017\] FCAFC 5](#); (2017) 250 FCR 341; (2017) 341 ALR 415

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## Stamp Duty

*Commissioner of State Revenue v Placer Dome Inc*  
**P6/2018:** [\[2018\] HCATrans 119](#)

**Date heard:** 18 June 2018

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

**Catchwords:**

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

**Appealed from WASC (CA):** [\[2017\] WASCA 165](#); (2017) 106 ATR 511

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## Taxation

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

[B60/2017](#); [B61/2017](#); [B62/2017](#); [B63/2017](#): [\[2018\] HCATrans 62](#); [\[2018\] HCATrans 63](#)

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

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

**Catchwords:**

Taxation – Franking credits – *Income Tax Assessment Act* 1997 (Cth) pt 3-6 div 207 – Where trustee resolved to apply net income of trust fund to benefit of two beneficiaries on assumption franking credits could be treated as separate category of income from dividends to which credits attached – Where Commissioner of Taxation notified trustee of intention to commence audit – Where trustee sought directions from Queensland Supreme Court under *Trusts Act* 1973 (Qld) s 96 as to proper construction of trust deed

and resolutions – Where Commissioner notified of proceedings but did not seek to become party – Where Supreme Court declared trustee resolutions effective to achieve franking credit distributions – Where Commissioner of Taxation issued amended notices of assessment – Where primary judge upheld amended assessments – Where Full Court allowed appeal – Whether Full Court erred in concluding Commissioner bound by declarations made by Supreme Court – Whether Full Court erred in concluding franking credits may be distributed on a different basis to income from dividends.

**Appealed from FCA (FC):** [\[2017\] FCAFC 57](#); (2017) 105 ATR 413; (2017) 2017 ATC 20-612

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## 4: ORIGINAL JURISDICTION

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

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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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### Constitutional Law

*Clubb v Edwards & Anor*

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

**Catchwords:**

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

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*Preston v Avery & Anor*

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

**Catchwords:**

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

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## 6: SPECIAL LEAVE GRANTED

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

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### Arbitration

*Rinehart & Anor v Hancock Prospecting Pty Ltd & Ors; Rinehart & Anor v Georgina Hope Rinehart (in her personal capacity and as trustee of the Hope Margaret Hancock Trust and as trustee of the HFMF Trust) & Ors*

**S143/2018; S144/2018:** [\[2018\] HCATrans 90](#)

**Date heard:** 18 May 2018 – *Special leave granted on limited grounds.*

**Catchwords:**

Arbitration – Arbitration agreements – Interpretation – Where parties entered into series of deeds containing arbitration agreements – Where primary judge ordered trial of question whether arbitration agreements in deeds null and void, inoperative or incapable of being performed – Where Full Court stayed proceeding and referred parties to arbitration – Whether Full Court erred in concluding arbitration clauses expressed to cover disputes “under” agreement extended to disputes concerning the validity of the deeds or provisions thereof.

**Appealed from FCA (FC):** [\[2017\] FCAFC 170](#); (2017) 350 ALR 658 and [\[2017\] FCAFC 208](#)

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### Constitutional Law

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

**D4/2018:** [\[2018\] HCATrans 69](#)

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

**Catchwords:**

Constitutional law – Inconsistency – *Work Health and Safety (National Uniform Legislation) Act 2011 (NT)* – Where hot air balloon passenger died from injuries suffered as result of scarf being sucked into inflation fan – Where appellant alleged first

respondent breached s 32 of Act – Where magistrate dismissed complaint on basis *Air Navigation Act 1920 (Cth)*, *Civil Aviation Act 1988 (Cth)* and other Commonwealth regulation covered field of safety of air navigation – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in concluding federal civil aviation legislation excluded operation of *Work Health and Safety (National Uniform Legislation) Act 2011 (NT)*.

