HIGH COURT BULLETIN

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[2011] HCAB 07 (15 September 2011)

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

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SUMMARY OF NEW ENTRIES

1: Cases Handed Down

Case	Title
Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106/2011 by his Litigation Guardian, Plaintiff M70/2011 v Minister for Immigration and Citizenship	Citizenship and Migration
Jemena Asset Management (3) Pty Ltd v Coinvest Limited	Constitutional Law
Momcilovic v The Queen	Constitutional Law
HIH Claims Support Limited v Insurance Australia Limited	Equity

2: Cases Reserved

Case	Title
Sportsbet Pty Ltd v State of New South Wales & Ors; Betfair Pty Limited v Racing New South Wales & Ors	Constitutional Law

Hargraves v The Queen; Stoten v The Queen	Criminal Law
Handlen v The Queen; Paddison v The Queen	Criminal Law
BBH v The Queen	Criminal Law
Tasty Chicks Pty Limited & Ors v Chief Commissioner of State Revenue	Taxation and Duties

3: Original Jurisdiction

Case	**Title**
Shahi v Minister for Immigration and Citizenship	Citizenship and Migration

4: Special Leave Granted

Case	**Title**
Aytugrul v The Queen	Criminal Law
Baiada Poultry Pty Ltd v The Queen	Criminal Law
Bui v Director of Public Prosecutions (Cth)	Criminal Law
King v The Queen	Criminal Law
Harbour Radio Pty Limited v Keysar Trad	Defamation
Papaconstuntinos v Holmes a Court	Defamation
Australian Education Union v General Manager of Fair Work Australia & Ors	Industrial Law
Board of Bendigo Regional Institute of Technical and Further Education v Barclay & Anor	Industrial Law
Australian Native Landscapes Pty Ltd v Minogue & Anor	Torts

1: Cases Handed Down

The following cases were handed down by the High Court of Australia during the August—September 2011 sittings.

Citizenship and Migration

Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106/2011 by his Litigation Guardian, Plaintiff M70/2011 v Minister for Immigration and Citizenship
M70/2011; M106/2011: [2011] HCA 32.

Judgment delivered: 31 August 2011.

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

Catchwords:

Citizenship and migration — Migration — Refugees — Plaintiffs "unlawful non-citizens" and "offshore entry persons" under *Migration Act* 1958 (Cth) — Plaintiffs detained under s 189(3) — Each plaintiff claimed asylum under Refugees Convention — Section 198(2) required officer to remove from Australia unlawful non-citizen in detention where no successful visa application made — Section 198A(1) empowered officer to take offshore entry person from Australia to country declared under s 198A(3) — Section 198A(3) empowered Minister to declare that specified country provides access for asylum-seekers to effective procedures for assessing protection needs, provides protection for asylum-seekers and refugees, and meets relevant human rights standards in providing protection — Whether s 198A only source of power to remove plaintiffs from Australia when asylum claims not assessed in Australia — Whether s 198(2) supplied power to remove plaintiffs from Australia.

Citizenship and migration — Migration — Refugees — Minister declared Malaysia under s 198A — Whether criteria in s 198A(3)(a)(i)-(iv) jurisdictional facts — Whether declared country must provide access and protections as matter of domestic or international legal obligation — Whether Minister's declaration valid.

Citizenship and migration — Migration — Refugees — Children — Second plaintiff entered Australia as unaccompanied minor and "non-citizen child" under *Immigration (Guardianship of Children) Act* 1946 (Cth) — Section 6 had effect that Minister guardian of second plaintiff — Section 6A provided that non-citizen child could not leave Australia except with consent in writing of Minister — No

consent given — Whether taking of second plaintiff to another country lawful.

Words and phrases — "declare", "meets relevant human rights standards", "non-citizen child", "offshore entry person", "provides access", "provides protection", "Refugees Convention", "unaccompanied minor", "unlawful non-citizen".

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

Constitutional Law

Jemena Asset Management (3) Pty Ltd v Coinvest Limited

M127/2010: [2011] HCA 33.

Judgment delivered: 7 September 2011.

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

Catchwords:

Constitutional law (Cth) — Inconsistency between Commonwealth instrument and State law — Appellants employed construction workers and were bound by certain federal industrial instruments ("federal instruments") made under *Workplace Relations Act* 1996 (Cth) ("Commonwealth Act"), which contained provisions regarding long service leave — *Construction Industry Long Service Leave Act* 1997 (Vic) ("State Act") provided for scheme of portable long service leave benefits for workers in construction industry — Commonwealth Act provided for paramountcy of industrial instruments made under federal legislation over State laws, to extent of any inconsistency — Whether State Act inconsistent with Commonwealth Act as embodied in federal instruments.

