



# 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

This edition of the High Court Bulletin includes new entries arising from both the May-June 2011 and June 2011 sittings of the High Court of Australia.

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

Case	Title
<i>Wainohu v The State of New South Wales</i>	Constitutional Law
<i>Australian Securities and Investments Commission v Lanepoint Enterprises Pty Ltd (Receivers and Managers Appointed)</i>	Corporations Law
<i>White v Director of Public Prosecutions for Western Australia</i>	Criminal Law
<i>Dasreef Pty Ltd v Hawchar</i>	Evidence
<i>Plaintiff M13/2011 v Minister for Immigration and Citizenship</i>	Immigration
<i>Jemena Gas Networks (NSW) Ltd v Mine Subsidence Board</i>	Mining

<i>Commissioner of Taxation v BHP Billiton Limited; Commissioner of Taxation v BHP Billiton Petroleum (North West Shelf) Pty Ltd; Commissioner of Taxation v The Broken Hill Proprietary Company Pty Ltd; Commissioner of Taxation v BHP Billiton Minerals Pty Ltd</i>	Taxation and Duties
<i>Maurice Blackburn Cashman v Brown</i>	Torts

## 2: Cases Reserved

Case	Title
<i>Queanbeyan City Council v ACTEW Corporation Ltd &amp; Anor</i>	Constitutional Law
<i>Green v The Queen; Quinn v The Queen</i>	Criminal Law
<i>Muldock v The Queen</i>	Criminal Law
<i>Cumerlong Holdings Pty Ltd v Dalcross Properties Pty Ltd &amp; Ors</i>	Environment and Planning
<i>HIH Claims Support Limited v Insurance Australia Limited</i>	Equity
<i>Michael Wilson &amp; Partners Limited v Nicholls &amp; Ors</i>	Practice and Procedure
<i>AB v The State of Western Australia; AH v The State of Western Australia</i>	Statutes

## 3: Original Jurisdiction

Case	Title
There are no new matters ready for hearing in the original jurisdiction of the High Court of Australia.	

## 4: Special Leave Granted

Case	Title
<i>Public Service Association of South Australia Incorporated v Industrial Relations Commission of South Australia &amp; Anor</i>	Administrative Law
<i>PGA v The Queen</i>	Criminal Law
<i>Waller v Hargraves Secured Investments Limited</i>	Mortgages

<i>Tasty Chicks Pty Limited &amp; Ors v Chief Commissioner of State Revenue</i>	Statutes
<i>Amaca Pty Ltd (Under NSW Administered Winding Up) v Booth &amp; Anor; Amaba Pty Ltd (Under NSW Administered Winding Up) v Booth &amp; Anor</i>	Torts

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# 1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the May—June 2011 and June 2011 sittings.

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## Constitutional Law

*Wainohu v The State of New South Wales*

S164/2010: [\[2010\] HCA 24](#).

**Judgment delivered:** 23 June 2011.

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

**Catchwords:**

Constitutional law (Cth) — Judicial power of Commonwealth — *Constitution*, Ch III — Institutional integrity of State courts — Non-judicial functions conferred upon judges of State courts — Section 5 of *Crimes (Criminal Organisations Control) Act 2009* (NSW) ("Act") provided that Attorney-General may, with consent of judge, declare judge of Supreme Court to be an "eligible Judge" for purposes of Act — Section 6(1) provided that Commissioner of Police ("Commissioner") may apply to eligible Judge for declaration that particular organisation is a "declared organisation" for purposes of Act — Section 9(1) provided that eligible Judge may make declaration if satisfied members of particular organisation "associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity", and that organisation "represents a risk to public safety and order" — Section 13(2) relevantly provided that eligible Judge not required to provide "any grounds or reasons" for making declaration — Part 3 of Act empowered Supreme Court to make, on application by Commissioner, control order against member of particular "declared organisation" — Whether function conferred by Act upon eligible Judge to make declaration without requirement to provide grounds or reasons repugnant to or incompatible with institutional integrity of Supreme Court — Whether substantial impairment of institutional integrity of Supreme Court.

Words and phrases — "incompatibility", "institutional integrity", "persona designata", "reasons".

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

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## Corporations Law

### *Australian Securities and Investments Commission v Lanepoint Enterprises Pty Ltd (Receivers and Managers Appointed)*

P43/2010: [\[2011\] HCA 18](#) .

**Judgment delivered:** 1 June 2011.

**Coram:** Gummow, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Corporations law — Winding up in insolvency — Application for winding up by Australian Securities and Investments Commission — Where respondent presumed insolvent under s 459C(2)(c) of *Corporations Act* 2001 (Cth) ("Act") — Where principle applying under former companies legislation that company will not be wound up where debt subject of bona fide dispute on substantial ground — Whether principle applicable to Act in light of presumption of insolvency — Whether respondent solvent — Where primary judge did not accept respondent's explanation for alterations to accounts and no further evidence relevant to solvency could be identified by respondent — Whether primary judge's exercise of discretion miscarried in refusing to dismiss or stay proceedings — Whether necessary to join other parties.

Words and phrases — "except so far as the contrary is proved".

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

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## Criminal Law

### *White v Director of Public Prosecutions for Western Australia*

P44/2010: [\[2011\] HCA 20](#).

**Judgment delivered:** 8 June 2011.

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

**Catchwords:**

Criminal law — Procedure — Confiscation of proceeds of crime and related matters — Forfeiture and confiscation of property — Section 22 of *Criminal Property Confiscation Act* 2000 (WA) ("Act") relevantly required court to make crime-used property substitution declaration where crime-used property not available for confiscation because offender did not own, and did not have effective control of, property and more likely than not that offender made criminal use

of crime-used property — Section 147 of Act provided offender makes criminal use of property if, alone or with anyone else, offender used or intended to use property in way that brings property within definition of crime-used property — Section 146(1)(c) provided property "crime-used" if any act or omission done, omitted to be done or facilitated in or on property in connection with commission of confiscation offence — Where DPP applied for crime-used property substitution declaration against appellant — Where not disputed that premises leased by appellant "crime-used" within s 146(1)(c) of Act — Whether definition of "criminal use" in s 147 of Act encompassed conduct within definition of "crime-used" in s 146(1)(c) of Act.

Words and phrases — "crime-used property", "criminal use", "property".

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

## Evidence

*Dasreef Pty Limited v Hawchar*  
**S313/2010:** [\[2011\] HCA 21](#).

**Judgment delivered:** 22 June 2011.

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

### Catchwords:

Evidence — Admissibility — Opinion evidence — Section 79(1) of *Evidence Act* 1995 (NSW) provided that rule excluding evidence of opinion did not apply where "a person has specialised knowledge based on the person's training, study or experience" and person's opinion "wholly or substantially based on that knowledge" — Respondent sued appellant in Dust Diseases Tribunal of New South Wales — Respondent claimed he was negligently exposed to unsafe levels of silica while working for appellant — Witness gave evidence about approximate level of respirable silica to which respondent may have been exposed — Opinion treated as admissible to found calculation of numerical or quantitative level of exposure to respirable silica — Whether opinion admissible for that purpose — Requirements for admissibility.

Procedure — Specialist tribunal — Dust Diseases Tribunal of New South Wales — Ability of judge constituting Tribunal to draw on experience as member of specialist tribunal when making findings of fact — Section 25 of *Dust Diseases Tribunal Act* 1989 (NSW) required Tribunal to apply rules of evidence — Section 25B provided exception subject to various requirements — Trial judge drew on

"experience" that silicosis usually caused by very high levels of silica exposure in concluding that respondent's silicosis caused by exposure to silica — Section 25B neither invoked nor complied with — Whether trial judge entitled to draw on "experience" in making finding of fact.

Procedure — Objection to admissibility of evidence — Evidence taken on voir dire — Trial judge did not rule on objection at conclusion of voir dire — Desirability of ruling on objection to admissibility as soon as possible.

Words and phrases — "based on the person's training, study or experience", "basis rule", "opinion rule", "specialised knowledge", "specialist tribunal", "voir dire", "wholly or substantially based on that knowledge".

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

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## Immigration

*Plaintiff M13/2011 v Minister for Immigration and Citizenship*  
M13/2011: [\[2011\] HCA 23](#).

**Judgment delivered:** 23 June 2011.

**Coram:** Hayne J.

### Catchwords:

Immigration — Refugees — Well-founded fear of persecution — Relocation — Plaintiff applied for and delegate of defendant refused to grant Protection (Class XA) visa — Delegate found plaintiff's fear not well-founded due to possibility of relocation within country of residence — Delegate made no finding of where plaintiff had been resident or to where plaintiff could relocate — Delegate did not consider whether relocation was reasonable or practicable for plaintiff — Whether delegate required to consider particular circumstances of plaintiff and impact upon plaintiff of relocation.

Practice and procedure — High Court of Australia — Original jurisdiction — Extension of time for commencing proceeding — Plaintiff sought writ of certiorari to quash decision of delegate of defendant — Proceeding commenced outside period prescribed by s 486A(1) of *Migration Act* 1958 (Cth) and r 25.06.1 of High Court Rules 2004 — Section 486A(2) of Act allowed extension of time where "necessary in the interests of the administration of justice" — Whether time for commencing proceeding should be extended.

Words and phrases — "jurisdictional error", "necessary in the interests of the administration of justice", "particular circumstances", "relocation".

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

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## Mining

*Jemena Gas Networks (NSW) Ltd v Mine Subsidence Board*  
S312/2010: [\[2011\] HCA 19](#).