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

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## Corporations

*Australian Securities & Investments Commission v Lewski & Anor*;  
*Australian Securities & Investments Commission v Wooldridge & Anor*;  
*Australian Securities & Investments Commission v Butler & Anor*;  
*Australian Securities & Investments Commission v Jaques & Anor*;  
*Australian Securities & Investments Commission v Clarke & Anor*

[M79/2018](#); [M80/2018](#); [M81/2018](#); [M82/2018](#); [M83/2018](#): [\[2018\] HCATrans 91](#)

**Date heard:** 18 May 2018 – *Special leave granted*.

### Catchwords:

Corporations – Managed investment schemes – Third party transactions – *Corporations Act 2001 (Cth)* ss 208, 209, 601FC, 601FD, 601GC – Where directors resolved to lodge deed purporting to amend constitution to authorise payment of fee to responsible entity – Where appellant brought civil penalty proceedings for contraventions of Act against responsible entity and directors – Where trial judge concluded directors breached duties in resolving to lodge deed and authorising payment of fee – Where Full Court allowed appeals – Whether Full Court erred in concluding deed purporting to amend constitution valid until set aside by Court – Whether Full Court erred in concluding deed binding on responsible entity – Whether Full Court erred in failing to find directors involved in contravention of s 208 by authorising payment of fee to responsible entity.

**Appealed from FCA (FC):** [\[2017\] FCAFC 171](#); (2017) 352 ALR 64

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## Criminal Law

*Grajewski v Director of Public Prosecutions (NSW)*

**S141/2018:** [\[2018\] HCATrans 89](#)

**Date heard:** 18 May 2018 – *Special leave granted.*

**Catchwords:**

Criminal law – Destroy or damage property – *Crimes Act 1900* (NSW) s 195(1) – Meaning of “damage” – Where appellant climbed machine causing operator to shut down machine – Where appellant convicted of intentionally or recklessly damaging property contrary to s 195(1)(a) – Where District Court dismissed appeal and referred question whether facts can support finding of guilt to Court of Criminal Appeal – Where Court of Criminal Appeal answered “yes” – Whether Court of Criminal Appeal erred in concluding “damage” can be established where no physical derangement of property – Whether Court of Criminal Appeal erred in concluding temporary physical interference with functionality of property may constitute “damage” for purpose of s 195.

**Appealed from NSWSC (CA):** [\[2017\] NSWCCA 251](#)

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*Rodi v State of Western Australia*

**P24/2018:** [\[2018\] HCATrans 71](#)

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

**Catchwords:**

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

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

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## Evidence

*McPhillamy v The Queen*

**S121/2018:** [\[2018\] HCATrans 73](#)

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

**Catchwords:**

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

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

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## Interpretation

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

**B9/2018:** [\[2018\] HCATrans 56](#)

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

**Catchwords:**

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

**Appealed from Fam CA (FC):** [\[2017\] FamCAFC 216](#); (2017) 327 FLR 228

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*Comptroller General of Customs v Zappia*  
**S91/2018:** [\[2018\] HCATrans 51](#)

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

**Catchwords:**

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

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

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*SAS Trustee Corporation v Miles*  
**S260/2017:** [\[2017\] HCATrans 208](#)

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

**Catchwords:**

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

determined by Commissioner under s 10B(3) to have been caused by being "hurt on duty".

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

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*Williams v Wreck Bay Aboriginal Community Council & Anor*  
**C5/2018:** [\[2018\] HCATrans 50](#)

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

**Catchwords:**

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

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

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## Migration

*BEG15 v Minister for Immigration and Border Protection & Anor*  
**S135/2018:** [\[2018\] HCATrans 80](#)

**Date determined:** 10 May 2018 – *Special leave granted.*

**Catchwords:**

Migration – Jurisdictional error – *Migration Act 1958* (Cth) s 438 – Where appellant applied for protection visa – Where application refused by delegate – Where appellant applied to Refugee Review Tribunal for review of decision – Where delegate issued certificate under s 438(1)(a) that disclosure of certain information would be

contrary to public interest – Where certificate invalid – Where Tribunal did not inform appellant of certificate or disclose information to appellant – Where Tribunal affirmed delegate’s decision – Where Federal Circuit Court dismissed application for judicial review – Where Full Federal Court dismissed appeal – Whether Full Court erred in failing to find Tribunal fell into jurisdictional error in acting on invalid certificate – Whether Full Court erred in failing to find not open to primary judge to withhold relief where decision affected by jurisdictional error – Whether necessary for applicant to show denial of procedural fairness in addition to invalidity of certificate.