Words and phrases — "alter, impair or detract from", "cover the field", "direct inconsistency", "indirect inconsistency".

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

Momcilovic v The Queen

M134/2010: [2011] HCA 34.

Judgment delivered: 8 September 2011.

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

Catchwords:

Constitutional law (Cth) — Inconsistency between Commonwealth and State laws — Appellant convicted of trafficking in methylamphetamine contrary to s 71AC of *Drugs, Poisons and Controlled Substances Act* 1981 (Vic) ("Drugs Act") — Trafficking in methylamphetamine an indictable offence under s 302.4 of *Criminal Code* (Cth) — Commonwealth offence prescribed lower maximum penalty than State offence and different sentencing regime — Whether State law inconsistent with Commonwealth law and invalid to extent of inconsistency.

Constitutional law (Cth) — Judicial power of Commonwealth — Constitution, Ch III — Functions conferred on State courts by State law — Compatibility with role of State courts under Ch III — Section 32(1) of *Charter of Human Rights and Responsibilities Act* 2006 (Vic) ("Charter") provided "[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" — Section 36(2) of Charter empowered Supreme Court of Victoria to make declaration that statutory provision cannot be interpreted consistently with a human right — Declaration had no effect upon validity of provision or legal rights of any person — Nature of task required by s 32(1) of Charter — Whether s 32(1) reflection of principle of legality — Whether s 32(1) invalid for incompatibility with institutional integrity of Supreme Court — Whether s 36 confers judicial function or function incidental to exercise of judicial power — Whether s 36 invalid for incompatibility with institutional integrity of Supreme Court.

Constitutional law (Cth) — High Court — Appellate jurisdiction — Whether declaration made under s 36 of Charter subject to appellate jurisdiction of High Court conferred by s 73 of Constitution.

Constitutional law (Cth) — Courts — State courts — Federal jurisdiction — Diversity jurisdiction — Appellant resident of Queensland at time presentment filed for offence under Drugs Act — Whether County Court and Court of Appeal exercising federal jurisdiction — Operation of s 79 of *Judiciary Act* 1903 (Cth) in respect of Charter and Drugs Act.

Criminal law — Particular offences — Drug offences — Trafficking — Possession for sale or supply — Section 5 of Drugs Act provided that any substance shall be deemed to be in possession of a person so long as it is upon any land or premises occupied by him, unless person satisfies court to the contrary — Section 70(1) of Drugs Act defined "traffick" to include "have in possession for sale" — Section 73(2) of Drugs Act provided that unauthorised possession of traffickable quantity of drug of dependence by a person is prima facie evidence of trafficking by that person — Whether s 5 applicable to offence under s 71AC on basis of "possession for sale" — Whether s 5 applicable to s 73(2) — Whether onus on

prosecution to prove appellant had knowledge of presence of drugs — Whether onus on appellant to prove not in possession of drugs.

Statutes — Validity — Severance — Section 33 of Charter provided for referral to Supreme Court of questions of law relating to application of Charter or interpretation of statutory provisions in accordance with Charter — Section 37 of Charter required Minister administering statutory provision in respect of which declaration made under s 36(2) to prepare written response and cause copies of declaration and response to be laid before Parliament and published in Government Gazette — Whether, if s 36 of Charter invalid, ss 33 and 37, and balance of Charter, severable from s 36.

Statutes — Interpretation — Section 7(2) of Charter provided that a human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society — Whether s 7(2) relevant to interpretive process under s 32(1) — Whether s 5 of Drugs Act to be construed to impose evidential rather than legal onus on appellant.

Procedure — Costs — Criminal appeal — Departing from general rule for costs where appeal raised significant issues of constitutional law — Whether appellant entitled to special costs order.

Words and phrases — "declaration", "diversity jurisdiction", "evidential onus", "incompatibility", "institutional integrity", "interpret", "legal onus", "legislative intention", "matter", "possession", "possession for sale", "resident of a State", "right to be presumed innocent".

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

Equity

HIH Claims Support Limited v Insurance Australia Limited

M24/2011: [2011] HCA 31.

Judgment delivered: 22 August 2011.

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

Catchwords:

Equity — Doctrine of contribution — Requirement of co-ordinate liabilities — Sub-contractor insured under insurance policy ("HIH policy") issued by member of HIH corporate group ("HIH") and under insurance policy issued by respondent's predecessor in title — Sub-contractor held liable for damage caused to third party by collapse of scaffold — HIH accepted sub-contractor's claim for

indemnity under HIH policy and paid portion of sub-contractor's legal costs — After collapse of HIH corporate group, sub-contractor assigned rights against HIH to appellant as trustee under government assistance scheme and appellant paid 90 per cent of amount HIH would have paid under HIH policy in satisfaction of sub-contractor's liability and defence costs, excluding amounts already paid by HIH — Whether appellant could claim equitable contribution from respondent — Whether liabilities of appellant and respondent co-ordinate.

