



# HIGH COURT BULLETIN

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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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## SUMMARY OF NEW ENTRIES

### [1: Cases Handed Down](#)

<b>Case</b>	<b>Title</b>
<a href="#">The Queen v GW</a>	Criminal Law
<a href="#">Moreton Bay Regional Council v Mekpine Pty Ltd</a>	Property
<a href="#">State of Victoria v Tatts Group Limited</a>	Statutes
<a href="#">Tabcorp Holdings Limited v State of Victoria</a>	Statutes
<a href="#">R &amp; Anor v The Independent Broad-based Anti-corruption Commissioner</a>	Statutes

### [2: Cases Reserved](#)

<b>Case</b>	<b>Title</b>
<a href="#">Nguyen v The Queen</a>	Criminal

<a href="#">Badenach &amp; Anor v Calvert</a>	Professions and Trades
<a href="#">Coverdale v West Coast Council</a>	Property
<a href="#">Attwells &amp; Anor v Jackson Lalic Lawyers Pty Limited</a>	Torts
<a href="#">Military Rehabilitation and Compensation Commission v May</a>	Workers Compensation

### 3: Original Jurisdiction

<b>Case</b>	<b>Title</b>
<a href="#">Bell Group NV (In Liq) &amp; Anor v State of Western Australia</a>	Constitution
<a href="#">Maranoa Transport Pty Ltd (In Liq) &amp; Ors v State of Western Australia &amp; Ors</a>	Constitution
<a href="#">WA Glendinning &amp; Associates Pty Ltd v The State of Western Australia</a>	Constitution

### 4: Special Leave Granted

<b>Case</b>	<b>Title</b>
<a href="#">Graham v The Queen</a>	Criminal
<a href="#">Sio v The Queen</a>	Criminal
<a href="#">Zefi v The Director of Public Prosecutions; Jakaj v The Director of Public Prosecutions; Stakaj v The Director of Public Prosecutions; N,H v The Director of Public Prosecutions</a>	Criminal
<a href="#">Australian Competition &amp; Consumer Commission v Flight Centre Travel Group Limited</a>	Competition
<a href="#">Lyons v State of Queensland</a>	Discrimination
<a href="#">Minister for Immigration and Border Protection &amp; Anor v SZSSJ &amp; Anor; Minister for Immigration and Border Protection &amp; Ors v SZTZI</a>	Migration

# 1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the March 2016 sittings.

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## Criminal Law

*The Queen v GW*

**C13/2015:** [\[2016\] HCA 6](#)

**Date heard:** 10 December 2015.

**Coram:** French CJ, Bell, Gageler, Keane and Nettle JJ.

### Catchwords:

Criminal law – Evidence – Unsworn evidence – Where respondent convicted following trial in Supreme Court of the Australian Capital Territory of commission of act of indecency in presence of daughter, R – Where R six years old when giving evidence – Where R's evidence received unsworn under s 13(3) of Uniform Evidence legislation – Where ex tempore reasons of pre-trial judge suggested reversal of presumption of competence to give sworn evidence – Where respondent agreed to be bound by pre-trial judge's ruling under s 13(3) – Whether pre-trial judge failed to apply s 13 – Whether open to pre-trial judge to be satisfied s 13(3) test met – Whether R's unsworn evidence wrongly admitted.

Criminal law – Evidence – Jury directions – Where audiovisual recording of child witness' unsworn evidence tendered at trial – Where respondent requested trial judge direct jury that evidence unsworn – Whether Uniform Evidence legislation required direction – Whether common law required direction to avoid perceptible risk of miscarriage of justice – Whether adequate directions given.

Words and phrases – "competence", "evidence of a kind that may be unreliable", "evidence of children", "obligation to give truthful evidence", "perceptible risk of a miscarriage of justice", "presumption of competence", "reliability", "sworn evidence", "unsworn evidence".

Crimes Act 1900 (ACT) – s 61(1).

Evidence Act 2011 (ACT) – ss 12, 13, 21, 165, 165A, Sched 1.

Evidence (Miscellaneous Provisions) Act 1991 (ACT) – s 70.

**Appealed from ACTSC (CA):** [2015] ACTCA 15.

**Held:** Appeal allowed.

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## Property

*Moreton Bay Regional Council v Mekpine Pty Ltd*

**B60/2015:** [\[2016\] HCA 7](#)

**Date heard:** 8 December 2015.

**Coram:** French CJ, Kiefel, Bell, Gageler and Nettle JJ.

### **Catchwords:**

Real property – Resumption of land – Leases – Where registered lease expressed to confer interest over specified lot of land that was later amalgamated with adjacent lot – Where land previously part of adjacent lot resumed by local council – Whether lessee's interest extended to entire amalgamated lot upon registration of plan of subdivision under Land Title Act 1994 (Q) – Whether lessee had compensable interest in resumed land under Acquisition of Land Act 1967 (Q), s 12(5).

Real property – Leases – Retail leases – Construction and interpretation – Whether necessary to construe lease otherwise than in accordance with natural and ordinary effect of its terms.

Statutes – Interpretation – Function of definition clause – Whether definition of "Common Areas" in retail shop lease inconsistent with definition of "common areas" in Retail Shop Leases Act 1994 (Q), s 6.

Words and phrases – "common areas", "interest in land", "outgoings", "plan of subdivision", "registered lease", "registration of an instrument", "resumed land", "retail shop lease", "retail shopping centre".

Acquisition of Land Act 1967 (Q) – ss 2, 12(5).

Acts Interpretation Act 1954 (Q) – s 36.

Land Title Act 1994 (Q) – ss 12, 49, 49A, 50, 64, 65, 182, 183, 184, Sched 2.