**Judgment delivered:** 1 June 2011.

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

**Catchwords:**

Mining — Compensation — Section 12A(1)(b) of *Mine Subsidence Compensation Act* 1961 (NSW) allowed claims by owners of improvements for payment from Mine Subsidence Compensation Fund ("Fund") for proper and necessary expense incurred or proposed in preventing or mitigating damage that, in opinion of Mine Subsidence Board, owner "could reasonably have anticipated would otherwise have arisen, or could reasonably anticipate would otherwise arise, from a subsidence that has taken place" — Appellant made claim for costs of preventative and mitigatory works performed on pipeline after receiving expert advice that such works would be necessary as result of certain underground longwall mining — Whether appellant entitled to compensation from Fund under s 12A(1)(b) — Whether entitled to compensation only if subsidence occurred before expense incurred in preventing or mitigating damage — Whether "from a subsidence that has taken place" in s 12A(1)(b) refers to actual past occurrence or hypothetical future occurrence of subsidence.

Words and phrases — "from a subsidence that has taken place".

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

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## Taxation and Duties

*Commissioner of Taxation v BHP Billiton Limited; Commissioner of Taxation v BHP Billiton Petroleum (North West Shelf) Pty Ltd; Commissioner of Taxation v The Broken Hill Proprietary Company Pty Ltd; Commissioner of Taxation v BHP Billiton Minerals Pty Ltd*

**M117/2010—M120/2010; M121/2010 and M123 2010;  
M122/2010; M124/2010 and M125/2010:** [\[2011\] HCA 17](#).

**Judgment delivered:** 1 June 2011.

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

**Catchwords:**

Taxation and duties — Income tax — Allowable deductions — Funds advanced for construction of plant and facilities — Div 243 of *Income Tax Assessment Act 1997* (Cth) ("Act") required taxpayer to include additional amount in assessable income at termination of limited recourse debt arrangement if limited recourse debt used to finance or refinance expenditure and certain other criteria met — "Limited recourse debt" relevantly defined in s 243–20(2) of Act as debt where creditor's rights against debtor in event of default capable of being limited to rights in relation to financed property or property provided as security for debt, having regard to various factors — Wholly-owned subsidiary ("BHPDRI") of parent company ("BHPB") partly financed capital expenditure for processing plant with monies borrowed from other wholly-owned subsidiary ("Finance") — Finance wrote off balance of loan as irrecoverable — BHPDRI and BHPB claimed capital allowance deductions for project expenditure — Appellant applied Div 243 of Act to reduce deductions — Whether loan from Finance to BHPDRI "limited recourse debt" under s 243–20(2) of Act — Whether BHPDRI and Finance dealing at arm's length — Meaning of "capable of being limited" in s 243–20(2) of Act.

Words and phrases — "capable of being limited", "capital allowance deductions", "limited recourse debt".

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

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## Torts

*Maurice Blackburn Cashman v Brown*  
**M176/2010:** [\[2011\] HCA 22](#).

**Judgment delivered:** 22 June 2011.

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

**Catchwords:**

Torts — Negligence — Applicability and effect of legislation — Plaintiff alleged she had suffered injury including psychiatric injury as result of employer's negligence — Plaintiff made claim against

employer pursuant to s 98C of *Accident Compensation Act 1985* (Vic) ("Act") for compensation for non-economic loss — Pursuant to s 104B(9) of Act, Victorian WorkCover Authority referred questions to Medical Panel about extent of plaintiff's impairment — As result of Medical Panel finding, plaintiff deemed to have a "serious injury" for purposes of Act — As entitled under s 134AB(2) of Act, plaintiff commenced common law proceedings against employer for damages — Section 68(4) of Act provided that "[f]or the purposes of determining any question or matter", opinion of Medical Panel was to be applied by "any court, body or person" — In pleadings, employer denied plaintiff had suffered injury, loss and damage — Whether employer precluded by operation of Act from making that and other contentions in evidence or argument — Whether employer so precluded as a matter of issue estoppel.

Words and phrases — "for the purposes of determining any question or matter", "serious injury".

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

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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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### Administrative Law

*Australian Crime Commission v Stoddart & Anor*  
B71/2010: [\[2011\] HCATrans 44](#).

**Date heard:** 1 March 2011 — *Judgment reserved*.

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

**Catchwords:**

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

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

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### Arbitration

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

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### Constitutional Law

*Queanbeyan City Council v ACTEW Corporation Ltd & Anor*  
C6/2010; C7/2010: [\[2011\] HCATrans 177](#).

**Date heard:** 21 June 2011 — *Judgment reserved*.

**Catchwords:**

Constitutional law — Duties of excise — Water abstraction charge ("WAC") imposed by Australian Capital Territory ("ACT") on

respondent statutory corporation as condition of licence for taking of water — Respondent licensed to but not legally obliged to take water — WAC calculated by reference to quantum abstracted — From 1 July 2006, water fee incorporated into WAC — Whether WAC, as imposed from 1 July 2006, invalid because a duty of excise imposed contrary to s 90 of *Commonwealth Constitution* — Whether WAC a government financial arrangement and therefore not a tax — Whether WAC a charge for access to or purchase of a natural resource — Whether discernible relationship to value of acquisition necessary for governmental levy for access to and acquisition of natural resource to escape characterisation as a tax — If discernible relationship necessary, whether satisfied where government charges any rate borne by market, including monopoly rent — Whether discernible relationship between level of WAC imposed from 1 July 2006 and value of water acquired — Evidence required to establish absence of discernible relationship between charge and value of acquired resource — *Water Resources Act 1998 (ACT)* — *Water Resources Act 2007 (ACT)*.

Constitutional law — Duties of excise — Utilities Network Facilities Tax ("UNFT") imposed on owners of network facilities, including water networks — UNFT calculated by reference to "route length" of network facility — Whether UNFT invalid because a duty of excise imposed contrary to s 90 of *Commonwealth Constitution* — Whether UNFT a government financial arrangement and therefore not a tax — Whether UNFT an impost on an essential step in production and distribution of water — Whether relationship exists between UNFT and quantity or value of water which passes through it — Whether material that UNFT incorporated into cost of water — Whether following factors sufficient to establish that UNFT not an excise: UNFT payable by owner, rather than operator, of network; UNFT imposed by reference to conferral of right to use and occupy land on which facility located; quantum of tax referable to length land occupied; quantum of UNFT not explicable only on basis of quantity and value of water supplied by respondent; payment of fee not a condition on transportation of water; UNFT does not select water network for discrimination so as to warrant conclusion that tax upon water carried in network — *Utilities (Network Facilities Tax) Act 2006 (ACT)*.

Practice and procedure — Precedents — Decisions of High Court of Australia ("HCA") — Binding effect on other courts — Whether intermediate appellate court may depart from dicta of justices of HCA, subsequently approved by other justices of HCA, where no decision of HCA has disagreed with those dicta.

**Appealed from FCA FC:** [2010] FCAFC 124.

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*Phonographic Performance Company of Australia Limited & Ors v The Commonwealth & Ors*

**S307/2010:** [\[2011\] HCATrans 117](#); [\[2011\] HCATrans 118](#); [\[2011\] HCATrans 119](#).

**Date heard:** 10, 11 & 12 May 2011 — *Judgment reserved*.

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

**Catchwords:**

Constitutional law — Operation and effect of *Commonwealth Constitution* — Copyrights, patents and trade marks — Powers with respect to property — Power to acquire property on just terms — Whether some or all of provisions in ss 109 and 152 of *Copyright Act 1968* (Cth) ("provisions") within legislative competence of Parliament by reason of s 51(xviii) of *Commonwealth Constitution* — Whether provisions beyond legislative competence of Parliament by reason of s 51(xxxi) of *Commonwealth Constitution* — Whether provisions should be read down or severed and, if so, how — Whether copyright in sound recordings under *Copyright Act 1912* (Cth) property — Whether provisions effected acquisition of property — Whether any acquisition of property on just terms within s 51(xxxi) of *Commonwealth Constitution*.

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

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*Roy Morgan Research Pty Ltd v Commissioner of Taxation*

**M177/2010:** [\[2011\] HCATrans 78](#).

**Date heard:** 30 March 2011 — *Judgment reserved*.

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

**Catchwords:**

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

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

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*Nicholas v The Commonwealth & Anor*S183/2010: [\[2011\] HCATrans 77](#).**Date heard:** 29 March 2011 — *Judgment reserved*.**Coram:** French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ.**Catchwords:**

Constitutional law — *Commonwealth Constitution*, Ch III — Plaintiff convicted by Australian Military Court ("AMC") of offences under *Defence Force Discipline Act* 1982 (Cth) ("Act") on 25 August 2008 and sentenced accordingly — High Court of Australia declared provisions of the Act establishing AMC invalid on 26 August 2009: *Lane v Morrison* (2009) 239 CLR 230 — On 22 September 2009, *Military Justice (Interim Measures) Act (No 2)* 2009 (Cth) ("Interim Measures Act") came into force — Part 2 of Sch 1 to Interim Measures Act applies to punishments purportedly imposed by AMC prior to *Lane v Morrison* — Item 5 of Sch 1 to Interim Measures Act declares rights and liabilities of plaintiff to be, and always to have been, same as if punishments purportedly imposed by AMC had been properly imposed by general court martial and certain other conditions satisfied — Rights and liabilities declared to be subject to any review provided for by Sch 1, Pt 7 — No review sought by plaintiff — Whether item 5 of Sch 1 to Interim Measures Act valid law of Commonwealth or operates to usurp judicial power — Whether Interim Measures Act a Bill of Pains and Penalties — Whether Interim Measures Act consistent with *R v Humby; Ex parte Rooney* (1973) 129 CLR 231 factum and consequence model of legislating and therefore valid — *Military Justice (Interim Measures) Act (No 2)* 2009 (Cth), Sch 1, item 5.