**Appealed from FCA (FC):** [\[2017\] FCAFC 198](#); (2017) 253 FCR 36

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*CQZ15 v Minister for Immigration and Border Protection & Anor*  
**M75/2018:** [\[2018\] HCATrans 79](#)

**Date determined:** 10 May 2018 – *Special leave granted.*

**Catchwords:**

Migration – Jurisdictional error – *Migration Act* 1958 (Cth) s 438 – Where appellant applied for protection visa – Where application refused by delegate – Where appellant applied to Administrative Appeals Tribunal for review of decision – Where delegate issued certificate under s 438(1)(a) that disclosure of certain information would be contrary to public interest – Where certificate invalid – Where delegate issued further certificate – Where Tribunal did not inform appellant of certificates or disclose information to appellant – Where Tribunal affirmed delegate’s decision – Where Federal Circuit Court concluded Tribunal fell into jurisdictional error in acting upon invalid certificate and failing to disclose existence of certificates to appellant – Where Full Federal Court allowed appeal – Whether Full Court erred in departing from *Minister for Immigration and Border Protection v Singh* (2016) 244 FCR 305 by failing to find Tribunal fell into jurisdictional error in not disclosing certificates – Whether Full Court erred in failing to find not open to primary judge to withhold relief where decision affected by jurisdictional error.

**Appealed from FCA (FC):** [\[2017\] FCAFC 194](#); (2017) 253 FCR 1

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

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

**Catchwords:**

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

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

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## Native Title

*KN (deceased) and Others on behalf of the Tjiwarl and Tjiwarl#2 Native Title Claim Groups v State of Western Australia & Ors*

**P5/2018:** [\[2018\] HCATrans 124](#)

**Date heard:** 21 June – *Special leave granted.*

**Catchwords:**

Native title – Extinguishment – Exploration licence – *Native Title Act* 1993 (Cth) s 47B – Where unallocated Crown land subject to exploration licence granted under *Mining Act* 1978 (WA) – Where native title determination application filed in respect of land – Where primary judge concluded s 47B applied because exploration licence not “lease” within meaning of s 47B(1)(b)(i) – Where Federal Court allowed appeal – Whether Federal Court erred in concluding exploration licence is “lease” within meaning of s 47B(1)(b)(i).

**Appealed from FCA (FC):** [\[2018\] FCAFC 8](#); (2018) 351 ALR 491

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*Northern Territory of Australia v Alan Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples & Anor; Commonwealth of Australia v Alan Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples & Anor; Alan Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples v Northern Territory of Australia & Anor*  
[D1/2018](#); [D2/2018](#); [D3/2018](#): [\[2018\] HCATrans 28](#)

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

**Catchwords:**

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

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

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*Tjungarrayi & Ors v State of Western Australia & Ors*  
**P18/2018:** [\[2018\] HCATrans 124](#)

**Date heard:** 21 June – *Special leave granted.*

**Catchwords:**

Native title – Extinguishment – Petroleum exploration permits – *Native Title Act* 1993 (Cth) s 47B – Where land subject to

petroleum exploration permits granted under *Petroleum and Geothermal Energy Resources Act 1967* (WA) – Where native title determination application filed in respect of land – Where primary judge concluded s 47B applied because petroleum exploration permits not “leases” within meaning of s 47B(1)(b)(i) – Where Federal Court allowed appeal – Whether Federal Court erred in concluding petroleum exploration permits “leases” within meaning of s 47B(1)(b)(i).