Words and phrases — "co-ordinate liabilities", "common burden", "common interest", "of the same nature and to the same extent".

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

2: CASES RESERVED

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

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.

Arbitration

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

Constitutional Law

Sportsbet Pty Ltd v The State of New South Wales & Ors; Betfair Pty Limited v Racing New South Wales & Ors
S118/2011; S116/2011: [2011] HCATrans 230; [2011] HCATrans 231; [2011] HCATrans 232.

Dates heard: 30 & 31 August 2011, 1 September 2011 — *Judgment reserved.*

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

Catchwords:

Constitutional law (Cth) — Freedom of interstate trade, commerce and intercourse — Appellant Sportsbet Pty Ltd ("Sportsbet") a licensed wagering operator in Northern Territory ("NT") — Section 33 of *Racing Administration Act* 1998 (NSW) ("Racing Act") prohibited use of race field information by wagering operators unless operator authorised by approval and complied with conditions of approval — Section 33A(2)(a) of Racing Act and reg 16 of Racing Administration Regulations 2005 (NSW) ("Regulations") gave racing control bodies, including second and third respondents, power to grant approvals and impose conditions including imposition of race field fee of up to 1.5 per cent of wagering turnover — Fees imposed on all wagering operators irrespective of whether in NSW — NSW racing control bodies set thresholds for payment of fees, and arranged reduction in pre-existing fees, such that NSW on-course bookmakers largely unaffected — Sportsbet required to pay fees without regard to fees paid as conditions for licence in NT — TAB Limited ("TAB"), dominant wagering operator in NSW, received sums of money by second and third respondents equal to fees paid by it to those bodies — Whether intended and practical effect of ss 33 and 33A of Racing Act and Pt III of Regulations ("Scheme") was to impose discriminatory burden of protectionist nature on Sportsbet and other interstate wagering operators by prohibiting use of essential element of interstate trade and commerce subject to discretion of racing control bodies — Whether purpose and effect of Scheme was imposition of economic impost on interstate traders which would not be borne by intrastate traders — Whether validity of Scheme to be determined by comparing interstate and intrastate traders' positions — Whether practical effect of Scheme determinable without consideration of offsetting reductions in existing fees payable by intrastate traders — Whether fee conditions imposed by racing control bodies inconsistent with freedom of interstate trade, commerce and intercourse — Whether necessary for Sportsbet to demonstrate that it had a competitive advantage derived from its place of origin, or that the Scheme sought to erode its competitive advantage — Whether arrangements amongst NSW wagering operators and TAB were private contractual arrangements falling outside the purview of s 49 of *Northern Territory (Self Government) Act* 1978 (Cth) — Whether Scheme appropriate and adapted to legitimate non-protectionist objective — Whether fee conditions, approvals or Scheme invalid — Whether Scheme can be read consistently with freedom of interstate trade, commerce and intercourse pursuant to s 31 of *Interpretation Act* 1987 (NSW) ("Interpretation Act") — *Commonwealth Constitution*, ss 92 and 109.

S118/2011 appealed from FCA FC: (2010) 189 FCR 448; (2010) 274 ALR 12; [2010] FCAFC 132.

Constitutional law (Cth) — Freedom of interstate trade, commerce and intercourse — Appellant Betfair Pty Limited ("Betfair") a licensed betting exchange domiciled in Tasmania — Section 33 of Racing Act prohibited use of race field information by wagering operators unless operator authorised by approval and complied with conditions of approval — Section 33A(2)(a) of Racing Act and reg 16 of Regulations gave racing control bodies, including first and second respondents, power to grant approvals and impose conditions including imposition of race field fee of 1.5 per cent of wagering turnover — Wagering turnover defined as revenue from wagers that an event will occur ("back bets") — Fees imposed on all wagering operators irrespective of whether in NSW — Betfair generates revenue from back bets and bets that an event will not occur — Fees constituted greater proportion of Betfair's gross revenue than that of TAB and other wagering operators with different commission structures — Whether fee conditions imposed by first and second respondents pursuant to s 33 of Racing Act inconsistent with freedom of interstate trade, commerce and intercourse — Whether sufficient for Betfair to show that fee conditions imposed and were intended to impose significantly greater business costs on Betfair than on TAB — Whether Betfair required to demonstrate that practical effect or likely practical effect of fee conditions was to cause it to suffer loss of market share or profitability because fee conditions facially neutral — Whether Scheme appropriate and adapted to legitimate non-protectionist objective — Whether fee conditions, approvals or Scheme invalid — Whether Scheme can be read consistently with freedom of interstate trade, commerce and intercourse pursuant to s 31 of Interpretation Act — *Commonwealth Constitution*, s 92.