Retail Shop Leases Act 1994 (Q) – ss 3, 5, 6, 7(1), 8, 19, 20, 38(2), 40(1), Pt 3 Div 2, Schedule

**Appealed from QSC (CA):** [\[2014\] QCA 317](#).

**Held:** Appeal allowed.

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## Statutes

*State of Victoria v Tatts Group Limited*

**M83/2015:** [\[2016\] HCA 5](#)

**Date heard:** 11 November 2015.

**Coram:** French CJ, Kiefel, Bell, Keane and Gordon JJ.

**Catchwords:**

Contract – Construction of terms – Where contract used statutory term "gaming operator's licence" – Where contract provided for payment to respondent if "new gaming operator's licence" issued to person other than respondent – Where statutory scheme amended so gaming operator's licence could no longer be issued – Meaning of "new gaming operator's licence" – Whether payment due.

Contract – Construction of terms – Context and purpose – Where commercial context regulated by statutory regime – Where letter from member of Executive annexed to contract – View of reasonable business people.

Contract – Construction of terms – Whether pre-existing contractual right operated independently of statutory right on same subject matter – Whether pre-existing contractual right discharged or abrogated by subsequent legislative enactment.

Words and phrases – "gaming machine entitlement", "gaming operator's licence", "new gaming operator's licence".

Gaming Machine Control Act 1991 (Vic) – Pt 3.

Gambling Regulation Act 2003 (Vic) – Pts 4 and 4A of Ch 3.

**Appealed from VSC (CA):** [\[2014\] VSCA 311](#).

**Held:** Appeal allowed.

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*Tabcorp Holdings Limited v State of Victoria*

**[M81/2015](#)**: [\[2016\] HCA 4](#)

**Date heard:** 10 November 2015; 11 November 2015.

**Coram:** French CJ, Kiefel, Bell, Keane and Gordon JJ.

**Catchwords:**

Statutes – Interpretation – Where conjoined "wagering licence" and "gaming licence" issued under statutory scheme – Where statute provided for payment on "grant of new licences" – Where statutory scheme amended so no new wagering licence and gaming licence could be issued – Whether "grant of new licences" confined to grant of new wagering licence and gaming licence – Whether payment due.

Statutes – Interpretation – Context – Relevance of legislative history – Relevance of commercial context.

Statutes – Interpretation – Principle of legality – Whether principle engaged where nature of right is contingent and interest to be protected is limited.

Words and phrases – "gaming licence", "gaming machine entitlement", "grant of new licences".

Gambling Regulation Act 2003 (Vic) – Pt 4A of Ch 3, Pt 3 of Ch 4, ss 4. 3. 4A, 4. 3. 12.

**Appealed from VSC (CA):** [\[2014\] VSCA 312](#).

**Held:** Appeal dismissed.

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*R & Anor v The Independent Broad-based Anti-corruption Commissioner*

**[M246/2015](#)**: [\[2016\] HCA 8](#)

**Date heard:** 2 February 2016

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

**Catchwords:**

Statutory interpretation – Independent Broad-based Anti-corruption Commission Act 2011 (Vic) ("IBAC Act") – Investigation by Independent Broad-based Anti-corruption Commission into allegations of assault and human rights violations by officers of Victoria Police – Where appellants were police officers suspected of

involvement in alleged assault – Where appellants summoned to give evidence at public examination – Whether power to hold examination under Pt 6 of IBAC Act exercisable in relation to persons who have not been, but may be, charged with offence relating to subject matter of examination.

Statutory interpretation – Common law rights – Whether s 144 of IBAC Act abrogates privilege against self-incrimination.

Words and phrases – "abrogate", "companion principle", "compulsory examination", "police personnel misconduct", "principle of legality", "privilege against self-incrimination".

Independent Broad –based Anti-corruption Commission Act 2011 (Vic), ss 5, 8, 15, 42, 84(2), 120, 144.

**Appealed from VSC (CA):** [\[2015\] VSCA 271](#).

**Held:** Appeal dismissed.

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## 2: CASES RESERVED

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

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### Banking

*Paciocco & Anor v Australia and New Zealand Banking Group Limited*

**M219/2015; M220/2015:** [\[2016\] HCATrans 9](#); [\[2016\] HCATrans 10](#).

**Date heard:** 4 February 2016; 5 February 2016.

**Coram:** French CJ, Kiefel, Gageler, Keane and Nettle JJ.

**Catchwords:**

Banking and financial institutions – Consumer protection – *Australian Securities and Investments Commission Act 2001* (Cth) s 12CB – *National Consumer Credit Protection Act 2009* (Cth) s 76 and *Fair Trading Act 1999* (Vic) s 8 – Where first appellant was charged 26 late payment fees on two credit card accounts held with respondent – Where there was a disparity between the fee charged and the loss accrued as a consequence of late payment – Whether the terms “unconscionable”, “unfair” and “unjust”, as used in the statutory causes of action available, are intended to extend the common law in respect of standard form consumer contracts – Whether disproportion between the quantum of late payment fees and cost to respondent associated with late payment gives rise to statutory unconscionability, unjustness or unfairness if the fees were not exorbitant from respondent’s perspective.

**Appealed from FCA (FC):** [\[2015\] FCAFC 50](#).

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### Constitutional Law

*Alqudsi v The Queen*

**S279/2015:** [\[2016\] HCATrans 13](#).

**Date heard:** 10 February 2016.

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

**Catchwords:**



Constitutional law – Trial by jury for Commonwealth indictable offences – Whether s 80 of the Constitution can be read to permit a state Parliament to pass a statute allowing for a trial to be by a judge alone where the prosecution and accused agree or the accused seeks that outcome and the Court considers it in the interest of justice – Whether such a position would be consistent with *Brown v The Queen*.