**Appealed from FCA (FC):** [\[2018\] FCAFC 35](#)

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## Tort

*Parkes Shire Council v South West Helicopters Pty Ltd*

**S140/2018:** [\[2018\] HCATrans 92](#)

**Date heard:** 18 May 2018 – *Special leave granted on limited grounds.*

### Catchwords:

Tort – Negligence – Psychiatric injury – Where Council engaged South West Helicopters to provide helicopter and pilot for aerial survey – Where Council employees died in helicopter crash – Where relatives brought proceedings in negligence for nervous shock against Council and South West Helicopters under *Compensation to Relatives Act 1897* (NSW) – Where primary judge upheld claim – Where majority of Court of Appeal allowed appeal on basis any liability South West Helicopters might have had under *Compensation to Relatives Act* or general law excluded by *Civil Aviation (Carriers’ Liability) Act 1959* (Cth) – Whether majority of Court of Appeal erred in construction of s 35 of *Civil Aviation (Carriers’ Liability) Act* – Whether majority of Court of Appeal erred in failing to conclude claims against carriers brought by non-passengers following death of passenger not regulated by s 35.

**Appealed from NSW (CA):** [\[2017\] NSWCA 312](#); (2017) 327 FLR 110

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# 7: CASES NOT PROCEEDING OR VACATED

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## 8: SPECIAL LEAVE REFUSED

### Publication of Reasons: 13 June 2018

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Dhillon & Anor	Minister for Immigration and Border Protection & Anor (M25/2018)	Federal Court of Australia [2018] FCA 86	Application dismissed <a href="#">[2018] HCASL 140</a>
2.	CRC15	Minister for Immigration and Border Protection & Anor (M38/2018)	Federal Court of Australia [2018] FCA 218	Application dismissed <a href="#">[2018] HCASL 141</a>
3.	Slaveski	The Queen (M44/2018)	Supreme Court of Victoria (Court of Appeal) [2018] VSCA 44	Application dismissed <a href="#">[2018] HCASL 142</a>
4.	BZY15	Minister for Immigration and Border Protection & Anor (M49/2018)	Federal Court of Australia [2018] FCA 323	Application dismissed <a href="#">[2018] HCASL 143</a>
5.	Squance	The State of Western Australia (P11/2018)	Supreme Court of Western Australia (Court of Criminal Appeal) [2018] WASCA 25	Application dismissed <a href="#">[2018] HCASL 144</a>
6.	AMD16	Minister for Immigration and Border Protection & Ors (S78/2018)	Federal Court of Australia [2018] FCA 302	Application dismissed <a href="#">[2018] HCASL 145</a>
7.	SZKOR & Ors	Minister for Immigration and Border Protection & Anor (S79/2018)	Federal Court of Australia [2018] FCA 260	Application dismissed <a href="#">[2018] HCASL 146</a>
8.	CJH16	Minister for Immigration and Border Protection & Anor (S81/2018)	Federal Court of Australia [2018] FCA 327	Application dismissed <a href="#">[2018] HCASL 147</a>
9.	ADS15	Minister for Immigration and Border Protection & Anor (S88/2018)	Federal Court of Australia [2018] FCA 233	Application dismissed <a href="#">[2018] HCASL 148</a>
10.	AMY16	Minister for Immigration and Border Protection & Anor (S92/2018)	Federal Court of Australia [2018] FCA 292	Application dismissed <a href="#">[2018] HCASL 149</a>
11.	ALJ16	Minister for Immigration and Border Protection & Anor (S93/2018)	Federal Court of Australia [2018] FCA 297	Application dismissed <a href="#">[2018] HCASL 150</a>
12.	AWI16	Minister for Immigration and Border Protection & Anor (S94/2018)	Federal Court of Australia [2018] FCA 284	Application dismissed <a href="#">[2018] HCASL 151</a>
13.	GM	The Queen (S29/2018)	Supreme Court of New South Wales (Court of Criminal Appeal) [2017] NSWCA 298	Application dismissed <a href="#">[2018] HCASL 152</a>