S116/2011 appealed from FCA FC: (2010) 189 FCR 356; (2010) 273 ALR 664; [2010] FCAFC 133.

Williams v The Commonwealth

S307/2010: [2011] HCATrans 198; [2011] HCATrans 199; [2011] HCATrans 200.

Dates heard: 9, 10 & 11 August 2011 — *Judgment reserved.*

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

Catchwords:

Constitutional law (Cth) — Executive — Plaintiff the parent of children enrolled at Darling Heights State Primary School ("School") — Commonwealth implemented National School Chaplaincy Programme ("NSCP") in 2007 — Commonwealth 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 Funding Agreement invalid by reason of being beyond executive power of Commonwealth — Whether executive power of Commonwealth includes power to enter into, and make payments pursuant to, contracts in respect of matters other than those in respect of which the *Constitution* confers legislative power — Whether executive power of Commonwealth includes power to enter into, and make payments pursuant to, contracts in respect of which the *Constitution* confers legislative power — Whether executive power of Commonwealth includes power to enter into, and make payments pursuant to, contracts with respect to the provision of benefits to students within meaning of s 51(xxiiiA) of *Constitution* — Whether executive power of Commonwealth includes power to enter into contracts with trading corporations within meaning of s 51(xx) of *Constitution* — Whether payments to SUQ under Funding Agreement provide "benefits to students" — Whether SUQ a trading corporation — *Commonwealth Constitution*, ss 51(xx), 51(xxiiiA), 61.

Constitutional law (Cth) — Revenue and appropriation — Payments under Funding Agreement drawn from Consolidated Revenue Fund ("CRF") by Appropriation Acts — Whether drawing of money from CRF for purpose of making payments under Funding Agreement authorised by Appropriation Acts — Whether Appropriation Acts authorised expenditure only for "ordinary annual services of government" — Whether permitted and appropriate to have regard to practices of Parliament to determine "ordinary annual services of the Government" — Whether payments to SUQ under Funding Agreement were "ordinary annual services of government" — *Commonwealth Constitution*, ss 54, 56, 81, 83.

Constitutional law (Cth) — Restrictions on Commonwealth legislation — Laws relating to religion — Whether definition of "school chaplains" in NSCP Guidelines, as incorporated in Funding Agreement, invalid by reason of imposing religious test as qualification for office under the Commonwealth in contravention of s 116 of *Commonwealth Constitution*.

High Court of Australia — Original jurisdiction — Practice and procedure — Parties — Standing — Whether plaintiff has standing to challenge validity of Funding Agreement — Whether plaintiff has standing to challenge drawing of money from CRF for purpose of making payments pursuant to Funding Agreement — Whether plaintiff has standing to challenge Commonwealth payments to SUQ pursuant to Funding Agreement.

Words and phrases — "office under the Commonwealth", "ordinary annual services of the Government", "provision of benefits to students", "religious test", "school chaplains", "trading corporation".

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

Wotton v The State of Queensland & Anor
S314/2010: [2011] HCATrans 191.

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

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

Catchwords:

Constitutional law (Cth) — Implied freedom of communication about government or political matters — Section 132(1)(a) of *Corrective Services Act* 2006 (Q) ("Act") prohibits person from interviewing prisoners or obtaining written or recorded statements from prisoners, including persons on parole — Section 200(2) of Act allows parole board to impose conditions on grant of parole order — Plaintiff convicted of offence of rioting causing destruction and sentenced to imprisonment — Plaintiff granted parole subject to conditions prohibiting, inter alia, attendance at public meetings on Palm Island without prior approval of corrective services officer, and receipt of direct or indirect payments 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, Central and Northern Queensland Regional Parole Board — Whether s 132(1)(a) of Act contrary to *Commonwealth Constitution* by impermissibly burdening implied freedom — Whether s 132(1)(a) of Act to be construed so as not to apply to a prisoner on parole — Whether s 200(2) of Act invalid to extent it authorises imposition of Conditions — Whether Conditions invalid as infringing implied freedom if s 200(2) of Act construed in conformity with implied freedom.

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

Queanbeyan City Council v ACTEW Corporation Ltd & Anor
C2/2011; C3/2011: [2011] HCATrans 177.

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

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

Catchwords:

Constitutional law (Cth) — 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 (Cth) — 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) 188 FCR 541; (2010) 273 ALR 553; [2010] FCAFC 124.

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

S23/2010: [2011] HCATrans 117; [2011] HCATrans 118; [2011] HCATrans 119.

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

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

Catchwords:

Constitutional law (Cth) — 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.

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 (Cth) — 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.

Contracts

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

Dates 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.

Criminal Law

Stoten v The Queen; Hargraves v The Queen

B72/2010; B73/2010: [2011] HCATrans 253.