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

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*Haskins v The Commonwealth*S8/2011: [\[2011\] HCATrans 77](#).**Date heard:** 29 March 2011 — *Judgment reserved*.**Coram:** French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ.**Catchwords:**

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

Measures Act") came into force — Part 2 of Sch 1 to Interim Measures Act applies to punishments purportedly imposed by AMC prior to *Lane v Morrison* — Item 5 of Sch 1 to Interim Measures Act declares rights and liabilities of plaintiff to be, and always to have been, same as if punishments purportedly imposed by AMC had been properly imposed by general court martial and certain other conditions satisfied — Rights and liabilities declared to be subject to any review provided for by Sch 1, Pt 7 — No review sought by plaintiff — Whether Interim Measures Act provides lawful authority justifying detention of plaintiff — If so, whether items 3, 4, and 5 of Sch 1 to Interim Measures Act valid laws of Commonwealth or operate to usurp judicial power — Whether Interim Measures Act a Bill of Pains and Penalties — Whether Interim Measures Act consistent with *R v Humby; Ex parte Rooney* (1973) 129 CLR 231 factum and consequence model of legislating and therefore valid — *Military Justice (Interim Measures) Act (No 2) 2009* (Cth), Sch 1, items 3, 4 and 5.

Constitutional law — Acquisition of property on just terms — Whether Interim Measures Act effects an acquisition of the plaintiff's asserted common law cause of action, arising out of the plaintiff's wrongful imprisonment, without providing just terms — Whether Interim Measures Act a law with respect to the acquisition of property — Whether action for wrongful imprisonment is maintainable by the plaintiff against the Commonwealth — *Commonwealth Constitution*, s 51(xxxi).

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

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***Jemena Asset Management (3) Pty Ltd & Ors v Coinvest Limited***  
**M127/2010:** [\[2011\] HCATrans 45](#).

**Date heard:** 2 March 2011 — *Judgment reserved*.

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

**Catchwords:**

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

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

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

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## Contracts

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

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

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

**Catchwords:**

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

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

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## Criminal Law

*Green v The Queen; Quinn v The Queen*  
S18/2010; S61/2010: [\[2011\] HCATrans 180](#).

**Date heard:** 24 June 2011 — *Judgment reserved*.

**Catchwords:**

Criminal law — Sentencing — Appellants and other persons, relevantly Taylor, involved in cultivation of cannabis plants — Appellants pleaded guilty to offence of cultivating commercial quantity of cannabis plants and sentenced accordingly — Taylor pleaded guilty to offence of knowingly taking part in supply of commercial quantity of cannabis leaf and sentenced accordingly — Crown appealed against inadequacy of appellants' respective sentences — No appeal instituted against Taylor's sentence — Court of Criminal Appeal ("CCA") increased appellants' sentences — Whether appropriate to allow Crown appeal against appellants' sentences thereby creating disparity between appellants' revised

sentences and that imposed on co-offender not subject of Crown appeal — Whether CCA erred in finding, as essential step in its reasoning that appellants' sentences manifestly inadequate, that sentence imposed on Taylor also manifestly inadequate, in circumstances where such finding was not sought by the Crown and CCA did not give parties an opportunity to argue the point before making finding — *Drug Misuse and Trafficking Act 1985* (NSW), s23(2)(a) — *Criminal Appeal Act 1912* (NSW), s 5D — *Crimes (Sentencing Procedure) Act 1999* (NSW), Div 1A.

**Appealed from NSW SC (CA):** [2010] NSWCCA 313.

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*Muldrock v The Queen*

**S231/2010:** [\[2011\] HCATrans 147](#).

**Date heard:** 8 & 9 June 2011 — *Judgment reserved*.

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

**Catchwords:**

Criminal law — Sentence — Appellant pleaded guilty to charge of sexual intercourse with child under age of 10 years — Further offence of aggravated indecent assault taken into account in sentencing — Appellant intellectually disabled — Appellant previously convicted of similar offence — Relevance of standard non-parole period in cases of less than mid-range seriousness — Relevance of rehabilitation and community protection to sentencing of intellectually disabled offenders — Whether appellant "significantly intellectually disabled" such that deterrence objective inappropriate — Whether full-time custody an exceptional penalty for intellectually disabled offenders — Whether appellant a person with "special circumstances" — *Crimes Act 1900* (NSW), ss 61M(1) and 66A — *Crimes (Sentencing Procedure) Act 1999* (NSW), ss 3A, 54A and 54B.

Words and phrases — "significantly intellectually disabled", "special circumstances", "standard non-parole period".

**Appealed from NSW SC (CCA):** [2010] NSWCCA 106.

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*Commonwealth Director of Public Prosecutions v Poniatowska*

**A20/2010:** [\[2011\] HCATrans 46](#).

**Date heard:** 3 March 2011 — *Judgment reserved*.

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

**Catchwords:**

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

Words and phrases — “engages in conduct”.

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

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*Momcilovic v The Queen*

**M134/2010:** [\[2011\] HCATrans 15](#); [\[2011\] HCATrans 16](#); [\[2011\] HCATrans 17](#); [\[2011\] HCATrans 145](#).

**Date heard:** 8, 9 & 10 February 2011, 7 June 2011 — *Judgment reserved*.

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

**Catchwords:**

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

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

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

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

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

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

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

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

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

## Defamation

*Boland v Dillon; Cush v Dillon*  
**S310/2010; S309/2010:** [\[2011\] HCATrans 82](#).

**Date heard:** 7 April 2011 — *Judgment reserved*.

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

### Catchwords:

Defamation — Defences — Qualified privilege — Boland and respondent directors and Cush general manager of Border Rivers-

Gwydir Catchment Management Authority ("CMA") — Respondent told chairman of CMA that "[i]t is common knowledge among people in the CMA that [the appellants] are having an affair" — Common ground at trial that appellants not having affair and that respondent did not believe appellants having affair when comment made — Respondent denied making comment — Jury found respondent made comment — Respondent advanced defence of qualified privilege founded on perceived need to inform chairman of CMA of "the rumour and the accusation" of affair — Whether publication of imputations of affair between director and General Manager of statutory body published by another director to chairman on occasion of qualified privilege — Relevance of duty respondent owed to CMA to occasion of qualified privilege.

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

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## Environment and Planning

*Cumerlong Holdings Pty Ltd v Dalcross Properties Pty Ltd & Ors*  
**S227/2010:** [\[2011\] HCATrans 143](#).

**Date heard:** 1 June 2011 — *Judgment reserved*.

**Coram:** Gummow ACJ, Hayne, Heydon, Crennan and Bell JJ,

**Catchwords:**

Environment and planning — Building control — Planning instruments — Interpretation — Ku-ring-gai Local Environment Plan 194 ("LEP 194") rezoned appellant's land and suspended restrictive covenant enjoyed by appellant over respondent's land — Whether LEP 194 a "provision", for purpose of s 28(3) of *Environmental Planning and Assessment Act 1979* (NSW) ("Act"), that accords with s 28(2) of Act — Whether s 28(3) of Act required approval of Governor to effect change of zoning under LEP 194 — Whether s 28(3) of Act engaged if LEP 194 contains no express provision identifying regulatory instrument which shall not apply to any particular development.

Words and phrases — "provide", "provision".

**Appealed from NSW SC (CA):** [2010] NSWCA 214; (2010) 175 LGERA 433; [2011] ALMD 220.

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# Equity

*HIH Claims Support Limited v Insurance Australia Limited*  
M147/2010: [\[2011\] HCATrans 144](#).

**Date heard:** 2 June 2011 — *Judgment reserved*.

**Coram:** Gummow ACJ, Hayne, Heydon, Crennan and Kiefel JJ.

**Catchwords:**

Equity — Contribution — Equal and coordinate liability — Scaffolder Steele sub-contracted to Australian Grand Prix Corporation ("AGPC") — Steele held insurance policy with company in HIH group which, but for HIH collapse, responded to Steele's liability to AGPC — Appellant administrator of HIH Claim Support Scheme — AGPC held insurance policy with State Government Insurance Corporation ("SGIC") which extended to sub-contractors — SGIC's rights, liabilities and obligations vested in respondent — Whether appellant entitled to contribution from respondent — Whether liabilities of appellant and Steele and respondent and Steele equal and coordinate — Whether indemnities not coordinate because appellant may recover from liquidation of HIH — Whether equitable doctrine of contribution sufficiently flexible to do "practical justice" — Whether characterisation of separate contracts of insurance as "primary" and "secondary" prevents contribution — Whether relevant date for determining right to contribution is date of indemnity payment or date of casualty.

Words and phrases — "practical justice", "primary", "secondary".

**Appealed from Vic SC (CA):** [2010] VSCA 255; (2010) 16 ANZ Insurance Cases 61-863.

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*Byrnes & Anor v Kendle*  
A23/2010: [\[2010\] HCATrans 322](#).

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

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

**Catchwords:**

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

as trustee of the property to collect rent — Whether second appellant was able to, and in fact did, consent to respondent's actions.

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

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## Evidence

*Lithgow City Council v Jackson*  
S158/2010: [\[2011\] HCATrans 115](#).

**Date heard:** 5 May 2011 — *Judgment reserved*.

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

**Catchwords:**

Evidence — Admissibility and relevance — Respondent found unconscious and injured in parklands during early hours of morning — Respondent had no memory of events leading to his injuries — Ambulance officers who attended scene recorded, inter alia, "? Fall from 1.5 metres onto concrete" ("Ambulance Record") — Whether Ambulance Record an opinion that respondent fell in to drain or record of fact that such a fall possible — If Ambulance Record a record of fact, whether it should have been excluded under s 136 of *Evidence Act 1995* (NSW) ("Act") — If Ambulance Record an opinion, whether it should have been excluded under s 76 of Act — Whether Ambulance Record a lay opinion and admissible under s 78 of Act — Whether opinion of underlying matter or event includes perceptions of aftermath of matter or event.