Orders made on 10 February 2016 dismissing motion. Written reasons of the Court to be published at a future date.

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## Criminal Law

*IMM v The Queen*

**D12/2015:** [2016 HCATrans 8](#).

**Date heard:** 3 February 2016

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

**Catchwords:**

Criminal law – Evidence – Tendency evidence – *Evidence (National Uniform Legislation) Act* (NT) (“Uniform Evidence Law”) s 97 – Where appellant was found guilty of offences committed against his step grandchild – Where complainant made a complaint to family members – Where evidence was given of an incident which was not charged and occurred after the time period of the offences charged – Where several people give evidence of the complaints – Whether trial judge is required to assume that the jury will accept the evidence when considering the probative value of the tendency evidence pursuant to s 97(1)(b) of the Uniform Evidence Law – Whether hearsay evidence of a complaint, involving general allegations of sexual misconduct not linked to any particular charge is admissible as evidence of guilt of the offences charged under the Uniform Evidence Law – Whether the correct approach to assessment of “probative value” for the purposes of s 137 of the Uniform Evidence Law was made.

**Appealed from NTSC (CCA):** [\[2014\] NTCCA 20](#).

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*Zaburoni v The Queen*

**B69/2015**: [\[2016\] HCATrans 12](#).

**Date heard:** 9 February 2016.

**Coram:** Kiefel, Bell, Gageler, Keane and Nettle JJ.

**Catchwords:**

Criminal law – Criminal liability – *Criminal Code 1899* (Qld) s 317 – Element of intent to cause a specific result – Where appellant is HIV positive – Where appellant commenced a relationship with complainant – Where appellant did not disclose HIV status – Where complainant was diagnosed with HIV after engaging in unprotected sex with appellant – Where appellant was found guilty of transmitting a serious disease with intent – Whether the element of intent to cause a specific result can be satisfied by establishing that an accused engaged in a course of conduct over a significant period time and was reckless as to the potential consequences of that conduct – Whether the element of intent can be inferred from an awareness of increased risk where conduct is engaged in frequently and over a period of time – Whether intent can be inferred from frequent conduct where the precise time at which the intent formed and the result occurred cannot be identified.

**Appealed from QSC (CA):** [\[2014\] QCA 77](#).

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*Mok v Director of Public Prosecutions (NSW)*

**S246/2015**: [\[2016\] HCATrans 14](#).

**Date heard:** 11 February 2016.

**Coram:** French CJ, Kiefel, Bell, Keane and Gordon JJ.

**Catchwords:**

Criminal law – Commonwealth places – *Service and Execution of Process Act 1992* (Cth) ("Act") s 89(4) – Where appellant pleaded guilty to a number of fraud offences in New South Wales – Where appellant failed to appear for sentencing – Where appellant was charged with unrelated offences in Victoria – Where appellant escaped custody whilst in an airport and was apprehended shortly after – Where appellant was charged with attempting to escape from lawful custody contrary to s 310D *Crimes Act 1900* (NSW) – Whether when applying a criminal offence provision by virtue of s 89(4) of the Act is the prosecution relieved of the burden of proving all elements of the offence – Whether s 89(4) of the Act is an offence creating provision.

**Appealed from NSWSC (CA):** [\[2015\] NSWCA 98](#).

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*Nguyen v The Queen*

**S271/2015:** [\[2016\] HCATrans 49](#).

**Date heard:** 10 March 2016.

**Coram:** Bell J, Gageler, Keane, Nettle and Gordon JJ.

**Catchwords:**

Criminal law – Sentencing – Objective seriousness of offending – Whether sentencing judge appropriately considered the objective seriousness of the offending – Whether the principle in *The Queen v De Simoni* prohibits a sentencing judge from having regard to the absence of a fact which would render an offender guilty of a more serious offence where that fact is not an element of the more serious offence.

**Appealed from NSWSC (CCA):** [\[2013\] NSWCCA 195](#).

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## Equity

*Fischer & Ors v Nemeske Pty Ltd & Ors*

**S223/2015:** [\[2015\] HCATrans 321](#).

**Date heard:** 2 December 2015.

**Coram:** French CJ, Kiefel, Bell, Gageler and Gordon JJ.

**Catchwords:**

Equity – Trusts and trustees – Power of trustees – Maintenance and advancement – Where first respondent is the trustee of the Nemes Family Trust and applicants are the “Specified Beneficiaries” – Where in July 1994 the trust recorded an “asset revaluation reserve” in the accounts of the trust in the amount of \$3,904,300 – Where first respondent determined to make a distribution to Mr and Mrs Nemes but no money was paid out – Where, in 1995, first respondent executed a Deed of Charge in favour of the Nemes which recorded that trust was indebted to the Nemes to the sum of \$3,904,300 – Whether a trustee of an express trust validly exercise a power to “advance” or “apply” the capital or income of that trust

by resolving to pay or credit an amount of money to a beneficiary of the trust, notwithstanding that the trust assets do not include, and have never included, any money – Whether an action for money received maintainable against a trustee upon the trustee stating an account to the relevant beneficiary, notwithstanding that the trustee continued to have ongoing active duties as trustee in respect of all of the trust assets from which any liability to the relevant beneficiary would be realised.