Date heard: 6 September 2011 — *Judgment reserved*.

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

Catchwords:

Criminal law — Appeal and new trial — Directions to jury — Miscarriage of justice — Section 668E(1A) of *Criminal Code* (Q) ("proviso") allows a court to dismiss an appeal, even though points raised by an appellant might be decided in appellant's favour, if court considers no substantial miscarriage of justice occurred — Appellants found guilty by jury of conspiracy to defraud Commonwealth — Whether trial judge's directions to jury breached prohibition against giving direction to evaluate reliability of evidence of accused on basis of accused's interest in outcome of trial — Court of Appeal found errors in directions given to jury but applied proviso and dismissed appellants' appeals — Whether direction at trial constituted a substantial miscarriage of justice — *Robinson v The Queen (No 2)* (1991) 180 CLR 531 — *Weiss v The Queen* (2005) 224 CLR 300.

Words and phrases — "fair trial", "substantial miscarriage of justice".

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

Handlen v The Queen; Paddison v The Queen
B5/2010; B7/2011: [2011] HCATrans 253.

Date heard: 6 September 2011 — *Judgment reserved*.

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

Catchwords:

Criminal law — Appeal and new trial — Directions to jury — Miscarriage of justice — Section 668E(1A) of *Criminal Code* (Q) ("proviso") allows a court to dismiss an appeal, even though points raised by an appellant might be decided in appellant's favour, if court considers no substantial miscarriage of justice occurred — Appellants found guilty by jury of two counts of importing commercial quantity of border controlled drugs contrary to s 307.1 of *Criminal Code* (Cth) ("Code") ("importation counts") and one count of attempting to possess border controlled drugs contrary to s 307.5 of Code ("possession count") — Court of Appeal found case put to jury in respect of importation counts "in terms alien to the forms of criminal responsibility" then recognised by the Code and appellants only criminally responsible as aiders and abetters under s 11.2 of Code — Court of Appeal applied proviso and dismissed appeals — Whether misdirection as to factual requirements for conviction under Code in respect of importation counts a substantial miscarriage of justice — Whether misdirection gave rise to substantial miscarriage of justice in respect of possession count.

Words and phrases — "fair trial", "substantial miscarriage of justice".

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

BBH v The Queen
B76/2010: [2011] HCATrans 254.

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

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

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 — Complainant's brother gave evidence of incident involving applicant and complainant which was said to be capable of establishing the applicant's sexual interest in the complainant — Whether evidence of discreditable conduct admissible in a criminal trial when a

reasonable view of that evidence is consistent with innocence— Whether evidence of complainant's brother admissible at applicant's trial — Whether test for admissibility in *Pfennig v The Queen* (1995) 182 CLR 461 applies to evidence of discreditable conduct.

Words and phrases — "discreditable conduct".

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

Moti v The Queen

B19/2011: [2011] HCATrans 192; [2011] HCATrans 194.

Dates heard: 3 & 4 August 2011 — *Judgment reserved*.

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

Catchwords:

Criminal law — Procedure — Stay of proceedings — Abuse of process — Primary judge stayed indictment charging appellant with seven counts of engaging in sexual intercourse with person under age of 16 whilst outside Australia — Primary judge found financial support given to witnesses by Australian Federal Police an abuse of process — Whether open to conclude that appellant's 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 — Appellant deported from Solomon Islands to Australia without extradition proceedings and allegedly with knowledge and "connivance or involvement" of Australian Executive — Appellant previously charged with similar offences in Vanuatu but discharged — Appellant contended removal from Solomon Islands a disguised extradition in breach of Solomon Islands' *Deportation Act* and Order of Magistrates' Court restraining authorities from effecting deportation — Whether principle in *R v Horseferry Magistrates' Court; Ex Parte Bennett (No 1)* [1994] 1 AC 42 allows an Australian court to grant stay of proceedings — Meaning of "connivance or involvement" — Whether Australian Executive involved itself or connived in unlawful rendition of appellant to Australia.

Words and phrases — "connivance", "involvement".

Appealed from Qld SC (CA): (2010) 240 FLR 218; [2010] QCA 178.

Muldrock v The Queen

S137/2011: [2011] HCATrans 147.

Dates 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.

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.

Evidence

Lithgow City Council v Jackson
S66/2011: [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.

High Court of Australia

See **Constitutional Law:** *Williams v The Commonwealth*

Insurance

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

Dates 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.

Practice and Procedure

Michael Wilson & Partners Limited v Nicholls & Ors

S67/2011: [2011] HCATrans 141; [2011] HCATrans 142.

Dates 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.

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

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.

Dates 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.

Statutes

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

P15/2011: [2011] HCATrans 178.

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

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

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.