Words and phrases — "necessary".

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

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## High Court of Australia

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

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## Human Rights

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

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## Insurance

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

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

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

**Catchwords:**

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

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

Arbitration — The award — Appeal or judicial review — Grounds for remitting or setting aside — Whether arbitrators gave adequate reasons for making the award — *Commercial Arbitration Act* 1984 (NSW), s 29(1).

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

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## Practice and Procedure

*Michael Wilson & Partners Limited v Nicholls & Ors*  
S236/2010: [\[2011\] HCATrans 141](#); [\[2011\] HCATrans 142](#).

**Date heard:** 31 May 2011, 1 June 2011 — *Judgment reserved*.

**Coram:** Gummow ACJ, Hayne, Heydon, Crennan and Bell JJ.

**Catchwords:**

Practice and procedure — Supreme Court procedure — Abuse of process — Appellant obtained judgment against respondents in Supreme Court of NSW ("NSWSC") for knowing participation in breach of fiduciary duty by a non-party — London arbitrators subsequently issued interim award upholding breach of duties by

non-party but denying compensation to appellant ("Award") — Respondents not party to Award — Whether abuse of process for appellant to seek to enforce judgment in NSWSC in face of Award.

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

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

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

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See also **Constitutional Law:** *Queanbeyan City Council v ACTEW Corporation Ltd & Anor*

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## Restitution

*Equuscorp Pty Ltd (formerly Equus Financial Services Ltd) v Haxton; Equuscorp Pty Ltd (formerly Equus Financial Services Ltd) v Bassat; Equuscorp Pty Ltd (formerly Equus Financial Services Ltd) v Cunningham's Warehouse Sales Pty Ltd*  
**M128/2010; M129/2010; M130/2010—M132/2010:**  
[\[2011\] HCATrans 50](#); [\[2011\] HCATrans 51](#).

**Date heard:** 9 & 10 March 2011 — *Judgment reserved*.

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

**Catchwords:**

Restitution — Restitution resulting from unenforceable, incomplete, illegal or void contracts — Recovery of money paid or property transferred — Respondents investors in tax driven blueberry farming schemes — Funds for farm management fees lent to investors by Rural Finance Ltd ("Rural") — Appellant lent money to Rural — Rural subsequently wound up — Loan contracts between respondents and Rural assigned to applicant — Appellant's

enforcement of contractual debts statute-barred — Where parties agreed in court below loan contracts illegal and unenforceable — Whether total failure of consideration — Whether respondents' retention of loan funds "unjust".

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

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

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## Statutes

*AB v The State of Western Australia & Anor; AH v The State of Western Australia & Anor*

**P36/2010; P37/2010:** [\[2011\] HCATrans 178](#).

**Date heard:** 23 June 2011 — *Judgment reserved*.

### Catchwords:

Statutes — Acts of Parliament — Interpretation — Gender reassignment — *Gender Reassignment Act* 2000 (WA) ("Act") enables Gender Reassignment Board ("Board") to issue certificate recognising gender reassignment if, inter alia, the person "has adopted the lifestyle and has the gender characteristics of a person of the gender to which the person has been reassigned": s 15(1)(b)(ii) — Applicants born female — Applicants gender dysphoric and diagnosed as having gender identity disorder — Applicants commenced and continue to undergo testosterone therapy, rendering each currently infertile — Applicants underwent bilateral mastectomies but not hysterectomies — Applicants have not undergone phalloplasty due to associated risks and unavailability of procedure in Australia — Board refused applicants' applications for certificates recognising reassignment of their gender from female to male — Whether Act remedial or beneficial legislation requiring liberal interpretation — Whether each applicant has, for purposes of s 3 of Act, "the physical characteristics by virtue of which a person is identified as male" — Whether determination regarding physical characteristics to be determined by reference to general community standards and expectations or from perspective of reasonable member of community informed of facts and circumstances, including remedial purpose of Act — Whether decision to issue gender reassignment certificate to be made having regard solely to applicants' external physical characteristics or also by reference to applicants' internal physical characteristics — Whether female-to-male re-assignee with internal

and external female genitals must undertake surgery to remove internal female genitals and construct external male genitals in order to have "the physical characteristics by virtue of which a person is identified as male" — Act, ss 3, 14, 15.

Words and phrases — "the physical characteristics by virtue of which a person is identified as male", "gender characteristics", "reassignment procedure".

**Appealed from WA SC (CA):** [2010] WASCA 172.

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

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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

*Wotton v The State of Queensland & Anor*  
S314/2010

**Catchwords:**

Constitutional law — Restrictions on State legislation — Rights and freedoms implied in *Commonwealth Constitution* — Freedom of political communication — Plaintiff convicted of offence of rioting causing destruction and sentenced to imprisonment — Plaintiff granted parole subject to conditions that, inter alia: he attend no public meetings on Palm Island without prior approval of his corrective services officer; he be prohibited from speaking to and having any interaction with the media; and he receive no direct or indirect payment from the media ("Conditions") — Plaintiff sought approval to attend public meeting on Palm Island concerning youth crime and juvenile justice — Plaintiff's request denied by parole officer of second defendant, the Central and Northern Queensland Regional Parole Board — Whether s 132 of *Corrective Services Act 2006 (Q)* ("Act"), which prohibits interviewing and photographing of prisoners including persons on parole, contrary to *Commonwealth Constitution* by impermissibly burdening implied freedom of political communication — Whether Conditions contrary to *Commonwealth Constitution* by impermissibly burdening implied freedom of political communication — Whether s 200(2) of Act invalid to the extent it authorises imposition of Conditions.

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

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### High Court of Australia

*Williams v The Commonwealth*  
S307/2010

**Catchwords:**

High Court of Australia — Original jurisdiction — Practice and procedure — Parties — Standing — Plaintiff the parent of children enrolled at Darling Heights State Primary School ("School") — Commonwealth implemented National School Chaplaincy

Programme ("NSCP") in 2006 — Commonwealth, represented by Department of Education, Science and Training, entered into funding agreement with Scripture Union Queensland ("SUQ") for provision of funding to School under NSCP ("Funding Agreement") — From 2007, chaplaincy services provided to School by SUQ for reward using NSCP funding — Whether plaintiff has standing to challenge validity of Funding Agreement — Whether plaintiff has standing to challenge drawing of money from Consolidated Revenue Fund ("CRF") for purpose of making payments pursuant to Funding Agreement — Whether plaintiff has standing to challenge Commonwealth payments to SUQ pursuant to Funding Agreement.

Constitutional law — Executive — Whether Funding Agreement invalid by reason of s 61 of *Commonwealth Constitution* — Whether making of payments by Commonwealth to SUQ pursuant to Funding Agreement unlawful by reason of s 61 of *Commonwealth Constitution*.

Constitutional law — Restrictions on Commonwealth legislation — Laws relating to religion — Whether Funding Agreement invalid by reason of s 116 of *Commonwealth Constitution* — Whether making of payments by Commonwealth to SUQ pursuant to Funding Agreement unlawful by reason of s 116 of *Commonwealth Constitution*.

Constitutional law — Revenue and appropriation — Payments under Funding Agreement drawn from CRF by Appropriation Acts — Whether drawing of money from CRF for purpose of making payments under Funding Agreement authorised by Appropriation Acts.

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

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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

*Public Service Association of South Australia Incorporated v Industrial Relations Commission of South Australia & Anor*  
A7/2011: [\[2011\] HCATrans 149](#).

**Date heard:** *Referred to an enlarged Court on 8 June 2011 without oral submissions.*

**Catchwords:**

Administrative law — Judicial review — Grounds of review — Jurisdictional matters — Applicant notified two disputes in Industrial Relations Commission of South Australia ("Commission") — Commission at first instance and on appeal ruled it lacked jurisdiction to determine disputes — Section 206 of *Fair Work Act 1994* (SA) ("Act") precludes review of Commission determinations unless "on the ground of an excess or want of jurisdiction" — Full Court of Supreme Court of South Australia ("Court") held it lacked jurisdiction to review Commission's determinations and dismissed summons for judicial review — Whether s 206 of Act precludes judicial review by Court of jurisdictional error not in "excess or want of jurisdiction" — Whether s 206 of Act beyond power of South Australian Parliament — Whether *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531 impliedly overruled *Public Service Association of South Australia v Federated Clerks' Union of Australia, South Australian Branch* (1991) 173 CLR 132.

Constitutional law — *Commonwealth Constitution*, Ch III — State Supreme Courts — Power of State Parliament to alter defining characteristic of Supreme Court of a State — Supervisory jurisdiction — Whether all jurisdictional errors of tribunals must be subject to review by the Supreme Court of a State — Whether s 206 of Act impermissibly limits Court's jurisdiction to exercise judicial review where jurisdictional error has occurred.

Industrial law — South Australia — Commission — Jurisdiction — Public servants — Disputes raised in Commission concerning "no forced redundancy" commitment, recreational leave loading and long service leave provisions in Enterprise Agreement — Whether Commission and Court erred in relation to jurisdiction.

Words and phrases — "on the ground of an excess or want of jurisdiction".

**Appealed from SA SC (FC):** [2011] SASCF 14.

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## Constitutional Law

*Handlen v The Queen; Paddison v The Queen*  
**B5/2010; B7/2011:** [\[2011\] HCATrans 120](#).