**Appealed from NSWSC (CA):** [\[2015\] NSWCA 6](#).

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## Professions and Trades

*Badenach & Anor v Calvert*

**H12/2015:** [\[2016\] HCATrans 44](#).

**Date heard:** 2 March 2016.

**Coram:** French CJ, Kiefel, Gageler, Keane and Gordon JJ.

**Catchwords:**

Professions and trades – Lawyers – Duties and liabilities – Solicitors’ duties to other persons – Beneficiaries – Where first appellant acted for a testator who had terminal cancer in the preparation of a will – Where respondent was regarded as a son by testator – Where testator had an estranged daughter – Where testator did not disclose existence of estranged daughter and first appellant did not make any inquiries in this respect and did not give any advice as the effect of the *Testator’s Family Maintenance Act 1912* (Tas) on this arrangement – Whether a solicitor retained to draw a will owes a testator a duty of care which extends to inquiries as to the existence of estranged children and advice pursuant to the effect of the Act.

Torts – Negligence – Duty of care – *Civil Liability Act 2002* (Tas) – Whether solicitor owed a duty of care to a non-client beneficiary – Whether damages for loss of opportunity can be awarded where opportunity is hypothetical and dependent on acts of third parties.

**Appealed from TASC (FC):** [\[2015\] TASFC 8](#).

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## Property

*Coverdale v West Coast Council*

**H10/2015:** [\[2016\] HCATrans 43](#).

**Date heard:** 1 March 2016.

**Coram:** French CJ, Kiefel, Keane, Nettle and Gordon JJ.

**Catchwords:**

Real Property – Rates and charges – Where the Valuer-General is required by the *Valuation of Land Act* 2001 (Tas) (“VLA”) to make valuations of all lands within a valuation district including any Crown lands that are liable to be rated – Where Macquarie Harbour is Crown land within the respondent’s municipality – Whether the sea or seabed is land which the Valuer-General is required to value.

**Appealed from TASC (FC):** [\[2015\] TASFC 1](#).

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## Torts

*Attwells & Anor v Jackson Lalic Lawyers Pty Limited*

**S161/2015:** [\[2016\] HCATrans 48](#).

**Date heard:** 8 March 2016.

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

**Catchwords:**

Torts – Negligence – Defences – Advocates’ immunity – Scope – Where respondent gave advice to appellants to agree to a terms of settlement – Where the terms of settlement caused the appellants to accept liability significantly higher than they would have otherwise been liable for if they had not defended the proceedings – Whether advocates’ immunity applies – Whether the advice falls within the boundaries of advocates’ immunity – Whether immunity is attracted in respect of final outcomes not the subject of a judicial determination on the merits.

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 335](#).

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# Workers Compensation

*Military Rehabilitation and Compensation Commission v May*  
**S243/2015:** [\[2016\] HCATrans 45](#).

**Date heard:** 3 March 2016.

**Coram:** French CJ, Kiefel, Gageler, Nettle and Gordon JJ.

**Catchwords:**

Workers' compensation – Injury – *Safety, Rehabilitation and Compensation Act 1988* (Cth) ("Act") – Where respondent enlisted in the Royal Australian Air Force in 1998 – Where respondent lodged a claim under the Act for rehabilitation and compensation in for "low immunity, fatigue, illnesses and dizziness" that respondent claimed was caused by vaccinations he received in the course of his employment in 1998 – Where no specific condition or cause of symptoms was diagnosed – Whether respondent's symptoms amount to an "injury" as defined by the Act – Whether an injury as defined by the Act requires a sudden or identifiable physiological change or disturbance of the normal physiological state in an employee – Whether the Act contemplates no more than a physiological change or disturbance of the normal physiological state in the employee.

**Appealed from FCA (FC):** [\[2015\] FCAFC 93](#).

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## 3: ORIGINAL JURISDICTION

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

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### Constitutional Law

*Cunningham & Ors v Commonwealth of Australia & Anor*

**[S140/2015](#)**: *Writ of Summons*

**Catchwords:**

Constitution – s 51(xxxi) – *Remuneration and Other Legislation Amendment Act 2011* (Cth) – *Members of Parliament (Life Gold Pass) and Other Legislation Amendment Act 2012* (Cth) – Acquisition of property on just terms – Where applicants are former members of the House of Representatives – Where applicants occupied positions as Ministers of State or where officeholders of the Parliament or of a House of Parliament – Where Parliament reduced the ‘retiring allowance’ of past members – Where Parliament restricted the number of return trips per year using the ‘Gold Pass’.

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*Bell Group NV (In Liq) & Anor v State of Western Australia*

**[S248/2015](#)**: *Writ of Summons*

**Catchwords:**

Constitution – s 109 – inconsistency – *Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015* (WA) (“*Bell Group Act*”) – *Income Tax Assessment Act 1936* (Cth), *Income Tax Assessment Act 1997* (Cth) and *Tax Administration Act 1953* (Cth) – whether parts 3 & 4 of the *Bell Group Act* are inconsistent with the Commonwealth’s tax regime – *Judiciary Act 1903* (Cth) – where *Bell Group Act* ends litigation in the Western Australian Supreme Court – where litigation involves federal jurisdiction – whether *Bell Group Act* is inconsistent with *Judiciary Act 1903* (Cth) – whether the *Bell Group Act* is inconsistent with Ch III of the *Constitution* – *Corporations Act 2001* (Cth) – whether *Bell Group Act* is inconsistent with *Corporations Act 2001* (Cth) – whether ss 5F and 5G of the *Corporations Act 2001* (Cth) operate to avoid any inconsistency with the *Bell Group Act* – whether *Bell Group Act* can be severed.