Taxation and Duties

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

S39/2011: [2011] HCATrans 255.

Date heard: 8 September 2011 — *Judgment reserved*.

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

Catchwords:

Taxation and duties — Payroll tax — Grouping and de-grouping — Objection and appeal — Discretion of Commissioner — 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 "appeal" for purposes of *Supreme Court Act* 1970 (NSW) ("Supreme Court Act") — Section 101 of Act lists powers of court or tribunal dealing with application for review — Commissioner issued payroll tax assessments grouping first and second appellants with partnership and other companies — Commissioner disallowed appellants' objections — Appellants sought review by Supreme Court pursuant to s 97 of Act — Trial judge re-exercised Commissioner's discretion under de-grouping provisions and, contrary to Commissioner, held first and second appellants should be de-grouped — Court of Appeal held review under s 97 of Act an appeal in "the right and proper sense" within the meaning of ss 19(2)(a) and 75A(1), not s 75A(5), of Supreme Court Act, meaning review limited to redressing error by Commissioner on materials before him — Whether right of review under s 97 of Act limited to redressing error based on materials extant at time of decision or a hearing de novo — Whether principles of judicial review in *Avon Downs Pty Limited v Federal Commissioner of Taxation* (1949) 78 CLR 353 apply in proceedings under s 97 of Act in respect of court's review of discretionary determination made by Commissioner — Whether Court of Appeal correct to overrule *Affinity Health Pty Limited v Chief Commissioner of State Revenue* (2005) 60 ATR 1 — Whether Court of Appeal entitled to re-exercise on appeal respondent's discretion to decline to de-group appellants under ss 16B, 16C and 16H of *Payroll Tax Act* 1971 (NSW), after primary judge re-exercised discretion under s 101(1)(b) of Act, without finding that primary judge committed error of principle consistently with *House v The King* (1926) 55 CLR 499 — Whether determination of Court of Appeal miscarried.

Words and phrases — "appeal", "review", "right and proper sense".

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

Torts

Strong v Woolworths Limited t/as Big W & Anor
S172/2011: [2011] HCATrans 194.

Date heard: 13 May 2011 — *Judgment reserved*.

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

Catchwords:

Torts — Negligence — Causation — Appellant 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) excludes consideration of material contribution to harm and increase in risk — Whether appellant demonstrated lack of adequate cleaning system responsible for debris on centre floor.

Words and phrases — "necessary condition".

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

3: ORIGINAL JURISDICTION

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

Citizenship and Migration

Shahi v Minister for Immigration and Citizenship
M10/2011

Catchwords:

Citizenship and migration — Migration — Refugees — Plaintiff born in Afghanistan — Plaintiff's precise age unknown — In May 2009, plaintiff arrived in Australia at Christmas Island without valid visa — Plaintiff applied for and granted Protection (Class XA) visa on, respectively, 14 and 16 September 2009 — On 4 December 2009, plaintiff's mother applied for Refugee and Humanitarian (Class XB) visa, subclass 202 (Global Special Humanitarian), as prescribed in Sch 1, item 1402 of Migration Regulations 1994 (Cth) ("Regulations") — Plaintiff's siblings and niece included as secondary applicants — Schedule 2 of Regulations lists criteria to be satisfied prior to grant of subclass 202 visa — Plaintiff the "proposer" of his mother's application — Plaintiff's mother "member of the immediate family" of plaintiff at 4 December 2009 for purpose of r 1.12AA of Regulations — On 7 September 2010, delegate of Defendant refused plaintiff's mother's application — Delegate gave as reasons for refusal the absence of compelling reasons "having regard to particular factors in the criteria" and, at time of decision, applicants were not members of plaintiff's immediate family because he was then aged over 18 — Plaintiff under 18 years of age at time of his mother's application and over 18 years of age at date of refusal — Whether delegate made jurisdictional error in finding plaintiff's mother failed to meet requirements of cl 202.221 of Sch 2 to Regulations.

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

4: SPECIAL LEAVE GRANTED

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

Administrative Law

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 (Cth) — *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) SASR 223; [2011] SASCFC 14.

Constitutional Law

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

Contracts

ALH Group Property Holdings Pty Limited v Chief Commissioner of State Revenue
S128/2011: [2011] HCATrans 215.