**Date heard:** 13 May 2011 — *Special leave granted*.

### Catchwords:

Constitutional law — Trial by jury — Section 668E(1A) of *Criminal Code* (Q) ("proviso") allows court to dismiss appeal where points raised by appellant might be decided in appellant's favour if court considers no substantial miscarriage of justice has occurred — Applicants found guilty by jury of drug offences in contravention of *Criminal Code* (Cth) ("Code") — Court of Appeal found case put to jury "in terms alien to the forms of criminal responsibility" recognised by Code and applicants only criminally responsible as aiders under s 11.2 of Code — Court of Appeal applied proviso — Whether failure to put case against applicants to jury on correct basis of criminal liability a substantial miscarriage of justice — Whether s 80 of *Commonwealth Constitution* precluded application of proviso.

Criminal law — Appeal and new trial — Miscarriage of justice — Whether failure to put case against applicants to jury on correct basis of criminal liability a substantial miscarriage of justice — Whether s 80 of *Commonwealth Constitution* precluded application of proviso.

Words and phrases — "substantial miscarriage of justice".

**Appealed from Qld SC (CA):** (2010) 247 FLR 261; [2010] QCA 371.

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*Stoten v The Queen; Hargraves v The Queen*  
**B72/2010; B73/2010:** [\[2011\] HCATrans 120](#).

**Date heard:** 13 May 2010 — *Special leave granted on limited grounds*.

### Catchwords:

Constitutional law — Trial by jury — Section 668E(1A) of *Criminal Code* (Q) ("proviso") allows court to dismiss appeal where points raised by appellant might be decided in appellant's favour if court

considers no substantial miscarriage of justice has occurred — Applicants found guilty by jury of conspiracy to defraud Commonwealth — Court of Appeal found errors in directions given to jury but applied proviso and dismissed appeal — Whether application of proviso inconsistent with s 80 of *Commonwealth Constitution* — *Weiss v The Queen* (2005) 224 CLR 300.

Criminal law — Appeal and new trial — Procedural fairness — Whether directions at trial constituted denial of procedural fairness — Whether Court of Appeal failed to take into account direction concerning applicants' interests in subject matter of evidence in applying proviso — *Weiss v The Queen* (2005) 224 CLR 300.

Words and phrases — "procedural fairness".

**Appealed from Qld SC (CA):** [2010] QCA 328.

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*Sportsbet Pty Ltd v The State of New South Wales & Ors*  
**S290/2010; S291/2010:** [\[2011\] HCATrans 52](#).

**Date heard:** 11 March 2011 — *Special leave granted on limited grounds.*

**Catchwords:**

Constitutional law — Freedom of interstate trade — Applicant a licensed bookmaker domiciled in Northern Territory — NSW legislative scheme prohibited use of race field information without approval and authorised imposition of fee as condition for approval ("Scheme") — Fee imposed on all wagering operators irrespective of whether domiciled in NSW — NSW racing control bodies subsidised NSW wagering operators — Whether practical effect of fee was to impose discriminatory burden of protectionist nature on interstate trade — Whether Scheme inconsistent with freedom of interstate trade, commerce and intercourse — *Commonwealth Constitution*, ss 92 and 109 — *Northern Territory (Self Government) Act 1978* (Cth), s 49 — *Racing Administration Act 1998* (NSW), s 33(1).

Constitutional law — Freedom of interstate trade — Whether Scheme inconsistent with freedom of interstate trade, commerce and intercourse — Whether practical effect of Scheme determinable without consideration of offsetting reductions in existing fees payable by intrastate traders — Whether necessary for interstate trader to show that interstate trader's competitive advantage derived from place of origin in another State or Territory and Scheme imposed discriminatory burden affecting that advantage — Whether Scheme protectionist if imposed with intention of protecting intrastate traders and fee not reasonably appropriate or adapted to non-protectionist objective — Whether validity of statutory prohibition, combined with administrative discretion to

relax prohibition, to be determined by comparing interstate and intrastate traders' positions — Whether relevant or determinative that State and administrative bodies intend discretion over prohibition to be exercised to protect intrastate traders — *Commonwealth Constitution*, ss 92 and 109 — *Northern Territory (Self Government) Act 1978* (Cth), s 49 — *Racing Administration Act 1998* (NSW), s 33(1).

**Appealed from FCA FC:** (2010) 189 FCR 448; (2010) 274 ALR 12; [2010] FCAFC 132.

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***Betfair Pty Limited v Racing New South Wales & Ors***  
**S294/2010:** [\[2011\] HCATrans 53](#).

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

**Catchwords:**

Constitutional law — Freedom of interstate trade — Applicant a licensed betting exchange domiciled in Tasmania — NSW legislative scheme prohibited use of race field information without approval and authorised imposition of fee as condition for approval ("Scheme") — Fee imposed on all wagering operators irrespective of whether domiciled in NSW — Where imposition of fee allegedly reduce applicant's commission by disproportionate amount compared to NSW operators — Whether practical effect of fee was to impose discriminatory burden of protectionist nature on interstate trade — Whether Scheme inconsistent with freedom of interstate trade, commerce and intercourse — *Commonwealth Constitution*, s 92 — *Racing Administration Act 1998* (NSW), s 33(1).

Constitutional law — Freedom of interstate trade — Whether Scheme inconsistent with freedom of interstate trade, commerce and intercourse — Whether insufficient for interstate trader to show fees imposed greater business costs on interstate traders than intrastate traders — Whether necessary for interstate trader to show that interstate trader's competitive advantage derived from place of origin in another State or Territory and Scheme imposed discriminatory burden affecting that advantage — Whether Scheme protectionist if imposed with intention of protecting intrastate traders and fee not reasonably appropriate or adapted to non-protectionist objective — Whether validity of statutory prohibition, combined with administrative discretion to relax prohibition, to be determined by comparing interstate and intrastate traders' positions — Whether relevant or determinative that State and administrative bodies intend discretion over prohibition to be exercised to protect intrastate traders — *Commonwealth Constitution*, s 92 — *Racing Administration Act 1998* (NSW), s 33(1).

**Appealed from FCA FC:** (2010) 189 FCR 356; (2010) 273 ALR 664; [2010] FCAFC 133.

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See also **Administrative Law:** *Public Service Association of South Australia Incorporated v Industrial Relations Commission of South Australia & Anor*

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## Corporations

*Australian Securities and Investments Commission v Shafron;*  
*Australian Securities and Investments Commission v Terry;*  
*Australian Securities and Investments Commission v Hellicar;*  
*Australian Securities and Investments Commission v Brown;*  
*Australian Securities and Investments Commission v Gillfillan;*  
*Australian Securities and Investments Commission v Koffel;*  
*Australian Securities and Investments Commission v O'Brien;*  
*Australian Securities and Investments Commission v Willcox;*  
*Shafron v Australian Securities and Investments Commission*  
**S29/2011; S30/2011; S31/2011; S32/2011; S33/2011;**  
**S34/2011; S35/2011; S36/2011; S37/2011:** [\[2011\] HCATrans 128](#).

**Date heard:** 13 May 2011 — *Special leave granted.*

### Catchwords:

Corporations — Management and administration — Evidence — Misleading announcement sent to Australian Stock Exchange ("ASX") — At trial, Australian Securities and Investments Commission ("ASIC") failed to call solicitor ("Mr Robb") advising James Hardie Industries Ltd ("JHIL") who attended meeting of Board of Directors — Trial judge made adverse findings and declarations of contravention against first to eighth respondents — Whether ASIC obliged to call particular witnesses pursuant to obligation of fairness — Whether ASIC failed to discharge burden of proving that JHIL Board passed Draft ASX Announcement resolution — Whether ASIC obliged to call Mr Robb to give evidence of firm's receipt of Draft ASX Announcement — Whether ASIC's failure to comply with obligations, if extant, had negative evidentiary impact on ASIC's case — Whether certain oral evidence of respondents Brown and Koffel ought to have been accepted as correlating with terms of Draft ASX Announcement — Whether ASIC failed to prove that JHIL Board passed resolution approving tabled ASX Announcement — Whether of evidentiary significance that company associated with respondent O'Brien produced to ASIC identical version of Draft ASX Announcement — Whether evidence of JHIL

company secretary that practice of retaining versions of announcements approved for market release did not relate to period of release of misleading announcement — Whether reliability and weight to be attributed to Board minutes open to question — Whether declarations of contravention made in respect of first to eighth respondents should be set aside — Whether, in respect of Shafron cross-appeal: Shafron was an officer of JHIL who participated in decisions affecting the business of JHIL; Shafron's responsibilities as company secretary and general counsel fell within scope of duty of care and diligence imposed on him as an "officer" by s 180(1) of *Corporations Law* and *Corporations Act 2001* (Cth) ("Acts"); Shafron's conduct was in his capacity as JHIL company secretary; Shafron breached s 180(1) of the Acts.

**Appealed from NSW SC (CA):** (2010) 274 ALR 205; (2010) 81 ACSR 285; [2010] NSWCA 331.

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## Criminal Law

*PGA v The Queen*

**A3/2011:** [\[2011\] HCA Trans 148](#).

**Date heard:** *Special leave granted on 8 June 2011 without oral submissions.*

**Catchwords:**

Criminal law — Offences against the person — Sexual offences — Rape and sexual assault — Consent — Presumption of — Applicant charged in 2010 with rape, allegedly committed in 1963, against then wife — In 1963, s 48 of *Criminal Law Consolidation Act 1935* (SA) ("Act") made person convicted of rape guilty of felony — Where elements of offence of rape in 1963 supplied by common law — Where South Australian Parliament amended s 48 of Act in 1976 — Whether common law of Australia in 1963 permitted husband to be found guilty of rape of his wife — Whether irrebuttable presumption of consent to sexual intercourse between married couples in 1963 — Effect of *R v L* (1991) 174 CLR 379 ("*R v L*") on common law in 1963 — Whether 1976 amendment to Act precludes subsequent amendment of common law position prevailing in 1963.