## 8: Special Leave Refused

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
14.	Metro North Hospital and Health Service	Pierce (S50/2018)	Supreme Court of New South Wales (Court of Appeal) [2018] NSWCA 11	Application dismissed with costs <a href="#">[2018] HCASL 153</a>
15.	ACB17	Minister for Immigration and Border Protection & Anor (B6/2018)	Federal Court of Australia [2018] FCA 237	Application dismissed <a href="#">[2018] HCASL 154</a>
16.	DTJ16	Minister for Immigration and Border Protection & Anor (B16/2018)	Federal Court of Australia [2018] FCA 415	Application dismissed <a href="#">[2018] HCASL 155</a>
17.	Olman	Teitzel (M20/2018)	Family Court of Australia	Application dismissed <a href="#">[2018] HCASL 156</a>
18.	ARM15	Minister for Immigration and Border Protection & Anor (M37/2018)	Federal Court of Australia [2018] FCA184	Application dismissed <a href="#">[2018] HCASL 157</a>
19.	AZG15	Minister for Immigration and Border Protection & Anor (M39/2018)	Federal Court of Australia [2018] FCA 226	Application dismissed <a href="#">[2018] HCASL 158</a>
20.	Hough	The State of Western Australia (P10/2018)	Supreme Court of Western Australia (Court of Appeal) [2018] WASCA 20	Application dismissed <a href="#">[2018] HCASL 159</a>
21.	Dandie	Perpetual Trustees Victoria Ltd (P14/2018)	Supreme Court of Western Australia (Court of Appeal) [2017] WASCA 74	Application dismissed <a href="#">[2018] HCASL 160</a>
22.	Tobin (Dandie)	Xplore Capital Ltd & Anor (P15/2018)	Supreme Court of Western Australia (Court of Criminal Appeal) [2017] WASCA 74	Application dismissed <a href="#">[2018] HCASL 160</a>
23.	CEY16	Minister for Immigration and Border Protection & Anor (S72/2018)	Federal Court of Australia [2018] FCA 492	Application dismissed <a href="#">[2018] HCASL 161</a>
24.	Al Titi	Minister for Immigration and Border Protection & Anor (S82/2018)	Federal Court of Australia [2018] FCA 239	Application dismissed <a href="#">[2018] HCASL 162</a>
25.	AAJ17	Minister for Immigration and Border Protection & Anor (S83/2018)	Federal Court of Australia [2018] FCA 205	Application dismissed <a href="#">[2018] HCASL 163</a>
26.	BQZ16	Minister for Immigration and Border Protection & Anor (S85/2018)	Federal Court of Australia [2018] FCA 261	Application dismissed <a href="#">[2018] HCASL 164</a>
27.	BAZ15	Minister for Immigration and Border Protection & Anor (S90/2018)	Federal Court of Australia [2018] FCA 230	Application dismissed <a href="#">[2018] HCASL 165</a>
28.	Proudfoot	Director of Public Prosecutions & Anor (M16/2018)	Removal application	Application dismissed with costs <a href="#">[2018] HCASL 166</a>

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<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
29.	Bradley	Ebbsfleet Pty Ltd as Trustee for Ebbsfleet Superannuation Fund & Ors (S51/2018)	Supreme Court of New South Wales (Court of Appeal) [2018] NSWCA 12	Application dismissed with costs <a href="#">[2018] HCASL 167</a>
30.	Spencer	Commonwealth of Australia & Anor (S53/2018)	Full Court of the Federal Court of Australia [2018] FCAFC 17	Application dismissed with costs <a href="#">[2018] HCASL 168</a>

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## Publication of Reasons: 14 June 2018