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*Maranoa Transport Pty Ltd (In Liq) & Ors v State of Western Australia & Ors*

**[P4/2016](#)**: *Writ of Summons*

**Catchwords:**

Constitution – s 109 – inconsistency – *Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015* (WA) (“*Bell Group Act*”) – *Income Tax Assessment Act 1936* (Cth), *Income Tax Assessment Act 1997* (Cth) and *Tax Administration Act 1953* (Cth) – whether parts 3 & 4 of the *Bell Group Act* are inconsistent with the Commonwealth’s tax regime – *Corporations Act 2001* (Cth) – whether *Bell Group Act* is inconsistent with *Corporations Act 2001* (Cth) – whether ss 5F and 5G of the *Corporations Act 2001* (Cth) operate to avoid any inconsistency with the *Bell Group Act* – whether *Bell Group Act* can be severed.

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*WA Glendinning & Associates Pty Ltd v The State of Western Australia*

**[P63/2015](#)**: *Writ of Summons*

**Catchwords**

Constitution – s 109 – inconsistency – *Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Act 2015* (WA) (“*Bell Group Act*”) – *Income Tax Assessment Act 1936* (Cth), *Income Tax Assessment Act 1997* (Cth) and *Tax Administration Act 1953* (Cth) – whether parts 3 & 4 of the *Bell Group Act* are inconsistent with the Commonwealth’s tax regime – *Judiciary Act 1903* (Cth) – where *Bell Group Act* ends litigation in the Western Australian Supreme Court – where litigation involves federal jurisdiction – whether *Bell Group Act* is inconsistent with *Judiciary Act 1903* (Cth) – whether the *Bell Group Act* is inconsistent with Ch III of the *Constitution* – *Corporations Act 2001* (Cth) – whether *Bell Group Act* is inconsistent with *Corporations Act 2001* (Cth) – whether ss 5F and 5G of the *Corporations Act 2001* (Cth) operate to avoid any inconsistency with the *Bell Group Act* – whether *Bell Group Act* can be severed.

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See also **[Native Title](#)**: *Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland*



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## Migration

*The Maritime Union of Australia & Anor v Minister for Immigration and Border Protection & Anor*

**[S136/2015](#)**: *Special case.*

### Catchwords:

Migration – Categories of visas – *Migration Act 1958* (Cth) (“Act”) – Where Act contains a regime under which non-citizens working in the offshore resources industries must hold permanent or prescribed temporary visas – Where Minister made two Determinations which excluded some off-shore activities from the regime – Whether Determinations IMMI 14/073 and IMMI 14/074 made pursuant to s 9A(6) of the Act by the Minister are valid.

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## Native Title

*Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland*

**[B26/2014](#)**: *Special case.*

### Catchwords:

Native title – Indigenous Land Use Agreement (“ILUA”) – *North Stradbroke Island Protection and Sustainability Act 2011* (Qld) (“Principal Act”) – *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013* (Qld) (“Amendment Act”) – Amendment Act allowed for renewal of four mining leases for periods longer than those provided in Principal Act – Amendment Act replaced environmental authority provisions in Principal Act with new s 17 which no longer applied conditions to two mining leases – ILUA registered as area agreement under ss 24CA to 24CL of *Native Title Act 1993* (Cth) (“NTA”) – Whether ILUA binds defendant not to enact ss 9 and 12 of Amendment Act.

Constitutional law – Inconsistency – Commonwealth Constitution, s 109 – Whether Amendment Act is invalid under s 109 of Constitution by reason of inconsistency between Amendment Act and ss 24EA and 87 of NTA.

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## 4: SPECIAL LEAVE GRANTED

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

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### Administrative Law

*Acquista Investments Pty Ltd & Anor v The Urban Renewal Authority & Ors*

**A29/2015:** [\[2015\] HCATrans 295](#).

**Date heard:** 13 November 2015 – *Special leave granted*.

**Catchwords:**

Administrative law – Judicial review – Grounds of review – Delegation of power – Where first respondent entered into a deed with the Minister for State Development and third respondent to grant third respondent options to purchase 407 hectares of land owned by first respondent – Where Cabinet had made decision to enter into Deed, purportedly on behalf of first respondent – Where appellants had previously expressed interest in purchasing the property – Whether the decision of first respondent to entered into a deed granting third respondent options to purchase is amenable to judicial review – Whether a valid delegation and exercise of power under relevant legislation or executive power occurred – Whether decision to enter into deed was legally unreasonable and ultra vires in the circumstances.

**Appealed from SASC (FC):** [\[2015\] SASCF 91](#).

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### Criminal Law

*Miller v The Queen*

**A28/2015:** [\[2015\] HCATrans 296](#).

**Date heard:** 13 November 2015 – *Special leave granted*.

**Catchwords:**

Criminal law – *Criminal Law Consolidation Act 1935* (SA) ss 11, 24(1), 269 – Murder – Intention – Where appellant was convicted of one count of murder and one count of aggravated causing of harm with two others – Where appellant was convicted on the basis of

joint criminal enterprise or extended joint criminal enterprise -  
Where appellant was highly intoxicated – Where evidence was given  
that this intoxication significantly impaired appellant’s decision-  
making – Whether appellant was too intoxicated to form the  
relevant intention for a conviction of murder.

**Appealed from SASC (FC):** [\[2015\] SASCF 53](#).

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*Betts v The Queen*

**S281/2015:** [\[2015\] HCATrans 328](#).

**Date heard:** 11 December 2015 – *Special leave granted*.

**Catchwords:**

Criminal law – Sentencing – Where Court of Criminal Appeal found  
that the sentencing judge made errors in the sentencing of  
appellant – Where Court of Appeal considered the matter afresh –  
Whether Court of Appeal erred by failing to consider new evidence  
when exercising the sentencing discretion afresh.