Criminal law — Appeal and new trial — Procedure — South Australia — Case stated and reservation of question of law — Whether common law of Australia in 1963 permitted husband to be found guilty of rape of his wife — Whether applicant can, as a matter of law, be convicted of counts of rape of his wife in 1963 — Act, s 350(2)(b).

Practice and procedure — Precedents — Development of common law — Prospective overruling — Whether common law recognises retrospective imposition of criminal liability absent statutory requirement — Whether change in common law effected by *R v L* to be applied retrospectively — Whether 1976 amendment to Act precludes subsequent amendment of common law position prevailing in 1963 — *Acts Interpretation Act 1915 (SA)*, s 16.

**Appealed from SA SC (CCA):** [2010] SASFC 81.

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*BBH v The Queen*

**B76/2010:** [\[2011\] HCATrans 121](#).

**Date heard:** 13 May 2011 — *Referred to an enlarged Court.*

**Catchwords:**

Criminal law — Appeal and new trial — Evidence — Applicant found guilty by jury of maintaining indecent relationship with child under 16, indecent treatment of child under 16 and sodomy of a person under 18 — Complainant was applicant's daughter — Whether evidence of complainant's brother, who provided innocent explanation for an event held to be evidence of discreditable conduct, properly put before jury in circumstances where complainant gave no evidence about the event — Whether test for admissibility in *Pfennig v The Queen* (1995) 182 CLR 461 applies to evidence of discreditable conduct — If so, whether admissibility test applicable.

**Appealed from Qld SC (CA):** [2007] QCA 348.

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*Moti v The Queen*

**B47/2010:** [\[2011\] HCATrans 96](#).

**Date heard:** 8 April 2011 — *Special leave granted on limited grounds.*

**Catchwords:**

Criminal law — Procedure — Stay of proceedings — Abuse of process — Indictment charging applicant with seven counts of engaging in sexual intercourse with person under 16 whilst outside Australia stayed by primary judge — Where primary judge found financial support given to witnesses by Australian Federal Police an abuse of process — Whether open to conclude that prosecution based on evidence of witnesses paid by Australian Executive, in amounts alleged to exceed expenses of giving evidence and in response to alleged threats to withdraw from prosecution, an abuse of process — Whether stay of proceedings should be set aside.

Criminal law — Procedure — Stay of proceedings — Abuse of process — Where applicant deported from Solomon Islands to Australia without extradition proceedings and allegedly with "knowledge and connivance or involvement" of Australian Executive — Where applicant previously charged with similar offences in Vanuatu but discharged — Where applicant contended removal from Solomon Islands a disguised extradition and criminal investigation politically motivated — Whether principle in *R v Horseferry Magistrates' Court; Ex Parte Bennett (No 1)* [1994] 1 AC 42 should be applied in Australia — Whether discretion to stay proceedings as abuse of process in light of facts and applicant's allegations ought to be exercised.

**Appealed from Qld SC (CA):** [2010] QCA 178.

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See also **Constitutional Law:** *Handlen v The Queen; Paddison v The Queen; Stoten v The Queen; Hargraves v The Queen*

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## Industrial Law

See **Administrative Law:** *Public Service Association of South Australia Incorporated v Industrial Relations Commission of South Australia & Anor*

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## Mortgages

*Waller v Hargraves Secured Investments Limited*  
**S285/2010:** [\[2011\] HCATrans 153](#).

**Date heard:** 10 June 2011 — *Special leave granted*.

### Catchwords:

Mortgages — Primary industry — Farm debt mediation — Mortgagee's remedies — Possession — Clause entitling mortgagee to possession upon default of mortgagor — *Farm Debt Mediation Act* 1994 (NSW) ("Act") provides no enforcement action to be taken until creditor gives notice of availability of mediation ("Notice") and enforcement action taken by creditor other than in compliance with Act is void — Applicant mortgaged land in favour of respondent to secure all moneys owed under loan agreement — Applicant breached terms of loan agreement and respondent gave Notice — Parties subsequently executed further loan agreements which discharged previous debts and created new farm debts — Applicant defaulted in making interest payments due under third loan

agreement — Respondent commenced proceedings for possession of property and judgment debt — Whether each pairing of mortgage and farm debt gave rise to separate farm mortgages — Whether further Notice required for enforcement action pursuant to third loan agreement — Whether there was a certificate "in respect of the farm mortgage concerned" within meaning of s 8(3) of Act — Whether certificate issued by Rural Assistance Authority under s 11 of Act void — Whether proceeding for possession and judgment debt should have been dismissed pursuant to s 6 of Act — Act, ss 6, 8 and 11.

Words and phrases — "enforcement action", "farm debt", "farm mortgage", "in respect of the farm mortgage concerned".

**Appealed from SC NSW (CA):** [2010] NSWCA 300.

## Practice and Procedure

See **Constitutional Law:** *Queanbeyan City Council v ACTEW Corporation Ltd & Anor*, **Criminal Law:** *PGA v The Queen*

## Statutes

*Tasty Chicks Pty Ltd & Ors v Chief Commissioner of State Revenue*

**S39/2011:** [\[2011\] HCATrans 151](#).

**Date heard:** 10 June 2011 — *Special leave granted on limited grounds.*

### Catchwords:

Statutes — Acts of Parliament — Interpretation — Taxation and duties — Appeal and new trial — Powers of court — Substituted verdict or judgment — Section 97 of *Taxation Administration Act 1996* (NSW) ("Act") allows taxpayer to apply to Supreme Court for review of decision of Chief Commissioner the subject of an objection — Section 97(4) of Act provides review by Supreme Court taken to be an appeal for purposes of *Supreme Court Act 1970* (NSW) — Commissioner issued payroll tax assessments grouping first and second applicants with partnership and other companies — Commissioner disallowed applicants' objections — Applicants sought review by Supreme Court pursuant to s 97 of Act — Trial judge re-exercised discretion under de-grouping provisions and, contrary to Commissioner, held first and second applicants should be de-grouped — Court of Appeal held review under s 97 of Act an appeal in ordinary sense meaning Court not entitled to re-exercise discretion under de-grouping provisions and substitute its decision

for that of Commissioner — Whether appeal instituted in Supreme Court pursuant to s 97 of Act an appeal by way of hearing de novo — Whether applicants required to prove that determination of Commissioner under review pursuant to s 97 of Act attended by error — Whether *Avon Downs v Pty Limited v FCT* (1949) 78 CLR 353 and *House v The King* (1926) 55 CLR 499 apply in proceedings under s 97 of Act in respect of Court's review of discretionary determination made by Commissioner — *Affinity Health Pty Limited v Chief Commissioner of State Revenue* (2005) 205 ATC 4637 — Act, ss 96 and 97 — *Supreme Court Act 1970* (NSW), ss 19(2) and 75A.

Words and phrases — "appeal", "review".

**Appealed from SC NSW (CA):** [2011] NSWCA 326.

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

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

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

**Catchwords:**

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

Words and phrases — "in addition to".

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

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

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

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

**Catchwords:**

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

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

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## Torts

*Amaca Pty Limited (Under NSW Administered Winding Up) v Booth & Anor; Amaba Pty Limited (Under NSW Administered Winding Up) v Booth & Anor*  
**S6/2011; S7/2011:** [\[2011\] HCATrans 152](#).

**Date heard:** 10 June 2011 — *Special leave granted on limited grounds.*

### Catchwords:

Torts — Negligence — Causation — Dust diseases — Respondent ("Booth") suffers from mesothelioma contracted from asbestos inhalation in four domestic and employment periods — Third and fourth periods of exposure occurred while Booth worked with brake linings containing asbestos manufactured by applicants — Trial judge found each applicant responsible for 70 per cent of asbestos fibre to which Booth exposed in third and fourth periods — Evidence indicated incidence of mesothelioma increases in proportion to increased exposure to asbestos — Whether causation in asbestos cases can be established by reference to increased risk of developing mesothelioma.

Torts — Negligence — Causation — Dust diseases — Evidence — Expert evidence — Experts for Booth gave evidence that all exposure to asbestos of the type found in applicants' brake linings, other than trivial or minimal exposure, materially contributed to Booth's mesothelioma — Whether sufficient evidence for conclusion that each exposure to asbestos a contributory cause of the development of mesothelioma.

**Appealed from SC NSW (CA):** [2010] NSWCA 344; [2010] Aust Torts Reports 82-079.

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*Strong v Woolworths Limited t/as Big W & Anor*  
S268/2010: [\[2011\] HCATrans 131](#).

**Date heard:** 13 May 2011 — *Special leave granted*.

**Catchwords:**

Torts — Negligence — Causation — Onus — Applicant slipped on chip and fell in area of shopping centre where respondent had exclusive right to conduct sidewalk sales — Whether causation established — Whether s 5D(1) of *Civil Liability Act 2002* (NSW) ("CLA") excludes consideration of material contribution to harm and increase in risk — Whether applicant demonstrated lack of adequate cleaning system responsible for debris on centre floor — CLA, ss 5D and 5E.

**Appealed from SC NSW (CA):** [2010] NSWCA 282.

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## **5: CASES NOT PROCEEDING OR VACATED**

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There are no cases in the High Court of Australia that are not proceeding or have been vacated since High Court Bulletin 04 [2011] HCAB 04.

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## 6: SPECIAL LEAVE REFUSED

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*Wynton Stone Australia Pty Ltd (in liq) v MWH Australia Pty Ltd (formerly Montgomery Watson Australia Pty Ltd)*

**M158/2010; M159/2010:** [\[2011\] HCATrans 146](#).

**Date heard:** 8 June 2011 — *Referred to an enlarged Court on 11 March 2011. Special leave refused by French CJ, Heydon, Crennan, Kiefel and Bell JJ following hearing on 8 June 2011.*

**Catchwords:**

Practice and procedure — Pleadings — Trial judge stated, without objection, that pleaded issues would be treated as abandoned if not run in final submissions — Whether respondent abandoned breach of warranty claim.