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	VAM	NAB (A3/2018)	Full Court of the Supreme Court of South Australia [2017] SASCFC 147	Application dismissed <a href="#">[2018] HCASL 169</a>
2.	VAM	NAB (A4/2018)	Full Court of the Supreme Court of South Australia [2017] SASCFC 174	Application dismissed <a href="#">[2018] HCASL 169</a>
3.	BPW16	Minister for Immigration and Border Protection & Anor (B18/2018)	Federal Court of Australia [2018] FCA 414	Application dismissed <a href="#">[2018] HCASL 170</a>
4.	CKZ15	Minister for Immigration and Border Protection & Anor (M24/2018)	Federal Court of Australia [2018] FCA 162	Application dismissed <a href="#">[2018] HCASL 171</a>
5.	BGY15	Minister for Immigration and Border Protection & Anor (M29/2018)	Federal Court of Australia [2018] FCA 217	Application dismissed <a href="#">[2018] HCASL 172</a>
6.	AOG15	Minister for Immigration and Border Protection & Anor (M31/2018)	Federal Court of Australia [2018] FCA 270	Application dismissed <a href="#">[2018] HCASL 173</a>
7.	BAC15	Minister for Immigration and Border Protection & Anor (M34/2018)	Federal Court of Australia [2018] FCA 257	Application dismissed <a href="#">[2018] HCASL 174</a>
8.	MZARY	Minister for Immigration and Border Protection & Anor (M42/2018)	Federal Court of Australia [2018] FCA 374	Application dismissed <a href="#">[2018] HCASL 175</a>
9.	BJG15	Minister for Immigration and Border Protection & Anor (M48/2018)	Federal Court of Australia [2018] FCA 251	Application dismissed <a href="#">[2018] HCASL 176</a>
10.	SZUNF	Minister for Immigration and Border Protection & Anor (S86/2018)	Federal Court of Australia [2018] FCA 220	Application dismissed <a href="#">[2018] HCASL 177</a>
11.	DPM16	Minister for Immigration and Border Protection & Anor (S89/2018)	Federal Court of Australia [2018] FCA 249	Application dismissed <a href="#">[2018] HCASL 178</a>
12.	BZH15 & Ors	Minister for Immigration and Border Protection & Anor (S95/2018)	Federal Court of Australia [2018] FCA 236	Application dismissed <a href="#">[2018] HCASL 179</a>
13.	EAU16	Minister for Immigration and Border Protection & Anor (S99/2018)	Federal Court of Australia [2018] FCA 318	Application dismissed <a href="#">[2018] HCASL 180</a>
14.	BNG16	Minister for Immigration and Border Protection & Anor (S100/2018)	Federal Court of Australia [2018] FCA 229	Application dismissed <a href="#">[2018] HCASL 181</a>
15.	Bodycorp Repairers Pty Ltd	Holding Redlich (M28/2018)	Supreme Court of Victoria (Court of Appeal) [2018] VSCA 17	Application dismissed with costs <a href="#">[2018] HCASL 182</a>

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
16.	Bodycorp Repairers Pty Ltd	Oakley Thompson & Co Pty Ltd (M35/2018)	Supreme Court of Victoria (Court of Appeal) [2018] VSCA 33	Application dismissed with costs <a href="#">[2018] HCASL 183</a>
17.	Zaburoni	Minister for Immigration and Border Protection (S40/2018)	Full Court of the Federal Court of Australia [2017] FCAFC 205	Application dismissed with costs <a href="#">[2018] HCASL 184</a>
18.	Yeshiva Synagogue Inc & Ors	Karimbla Properties (No 10) Pty Ltd as trustee for the Harry Triguboff Foundation (S61/2018)	Supreme Court of New South Wales (Court of Appeal) [2018] NSWCA 23	Application dismissed with costs <a href="#">[2018] HCASL 185</a>

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<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	KN (deceased) and Others on behalf of the Tjiwarl and Tjiwarl#2 Native Title Claim Groups	BHP Billiton Nickel West Pty Ltd & Ors (P4/2018)	Full Court of the Federal Court of Australia [2018] FCAFC 8	Application dismissed with costs <a href="#">[2018] HCATrans 123</a>
2.	Singh	Minister for Immigration and Border Protection & Anor (S282/2017)	Federal Court of Australia [2017] FCA 1297	Application dismissed with costs <a href="#">[2018] HCATrans 125</a>
3.	BES16	Minister for Immigration and Border Protection & Anor (S43/2018)	Federal Court of Australia [2018] FCA 78	Application dismissed with costs <a href="#">[2018] HCATrans 126</a>

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