**Appealed from NSWSC (CCA):** [\[2015\] NSWCCA 39](#).

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*Presley v The Director of Public Prosecutions for the State of  
South Australia*

**A17/2015:** [\[2016\] HCATrans 17](#).

**Date Heard:** 12 February 2016 – *Referred to the Full Court*.

**Catchwords:**

Criminal law – *Criminal Law Consolidation Act 1935* (SA) ss 11,  
24(1), 269 - Murder – Intention – Where appellant was convicted of  
one count of murder – Where appellant plead guilty to one count of  
aggravated causing of harm with intent to cause harm – Where  
appellant was convicted on the basis of joint criminal enterprise or  
extended joint criminal enterprise - Where appellant was highly  
intoxicated – Where evidence was given that this intoxication  
significantly impaired appellant’s decision-making – Whether  
appellant was too intoxicated to form the relevant intention for a  
conviction of murder.

**Appealed from SASC (FC):** [\[2015\] SASCF 53](#).

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*Smith v The Queen*

**A22/2015:** [\[2016\] HCATrans 16](#).

**Date Heard:** 12 February 2016 – *Referred to the Full Court.*

**Catchwords:**

Criminal law – *Criminal Law Consolidation Act 1935* (SA) ss 11, 24(1), 269 - Murder – Intention – Where appellant was convicted of one count of murder and one count of aggravated causing of harm with two others – Where appellant was convicted on the basis of joint criminal enterprise or extended joint criminal enterprise – Where appellant was highly intoxicated – Where evidence was given that this intoxication significantly impaired appellant’s decision-making – Whether appellant was too intoxicated to form the relevant intention for a conviction of murder.

**Appealed from SASC (FC):** [\[2015\] SASCF 53](#).

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*Graham v The Queen*

**B48/2015:** [\[2016\] HCATrans 62](#).

**Date Heard:** 11 March 2016 – *Special leave granted.*

**Catchwords:**

Criminal law – misdirection and non-direction – effect of misdirection or non-direction – where the appellant was convicted after a trial of attempted murder – where the defence of self-defence was raised at trial under ss 271(1), 271(2) and 272(1) of the Criminal Code – where the trial judge gave detailed directions to the jury about each form of self-defence – where the trial judge provided further directions to the jury at their request – where no redirection was sought at trial – whether the trial judge failed to properly direct the jury as to the defence of self-defence under ss 271(1), 271(2) and 272(1) of the Criminal Code.

**Appealed from QCA:** [\[2015\] QCA 137](#).

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*Sio v The Queen*

**S241/2015:** [\[2016\] HCATrans 56](#).

**Date Heard:** 11 March 2016 – *Special leave granted on limited grounds.*

**Catchwords:**

Criminal law – conviction appeal – armed robbery – joint criminal enterprise – unreasonable verdict – where appellant was acquitted of constructive murder based on the appellant’s participation in a joint criminal enterprise to commit armed robbery – where appellant was convicted of armed robbery with wounding – whether appellant’s conviction on alternative count is inconsistent with acquittal on principle count.

Criminal law – evidence – hearsay rule – accomplice – made admission against interest in police interview – accomplice not available - whether the trial judge was required to take into account the “demonstrable unreliability” of individual representations to determine whether interview was “made in circumstance that made it likely the representation was reliable”.

**Appealed from NSWSC (CCA):** [\[2015\] NSWCCA 42](#).

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*Zefi v The Director of Public Prosecutions; Jakaj v The Director of Public Prosecutions; Stakaj v The Director of Public Prosecutions; N,H v The Director of Public Prosecutions*

**A23/2015; A24/2015; A25/2015; A27/2015:** [\[2016\] HCATrans 65](#).

**Date heard:** 11 March 2016 – *Special leave granted*

**Catchwords:**

Criminal law – procedure – jury – verdict – alternative verdict – exercise of jurisdiction – whether the Supreme Court of a State has an inherent jurisdiction to set aside perfected orders that there be a conviction or acquittal – whether open to the court to admit evidence of the 12 (former) jurors in relation to whether the jury had determined to return a verdict of not guilty of the charge of murder.

**Appealed from SASC (CCA):** [\[2015\] SASCF 139](#).

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## Competition

*Australian Competition & Consumer Commission v Flight Centre Travel Group Limited*

**B51/2015:** [\[2016\] HCATrans 59](#).

**Date heard:** 11 March 2016

**Catchwords:**

Competition – whether appellant travel agent attempted to induce specific airlines to make a contract, arrangement or arrive at an understanding which had the purpose or effect of substantially lessening competition in a market – consideration of relevant market – characterisation of relevant services supplied by airlines and travel agents – whether airlines and travel agents competed in a market for booking and distribution services, or whether the only relevant market was the market for international passenger air travel services – whether travel agents competed with airlines in that market given they were the agent of the airlines when supplying such services – application of ss 45 and 45A of the *Trade Practices Act 1974* (Cth)

**Appealed from FCAFC:** [\[2015\] FCAFC 104](#).

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## Discrimination

*Lyons v State of Queensland*

**B56/2015:** [\[2016\] HCATrans 60](#).

**Date Heard:** 11 March 2016 – *Special leave granted*.

**Catchwords:**

Discrimination – direct discrimination – where the appellant, who was deaf, was excluded from jury service by a Deputy Registrar – where the appellant made a complaint of direct discrimination – construction of s 11 of the *Anti-Discrimination Act 1991* (Qld) – where the appellant argues that her impairment was inextricably linked to her requirement of an Auslan interpreter – construction of *Jury Act 1995* (Qld).