Trade and commerce — Misleading and deceptive conduct — Warranty — Whether statement of fact in warranty constituted misleading and deceptive conduct — Causation — Reliance — Inferred reliance — Whether causation able to be inferred in absence of direct evidence of reliance — *Gould v Vaggelas* (1985) 157 CLR 215 — *Campbell v Backoffice Investments Pty Ltd* [2010] VSCA 245.

Contracts — Construction and interpretation — Intention of parties — Deed of Novation — Whether release of "all claims and demands whatsoever in respect of the contract" intended to cover breaches of contract occurring before date of Deed — Application of "business commonsense point of view" where language not ambiguous on its face.

**Appealed from Vic SC (CA):** [2010] VSCA 245.

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*Mahmud v The Queen*

**S137/2011:** [\[2011\] HCATrans 147](#).

**Date heard:** 8 June 2011 — *Referred to an enlarged Court on 19 April 2011 to be heard with Muldrock v The Queen. Special leave refused by French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ following hearing on 8 June 2011.*

**Catchwords:**

Constitutional law — *Commonwealth Constitution*, Ch III — State Supreme Courts — Institutional integrity of courts — Applicant convicted of supplying prohibited drug in amount not less than large commercial quantity and possessing more than three firearms

which were unregistered and for which he was not authorised by licence or permit to possess — Court of Criminal Appeal ("CCA") increased applicant's sentences in respect of each count — Whether standard non-parole periods in *Crimes (Sentencing Procedure) Act 1999* (NSW), Pt 4, Div 1A create a rule for determination of non-parole periods that impermissibly interferes with judicial discretion — *Kable v DPP* (1996) 189 CLR 51.

Criminal law — Sentence — Whether CCA erred in holding that sentences imposed by trial judge manifestly inadequate and increasing sentences — Whether CCA erred by taking into account standard non-parole periods in increasing applicant's sentences — *Drug Misuse and Trafficking Act 1985* (NSW), s 25(2) — *Firearms Act 1996* (NSW), s 51D(2) — *Criminal Appeal Act 1912* (NSW), s 5D — *Crimes (Sentencing Procedure) Act 1999* (NSW), Pt 4, Div 1A.

Words and phrases — "standard non-parole period".

**Appealed from SC NSW (CCA):** [2010] NSWCCA 219.

## Canberra: 7 June 2011

(Publication of reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Alvarez	Lancaster (B15/2011)	Supreme Court of Queensland (Court of Appeal) [2011] QCA 23	Application dismissed <a href="#">[2011] HCASL 80</a>
MZYJO	Minister for Immigration and Citizenship and Anor (M21/2011)	Federal Court of Australia [2011] FCA 189	Application dismissed <a href="#">[2011] HCASL 81</a>
Sherman	Pearce & Ors (M22/2011)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application dismissed <a href="#">[2011] HCASL 82</a>
SZOJP	Minister for Immigration and Citizenship and Anor (S70/2011)	Federal Court of Australia [2011] FCA 93	Application dismissed <a href="#">[2011] HCASL 83</a>
SZOLO	Minister for Immigration and Citizenship & Anor (S80/2011)	Federal Court of Australia [2011] FCA 84	Application dismissed <a href="#">[2011] HCASL 84</a>
SZNSU & Anor	Minister for Immigration and Citizenship & Anor (S81/2011)	Federal Court of Australia [2011] FCA 65	Application dismissed <a href="#">[2011] HCASL 85</a>
Khan & Ors	Minister for Immigration and Citizenship & Anor	Federal Court of Australia [2011] FCA 75	Application dismissed <a href="#">[2011] HCASL 86</a>

<b>Applicant</b>	<b>Respondent</b>	<b>Court appealed from</b>	<b>Result</b>
	(S92/2011)		
SZOMS	Minister for Immigration and Citizenship & Anor (S97/2011)	Federal Court of Australia [2011] FCA 90	Application dismissed <a href="#">[2011] HCASL 87</a>
SZOLH	Minister for Immigration and Citizenship & Anor (S101/2011)	Federal Court of Australia [2011] FCA 154	Application dismissed <a href="#">[2011] HCASL 88</a>
SZOQE & Anor	Minister for Immigration and Citizenship & Anor (S102/2011)	Federal Court of Australia [2011] FCA 161	Application dismissed <a href="#">[2011] HCASL 89</a>
Watts & Anor	Bendigo and Adelaide Bank Limited (S105/2011)	Federal Court of Australia [2011] FCA 186	Application dismissed <a href="#">[2011] HCASL 90</a>
Croker	Commonwealth of Australia (S113/2011)	Full Court of the Federal Court of Australia [2011] FCA 25	Application dismissed <a href="#">[2011] HCASL 91</a>
Jensen	Bank of Queensland Limited (S117/2011)	Supreme Court of New South Wales (Court of Appeal) (no media neutral citation)	Application dismissed <a href="#">[2011] HCASL 92</a>
SZOIO	Minister for Immigration and Citizenship & Anor (S123/2011)	Federal Court of Australia [2010] FCA 1234	Application dismissed <a href="#">[2011] HCASL 93</a>
AZAAZ	Minister for Immigration and Citizenship & Anor (A6/2011)	Federal Court of Australia [2011] FCA 159	Application dismissed <a href="#">[2011] HCASL 94</a>
SZOOM	Minister for Immigration and Citizenship & Anor (S114/2011)	Federal Court of Australia [2011] FCA 152	Application dismissed <a href="#">[2011] HCASL 95</a>
In the matter of an application for leave to appeal by Oliver Markisic	(S119/2011)	High Court of Australia [2011] HCATrans 43	Application dismissed <a href="#">[2011] HCASL 96</a>
Szlasa	Provident Capital Limited (A28/2010)	Full Court of the Supreme Court of South Australia [2010] SASCFC 65	Application dismissed with costs <a href="#">[2011] HCASL 97</a>
Rhodes	Lake Macquarie City Council & Anor (S259/2010)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 235	Application dismissed with costs <a href="#">[2011] HCASL 98</a>
Easwaralingam	Director of Public Prosecutions (M9/2011)	Supreme Court of Victoria (Court of Appeal) [2010] VSCA 353	Application dismissed <a href="#">[2011] HCASL 99</a>

**Canberra: 8 June 2011**

(Publication of reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Kowalski	Military Rehabilitation and Compensation Commission (A8/2011)	Full Court of the Federal Court of Australia [2011] FCAFC 44	Application dismissed <a href="#">[2011] HCASL 100</a>
Kowalski	Repatriation Commission (A9/2011)	Full Court of the Federal Court of Australia [2011] FCAFC 43	Application dismissed <a href="#">[2011] HCASL 101</a>
Pachkovski & Ors	Australian Executor Trustees Limited (S78/2011)	Supreme Court of New South Wales (Court of Appeal) [2011] NSWCA 23	Application dismissed <a href="#">[2011] HCASL 102</a>
SZOIM	Minister for Immigration & Citizenship & Anor (S84/2011)	Federal Court of Australia [2011] FCA 83	Application dismissed <a href="#">[2011] HCASL 103</a>
SZOMB	Minister for Immigration & Citizenship & Anor (S86/2011)	Federal Court of Australia [2011] FCA 81	Application dismissed <a href="#">[2011] HCASL 104</a>
SZOPO	Minister for Immigration & Citizenship & Anor (S90/2011)	Federal Court of Australia [2011] FCA 150	Application dismissed <a href="#">[2011] HCASL 105</a>
Andrayani	Minister for Immigration and Citizenship (S91/2011)	Federal Court of Australia [2011] FCA 117	Application dismissed <a href="#">[2011] HCASL 106</a>
SZOFK & Anor	Minister for Immigration & Citizenship & Anor (S99/2011)	Federal Court of Australia [2011] FCA 88	Application dismissed <a href="#">[2011] HCASL 107</a>
SZOCE	Minister for Immigration & Citizenship & Anor (S100/2011)	Federal Court of Australia [2011] FCA 133	Application dismissed <a href="#">[2011] HCASL 108</a>
SZOMU	Minister for Immigration & Citizenship & Anor (S127/2011)	Federal Court of Australia [2011] FCA 140	Application dismissed <a href="#">[2011] HCASL 109</a>
Farah & Ors	Minister for Immigration & Citizenship & Anor (S129/2011)	Federal Court of Australia [2011] FCA 185	Application dismissed <a href="#">[2011] HCASL 110</a>
Garcia	Gonzales (S132/2011)	Full Court of the Family Court of Australia	Application dismissed <a href="#">[2011] HCASL 111</a>

<i><b>Applicant</b></i>	<i><b>Respondent</b></i>	<i><b>Court appealed from</b></i>	<i><b>Result</b></i>
		(no media neutral citation)	
Chand & Anor	Azorra Pty Ltd (in liq) formerly known as Lifestyle Homes NSW Pty Ltd (S133/2011)	Supreme Court of New South Wales (Court of Appeal) [2011] NSWCA 58	Application dismissed <a href="#">[2011] HCASL 112</a>
SZOUU & Anor	Minister for Immigration & Citizenship & Anor (S139/2011)	Federal Court of Australia [2011] FCA 241	Application dismissed <a href="#">[2011] HCASL 113</a>
BRGAA of 2009	Minister for Immigration & Citizenship & Anor (B16/2011)	Federal Court of Australia [2011] FCA 157	Application dismissed <a href="#">[2011] HCASL 114</a>
WZAOC	Minister for Immigration & Citizenship & Anor (P8/2011)	Federal Court of Australia [2011] FCA 163	Application dismissed <a href="#">[2011] HCASL 115</a>
Cvetkovic	The Queen (S28/2011)	Supreme Court of New South Wales (Court of Criminal Appeal) [2010] NSWCCA 329	Application dismissed <a href="#">[2011] HCASL 133</a>
Neil	Legal Profession Complaints Committee & Anor (P14/2011)	Supreme Court of Western Australia (Court of Appeal) [2011] WASCA 66	Application dismissed <a href="#">[2011] HCASL 134</a>