Date heard: 12 August 2011 — *Special leave granted on limited grounds.*

Catchwords:

Contracts — Discharge by agreement — Novation — Contract for sale of land ("Parkway Hotel") between Oakland Glen Pty Ltd ("Vendor") and Permanent Trustee Company Limited as trustee of ALE Direct Property Trust ("Purchaser") executed in 2003 ("2003 Contract") — Deed of Consent and Assignment between Vendor, Purchaser and applicant, executed in 2008, assigned rights and entitlements of Purchaser under 2003 Contract to applicant ("Deed") — Commissioner assessed Deed to ad valorem duty under s 22(2) of *Duties Act* 1997 (NSW) ("Duties Act") as transfer of dutiable property — By Deed of Termination, Vendor and applicant rescinded Deed and 2003 Contract and entered new contract for sale of Parkway Hotel on which ad valorem duty paid — Applicant claimed Deed of Termination avoided liability of Deed for ad valorem duty and conferred right to refund under s 50 of Duties Act — Whether Deed effected novation of 2003 Contract — Whether Deed rescinded 2003 Contract and substituted for it a new contract for sale of Parkway Hotel between Vendor and applicant on terms of 2003 Contract as varied by Deed — Whether Deed a "hybrid tripartite contract" wherein Vendor's obligations flowed from assignment and applicant's obligations flowed from Deed — Duties Act ss 8(1)(a), 22(2), 50.

Words and phrases — "hybrid tripartite contract".

Appealed from NSW SC (CA): [2011] NSWCA 32.

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.

Criminal Law

Baiada Poultry Pty Ltd v The Queen

M20/2011: [2011] HCATrans 251.

Date heard: 2 September 2011 — *Special leave granted on limited grounds.*

Catchwords:

Criminal law — Occupational health and safety — Duties of employer — Control — Applicant convicted of breaching s 21(1) of *Occupational Health and Safety Act* 2004 (Vic) ("Act") following death of driver ("decedent") engaged as independent contractor by applicant — Decedent struck by crate being moved by forklift operated by unlicensed driver employed by third party company engaged as independent contractor by applicant — Court of Appeal held trial judge's directions to jury inadequate on basis that jury ought to have been directed that, if satisfied that control on the part of the applicant was established, they were bound to consider whether they were satisfied beyond reasonable doubt that the applicant's engagement of independent contractors was not sufficient to discharge obligations — Court of Appeal held no substantial miscarriage of justice occasioned by misdirection and applied s 568(1) of *Crimes Act* 1958 (Vic) ("proviso") to dismiss appeal — Whether Court of Appeal erred in application of proviso by finding it had discretion to apply proviso and in circumstances where applicant was denied jury's consideration of one of its principal defences.

Appealed from Vic SC (CA): [2011] VSCA 23.

King v The Queen

M27/2011: [2011] HCATrans 249.

Date heard: 2 September 2011 — *Special leave granted.*

Catchwords:

Criminal law — Dangerous driving causing death — Direction to jury — Applicant found guilty of two counts of culpable driving causing death contrary to s 318 of *Crimes Act* 1958 (Vic) ("Act") — Primary judge left to jury alternative charge of dangerous driving causing death contrary to s 319(1) of Act — Primary judge directed jury that Crown case in respect of dangerous driving charge required same analysis as culpable driving charge — Whether primary judge erred in directing jury that, in relation to dangerous driving charge, driving need only have significantly increased risk of hurting or harming others, and that driving need not be deserving of criminal punishment — Whether a substantial miscarriage of justice — *R v De Montero* (2009) 25 VR 694.

Words and phrases — "substantial miscarriage of justice".

Appealed from Vic SC (CA): [2011] VSCA 69.

Bui v Director of Public Prosecutions (Cth)

M28/2011: [2011] HCATrans 244.

Date heard: 2 September 2011 — *Special leave granted on limited grounds.*

Catchwords:

Criminal law — Sentencing — Application of State legislation in Crown appeal against sentence instituted by respondent — Applicant pleaded guilty to importation of marketable quantity of heroin contrary to s 307.2(1) of *Criminal Code* (Cth) — Applicant sentenced to three years imprisonment to be released forthwith upon provision of security and good behaviour undertaking — In mitigation, applicant relied on exceptional hardship to infant daughters and undertaking to cooperate with future investigations — Respondent appealed on basis that sentence manifestly inadequate and that sentencing judge erred in finding exceptional circumstances or in weight afforded to exceptional circumstances — At time of appeal, *Criminal Procedure Act* 2009 (Vic) ("Act") in operation — Sections 289 and 290 of Act provide that double jeopardy in relation to Crown appeals against sentence not to be taken into account — Whether ss 289(2) and 290(3) of Act picked up and applied pursuant to *Judiciary Act* 1903 (Cth) in Crown appeal against sentence instituted by respondent.

Words and phrases — "double jeopardy".

Appealed from Vic SC (CA): [2011] VSCA 61.

Aytugrul v The Queen

S149/2011: [2011] HCATrans 238.