**Appealed from QCA:** [\[2015\] QCA 159](#).

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## Equity

*Crown Melbourne Limited v Cosmopolitan Hotel (Vic) Pty Ltd & Anor*

**M235/2015:** [\[2015\] HCATrans 335](#).

**Date heard:** 11 December 2015 – *Special leave granted*.

**Catchwords:**

Equity – Promissory estoppel – Where respondent operated restaurants at appellant’s complex - Where the appellant made representations to the respondent that if certain refurbishments were made respondent would be “looked after” when it came time to renew the lease for the premises – Whether an ambiguous representation is capable of founding a promissory estoppel – Whether a promissory estoppel can be found to exist by proving the making and the resiling from a representation made.

**Appealed from VSC (CA):** [\[2014\] VSCA 353](#).

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## Family

*Hall v Hall*

**A7/2016:** [\[2016\] HCATrans 23](#).

**Date Heard:** 12 February 2016 – *Special Leave Granted*

**Catchwords:**

Family – spousal maintenance – appeal from an interlocutory order – where primary judge made order that respondent husband pay spousal maintenance on the basis that applicant wife was ‘unable to support herself adequately’ under s 72(1) *Family Law Act* 1975 (Cth) – where applicant wife’s deceased father’s will contains ‘wish’ that the applicant wife receives annual payment of \$150,000 net of income tax until such time as she receives a payment of \$16.5 million – whether voluntary payment is a ‘financial resource’ under the *Family Law Act* 1975 (Cth).

**Appealed from FamCA (FC):** [\[2015\] FamCAFC 154](#).

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## Migration

*Minister for Immigration and Border Protection & Anor v SZSSJ & Anor; Minister for Immigration and Border Protection & Ors v SZTZI*

**S206/2015; S207/2015:** [\[2016\] HCATrans 55](#).

**Date heard:** 11 March 2016 – *Special leave granted*.

**Catchwords:**

Migration – procedural fairness – whether the processes adopted by the Department for considering consequences of release of personal information for protection visa applicant in immigration detention procedurally fair – whether the Full Court erred in finding that s 197C of the *Migration Act 1958* does not apply because the respondent had an accrued right not to be removed from Australia under s 198 until a procedurally fair assessment of his/her non-refoulement claims was conducted – whether Federal Circuit Court has jurisdiction to determine the claims – whether the rules of procedural fairness apply to conduct preparatory to the Minister’s dispensing powers under s 48B, 195A and 417 – whether the conduct of officers of the Department are capable of generating an obligation of procedural fairness in circumstances in which the rules of procedural fairness would not otherwise apply.

**Appealed from FCA (FC):** [\[2015\] FCAFC 125](#).

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## Torts

*Robinson Helicopter Company Incorporated v McDermott & Ors*  
**B61/2015:** [\[2015\] HCATrans 274](#).

**Date heard:** 16 October 2015 – *Special leave granted*.

**Catchwords:**

Torts – Negligence – Where first respondent was a passenger in a Robinson R 22 helicopter which was manufactured by the appellant – Where helicopter crashed, killing the pilot and seriously injuring first respondent – Where it was a failure in the forward flexplate of the helicopter which caused it to crash – Whether appellant is liable for the failures of the helicopter – Whether a manufacturer of goods is to be held liable under ss 75AD and AE of the *Trade Practices Act 1974* (Cth) or in negligence by reason of the maintenance manual calling for a technician to verify the parts without specifying the



particular method to do so – Whether appellant should have been held liable without consideration of whether the negligence or breach of the Trade Practices Act was causative of any loss.

**Appealed from QSC (CA):** [\[2014\] QCA 357](#).

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See also **[Professions and Trades](#)**: *Badenach & Anor v Calvert*.

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## Workers' Compensation

*Deal v Kodakkathanath*

**M252/2015:** [\[2015\] HCATrans 333](#).

**Date heard:** 11 December 2015 – *Special leave granted*.

### Catchwords:

Workers' compensation – Accident compensation – *Occupational Health and Safety Regulations 2007* (Vic) r 3.1.2 ("regulations") – Where appellant fell off a step ladder whilst attempting to remove large displays from a wall and suffered a knee injury – Whether "associated with" in the phrase "associated with a hazardous manual handling task affecting an employee" requires a close connection between the manual handling task and the anticipated risk – Whether injury is the kind that the regulations are designed to prevent – Whether regulations should be interpreted to apply to an injury occasioned by the stresses or forces involved in the activity.

**Appealed from VSC (CA):** [\[2015\] VSCA 191](#).

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# 5: CASES NOT PROCEEDING OR VACATED

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## Migration

*The Maritime Union of Australia & Anor v Minister for Immigration and Border Protection & Anor*

**S136/2015:** [\[2015\] HCATrans 341](#). *Special case.*

**Date Heard:** 10 February 2016 hearing vacated.

**Catchwords:**

Migration – Categories of visas – *Migration Act 1958* (Cth) (“Act”) – Where Act contains a regime under which non-citizens working in the offshore resources industries must hold permanent or prescribed temporary visas – Where Minister made two Determinations which excluded some off-shore activities from the regime – Whether Determinations IMMI 14/073 and IMMI 14/074 made pursuant to s 9A(6) of the Act by the Minister are valid.