## Canberra: 9 June 2011

(Publication of reasons)

<i><b>Applicant</b></i>	<i><b>Respondent</b></i>	<i><b>Court appealed from</b></i>	<i><b>Result</b></i>
MZYJF	Minister for Immigration and Citizenship & Anor (M16/2011)	Federal Court of Australia [2011] FCA 119	Application dismissed <a href="#">[2011] HCASL 116</a>
Finch	The Heat Group Pty Ltd & Ors (M17/2011)	Supreme Court of Victoria (Court of Appeal) [2010] VSCA 256	Application dismissed <a href="#">[2011] HCASL 117</a>
Simonsen	Legge (P3/2011)	Supreme Court of Western Australia (Court of Appeal) [2010] WASCA 238	Application dismissed <a href="#">[2011] HCASL 118</a>
Hannigan	Sorrow (S23/2011)	Full Court of the Family Court of Australia (no media neutral citation)	Application dismissed <a href="#">[2011] HCASL 119</a>
Samootin	Shea & Ors (S38/2011)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 371	Application dismissed <a href="#">[2011] HCASL 120</a>

<b>Applicant</b>	<b>Respondent</b>	<b>Court appealed from</b>	<b>Result</b>
SZODW	Minister for Immigration and Citizenship & Anor (S54/2011)	Federal Court of Australia [2011] FCA 5	Application dismissed <a href="#">[2011] HCASL 121</a>
SZOIU	Minister for Immigration and Citizenship & Anor (S73/2011)	Federal Court of Australia [2011] FCA 62	Application dismissed <a href="#">[2011] HCASL 122</a>
SZOHE	Minister for Immigration and Citizenship & Anor (S79/2011)	Federal Court of Australia [2011] FCA 73	Application dismissed <a href="#">[2011] HCASL 123</a>
SZOQR	Minister for Immigration and Citizenship & Anor (S112/2011)	Federal Court of Australia [2011] FCA 142	Application dismissed <a href="#">[2011] HCASL 124</a>
Vescio	Guardianship Tribunal NSW (S230/2010)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 227	Application dismissed <a href="#">[2011] HCASL 125</a>
BZAAC	Minister for Immigration and Citizenship & Anor (B18/2011)	Federal Court of Australia [2011] FCA 167	Application dismissed <a href="#">[2011] HCASL 126</a>
SZOMF	Minister for Immigration and Citizenship & Anor (S75/2011)	Federal Court of Australia [2011] FCA 57	Application dismissed <a href="#">[2011] HCASL 127</a>
SZOIX	Minister for Immigration and Citizenship & Anor (S83/2011)	Federal Court of Australia [2011] FCA 70	Application dismissed <a href="#">[2011] HCASL 128</a>
SZOHX	Minister for Immigration and Citizenship & Anor (S106/2011)	Federal Court of Australia [2011] FCA 139	Application dismissed <a href="#">[2011] HCASL 129</a>
SZLQI	Minister for Immigration and Citizenship & Anor (S261/2010)	Federal Court of Australia [2009] FCA 1458	Application dismissed <a href="#">[2011] HCASL 130</a>
Queensland Construction Materials Pty Ltd	Tapp & Ors (B52/2010)	Supreme Court of Queensland (Court of Appeal) [2010] QCA 182	Application dismissed with costs <a href="#">[2011] HCASL 131</a>
Queensland Construction Materials Pty Ltd	Baxter & Ors (B53/2010)	Supreme Court of Queensland (Court of Appeal) [2010] QCA 182	Application dismissed with costs <a href="#">[2011] HCASL 131</a>
Dempsey	Legal Services Commissioner (B55/2010)	Supreme Court of Queensland (Court of Appeal) [2010] QCA 197	Application dismissed with costs <a href="#">[2011] HCASL 132</a>

## Sydney: 10 June 2011

### *Civil*

<b>Applicant</b>	<b>Respondent</b>	<b>Court appealed from</b>	<b>Result</b>
Goodridge	Leveraged Equities Limited and Anor (S57/2011)	Full Court of the Federal Court of Australia [2011] FCAFC 3	Special leave refused with costs <a href="#">[2011] HCATrans 154</a>
Goodridge	Macquarie Bank Limited & Anor (S58/2011)	Full Court of the Federal Court of Australia [2011] FCAFC 3	Special leave refused with costs <a href="#">[2011] HCATrans 154</a>
Sydney South West Area Health Service	Macquarie International Health Clinic Pty Ltd (S14/2011)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 348	Special leave refused with costs <a href="#">[2011] HCATrans 155</a>
Bechara	Legal Services Commissioner (S25/2011)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 369	Special leave refused with costs <a href="#">[2011] HCATrans 156</a>
Pahi	Unilever Australia Limited t/as Streets Ice Cream & Anor (S167/2010)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 149	Special leave refused with costs <a href="#">[2011] HCATrans 157</a>
Pahi	Swire Cold Storage Pty Limited & Anor (S308/2010)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 149	Special leave refused with costs <a href="#">[2011] HCATrans 157</a>
Ferguson	Singler (S318/2010)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 325	Special leave refused with costs <a href="#">[2011] HCATrans 158</a>

### *Criminal*

<b>Applicant</b>	<b>Respondent</b>	<b>Court appealed from</b>	<b>Result</b>
Huynh	The Queen (S68/2011)	Supreme Court of New South Wales (Court of Criminal Appeal) [2009] NSWCCA 65	Special leave refused <a href="#">[2011] HCATrans 159</a>

## Melbourne: 10 June 2011

### *Civil*

<b>Applicant</b>	<b>Respondent</b>	<b>Court appealed from</b>	<b>Result</b>
Seal	Transfield Services (Australia) Pty Ltd (A26/2010)	Full Court of the Supreme Court of South Australia [2010] SASCF 44	Special leave refused with costs <a href="#">[2011] HCATrans 163</a>

*Criminal*

<b>Applicant</b>	<b>Respondent</b>	<b>Court appealed from</b>	<b>Result</b>
Benbrika	The Queen (M155/2010)	Supreme Court of Victoria (Court of Appeal) [2010] VSCA 281	Special leave refused <a href="#">[2011] HCATrans 160</a>
Raad	The Queen (M156/2010)	Supreme Court of Victoria (Court of Appeal) [2010] VSCA 281	Special leave refused <a href="#">[2011] HCATrans 160</a>
Joud	The Queen (M164/2010)	Supreme Court of Victoria (Court of Appeal) [2010] VSCA 281	Special leave refused <a href="#">[2011] HCATrans 160</a>
Ferguson	The Queen (M103/2009)	Supreme Court of Victoria (Court of Appeal) [2009] VSCA 198	Special leave refused <a href="#">[2011] HCATrans 161</a>
The Queen	Guariglia (M3/2011)	Supreme Court of Victoria (Court of Appeal) [2010] VSCA 343	Special leave refused with costs <a href="#">[2011] HCATrans 162</a>
Watson	State of South Australia (A1/2011)	Full Court of the Supreme Court of South Australia [2010] SASCFC 69	Special leave refused <a href="#">[2011] HCATrans 164</a>
Barrett	Coroner's Court of South Australia & Anor (A2/2011)	Full Court of the Supreme Court of South Australia [2010] SASCFC 70	Special leave refused with costs <a href="#">[2011] HCATrans 165</a>
Balassis	The Queen (M161/2010)	Supreme Court of Victoria (Court of Appeal) [2010] VSCA 296	Special leave refused <a href="#">[2011] HCATrans 166</a>
Lim	State of Western Australia (P41/2010)	Supreme Court of Western Australia (Court of Appeal) [2010] WASCA 186	Special leave refused <a href="#">[2011] HCATrans 167</a>
Pedersen	State of Western Australia (P42/2010)	Supreme Court of Western Australia (Court of Appeal) [2010] WASCA 175	Special leave refused <a href="#">[2011] HCATrans 168</a>
Wright	State of Western Australia (P47/2010)	Supreme Court of Western Australia (Court of Appeal) [2010] WASCA 199	Special leave refused <a href="#">[2011] HCATrans 169</a>
Hansen	State of Western Australia (P38/2010)	Supreme Court of Western Australia (Court of Appeal) [2010] WASCA 180	Special leave refused <a href="#">[2011] HCATrans 170</a>

**Sydney: 15 June 2011***Criminal*

<b>Applicant</b>	<b>Respondent</b>	<b>Court appealed from</b>	<b>Result</b>
Abibadra	The Queen (S182/2011)	Supreme Court of New South Wales (Court of Criminal Appeal)	Special leave refused <a href="#">[2011] HCATrans 171</a>

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		[2011] NSWCCA 119	
Jandagi	The Queen (S183/2011)	Supreme Court of New South Wales (Court of Criminal Appeal) [2011] NSWCCA 119	Special leave refused <a href="#">[2011] HCATrans 171</a>
Zerafa	The Queen (S184/2011)	Supreme Court of New South Wales (Court of Criminal Appeal) [2011] NSWCCA 119	Special leave refused <a href="#">[2011] HCATrans 171</a>
Agius	The Queen (S187/2011)	Supreme Court of New South Wales (Court of Criminal Appeal) [2011] NSWCCA 119	Special leave refused <a href="#">[2011] HCATrans 171</a>

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