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## 6: SPECIAL LEAVE REFUSED

### Publication of Reasons: 9 March 2016

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Andres	The Queen (B59/2015)	Supreme Court of Queensland (Court of Appeal) [2015] QCA 167	Application dismissed <a href="#">[2016] HCASL 1</a>
2.	Mentink	Registrar of the Australian Register of Ships (B63/2015)	Full Court of the Federal Court of Australia [2015] FCAFC 150	Application dismissed <a href="#">[2016] HCASL 2</a>
3.	Di Iorio	Norris (B65/2015)	Supreme Court of Queensland (Court of Appeal) [2010] QCA 191	Application dismissed <a href="#">[2016] HCASL 3</a>
4.	Wsol	John James Memorial Hospital ( Mr L Andrews ) (C16/2015)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2015] ACTCA 59	Application dismissed <a href="#">[2016] HCASL 4</a>
5.	Angeleska (known as Slaveska)	State of Victoria & Ors (M206/2015)	Supreme Court of Victoria (Court of Appeal) [2015] VSCA 140	Application dismissed <a href="#">[2016] HCASL 5</a>
6.	Censori	Adult Parole Board & Ors (M236/2015)	Supreme Court of Victoria (Court of Appeal) [2015] VSCA 254	Application dismissed <a href="#">[2016] HCASL 6</a>
7.	Milton Jones (A Pseudonym)	The Queen (M241/2015)	Supreme Court of Victoria (Court of Appeal) [2015] VSCA 272	Application dismissed <a href="#">[2016] HCASL 7</a>
8.	Marshall	The State of Western Australia (P42/2015)	Supreme Court of Western Australia (Court of Appeal) [2015] WASCA 156	Application dismissed <a href="#">[2016] HCASL 8</a>
9.	De Alwis	The State of Western Australia (P45/2015)	Supreme Court of Western Australia (Court of Appeal) [2015] WASCA 42	Application dismissed <a href="#">[2016] HCASL 9</a>
10.	Donaghy	The Council of the Law Society of NSW (S179/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 224	Application dismissed <a href="#">[2016] HCASL 10</a>
11.	Wecker	The Delegate (the decision maker) to the President (Mr S. Kerkyashrian) of the NSW Anti-Discrimination Board (S224/2015)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 372	Application dismissed <a href="#">[2016] HCASL 11</a>
12.	Zepinic & Anor	Chateau Constructions (Aust) Limited (S230/2015)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 383	Application dismissed <a href="#">[2016] HCASL 12</a>

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
13.	Kumar	Minister for Immigration and Border Protection & Anor (S234/2015)	Federal Court of Australia [2015] FCA 1189	Application dismissed <a href="#">[2016] HCASL 13</a>
14.	SZUQS & Anor	Minister for Immigration and Border Protection & Anor (S261/2015)	Federal Court of Australia [2015] FCA 1330	Application dismissed <a href="#">[2016] HCASL 14</a>
15.	SZUUU & Anor	Minister for Immigration and Border Protection & Anor (S262/2015)	Federal Court of Australia [2015] FCA 1331	Application dismissed <a href="#">[2016] HCASL 15</a>
16.	Collard & Ors	The State of Western Australia & Anor (P26/2015)	Supreme Court of Western Australia (Court of Appeal) [2015] WASCA 86	Application dismissed with costs <a href="#">[2016] HCASL 16</a>
17.	Ying	Perpetual Trustees Victoria Limited (ACN 004 027 258) (M108/2015)	Supreme Court of Victoria (Court of Appeal) [2015] VSCA 124	Application dismissed with costs <a href="#">[2016] HCASL 17</a>
18.	Stamford Aus-Trade & Press Pty Limited	Melbourne Orthopaedic Group Pty Limited & Anor (M153/2015)	Supreme Court of Victoria (Court of Appeal) [2015] VSCA 150	Application dismissed with costs <a href="#">[2016] HCASL 18</a>
19.	Webster	The Queen (P30/2015 and P31/2015)	Supreme Court of Western Australia (Court of Appeal) [2015] WASCA 20	Applications dismissed <a href="#">[2016] HCASL 19</a>

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## 11 March 2016: Sydney

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	AG	Director of Public Prosecutions (NSW) - Sydney & Anor (S164/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 218	Application dismissed <a href="#">[2016] HCATrans 50</a>
2.	McMaster	State of New South Wales (S171/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 228	Application dismissed <a href="#">[2016] HCATrans 54</a>
3.	McMaster	State of New South Wales (S172/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 228	Application dismissed <a href="#">[2016] HCATrans 54</a>
4.	Karakizos	State of New South Wales (S173/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 228	Application dismissed <a href="#">[2016] HCATrans 54</a>
5.	Alphapharm Pty Ltd & Ors	H Lundbeck A/S (S218/2015)	Full Court of the Federal Court of Australia [2014] FCAFC 138	Application dismissed with costs <a href="#">[2016] HCATrans 52</a>
6.	Polley	Johnson & Anor (S227/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 256	Application dismissed <a href="#">[2016] HCATrans 51</a>
7.	Miller	Uniting Church in Australia Property Trust (NSW) & Anor (S235/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 320	Application dismissed with costs <a href="#">[2016] HCATrans 53</a>

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**11 March 2016: Brisbane**

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Civic	The Queen (B21/2015)	Supreme Court of Queensland (Court of Appeal) [2014] QCA 322	Application dismissed <a href="#">[2016] HCATrans 64</a>
2.	Cowan (AKA Shaddo N-Unyah Hunter)	The Queen (B30/2015)	Supreme Court of Queensland (Court of Appeal) [2015] QCA 87	Application dismissed <a href="#">[2016] HCATrans 57</a>
3.	Coles Group Limited ACN 004 089 936	Costin (B50/2015)	Supreme Court of Queensland (Court of Appeal) [2015] QCA 140	Application dismissed with costs <a href="#">[2016] HCATrans 58</a>
4.	Duong	The Queen (B57/2015)	Supreme Court of Queensland (Court of Appeal) [2015] QCA 170	Application dismissed <a href="#">[2016] HCATrans 63</a>
5.	Grainger	Bloomfield & Anor (B70/2015)	Full Court of the Family Court of Australia No media neutral citation	Application dismissed with costs <a href="#">[2016] HCATrans 61</a>