Date heard: 2 September 2011 — *Special leave granted on limited grounds.*

Catchwords:

Criminal law — Identification evidence — DNA evidence — Admissibility — Discretion to admit or exclude evidence — Applicant convicted of murder of former partner — Evidence led by prosecution at trial that a hair found on deceased's thumbnail consistent with applicant's mitochondrial DNA profile — Prosecution expert gave evidence that 99.9 per cent of people in general population would not have a profile matching the hair ("statistical evidence") — Expert's statistical evidence did not take ethnicity into account — Different prosecution witness gave evidence that approximately two per cent of persons of applicant's ethnicity would be expected to share DNA profile found in the hair — Whether trial judge ought to have refused to admit the statistical evidence — *Evidence Act* 1995 (NSW), ss 135 and 137.

Appealed from NSW SC (CCA): [2010] NSWCCA 272.

Perini v The Queen & Anor

B17/2011: [2011] HCATrans 201.

Date heard: 12 August 2011 — *Special leave granted. Appeal treated as heard instanter and allowed. Decision of Court of Appeal set aside and remitted to Court of Appeal.*

Catchwords:

Criminal law — Appeal and new trial — Applicant tried for manslaughter and other offences and sentenced to 13 years imprisonment at first instance — Court of Appeal increased sentence to 18 years without finding error by sentencing judge or manifest inadequacy in sentence imposed at first instance — Subsequently, in *Lacey v Attorney-General for Queensland* [2011] HCA 10, High Court determined that Court of Appeal's approach in this matter incorrect — Whether Court of Appeal erred in law in allowing appeal against sentence in the absence of a finding of error or manifest inadequacy of sentence.

Appealed from Qld SC (CA): [2011] QCA 30.

PGA v The Queen

A3/2011: [2011] HCATrans 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] SASCFC 81.

Defamation

Harbour Radio Pty Limited v Keysar Trad

S141/2011: [2011] HCATrans 234.

Date heard: 2 September 2011 — *Special leave granted on limited grounds*.

Catchwords:

Defamation — Defence of substantial truth — Application of defence — Respondent engaged in public speech concerning activities of Radio 2GB, a station owned and operated by the applicant — Radio 2GB broadcast response to respondent's speech consisting of a presenter monologue, audio recording of part of respondent's

speech and talkback calls — Respondent brought proceedings for defamation — Jury found certain defamatory imputations arose from broadcast — Applicant relied on, inter alia, defence of substantial truth — Trial judge found certain imputations were matters of substantial truth and applicant not actuated by malice — Court of Appeal overturned trial judge's findings with respect to defence of truth on the basis that while the correct test had been identified, it was not applied, and therefore could not be sustained — Whether trial judge failed to apply relevant test for defence of truth — *Defamation Act* 1974 (NSW), s 15.

Appealed from NSW SC (CA): [2011] NSWCA 61.

Papaconstuntinos v Holmes a Court

S142/2011: [2011] HCATrans 235.

Date heard: 2 September 2011 — *Special leave granted*.

Catchwords:

Defamation — Defence of qualified privilege — Respondent involved in bid to invest funds in South Sydney District Rugby League Football Club ("Club") in exchange for controlling interest — Applicant, employee of Construction, Forestry, Mining and Energy Union ("CFMEU"), opposed respondent's bid — Prior to Extraordinary General Meeting at which bid was to be put to Club members, respondent sent letter of complaint to State Secretary of CFMEU, copied to former Chairman of Club, which also came to attention of applicant's immediate supervisor — Trial judge found letter conveyed three defamatory imputations and rejected, inter alia, respondent's plea of common law qualified privilege on the basis that there was no "pressing need" for the respondent to protect his interests by volunteering the defamatory information — Court of Appeal held defence of qualified privilege established since respondent had a legitimate interest in publishing the defamatory letter, and that the trial judge erred in applying the test of "pressing need" to establish qualified privilege — Whether defence of qualified privilege at common law requires evidence of "pressing need" to communicate defamatory matter — Whether absence of "pressing need" decisive — Whether requisite reciprocity of interest existed on occasion of communication of defamatory matter — Whether respondent's communication of suspicion of applicant's criminality fairly warranted to protect of further respondent's interests.

Words and phrases — "pressing need".

Appealed from NSW SC (CA): [2011] NSWCA 59.

Industrial Law

Australian Education Union v Lee, General Manager of Fair Work Australia

M8/2011: [2011] HCATrans 245.

Date heard: 2 September 2011 — *Referred to an enlarged Court.*

Catchwords:

Industrial law — Registered organisations — Interpretation of *Fair Work (Registered Organisations) Act* 2009 (Cth) ("Act") — Third respondent applied to Australian Industrial Relations Commission ("AIRC") for registration and organisation under *Workplace Relations Act* 1996 (Cth) — Applicant objected to registration — AIRC granted application for registration — Full Court of Federal Court ("FCAFC") quashed decision of AIRC and third respondent's registration because its rules did not contain "purging rule" — Third respondent applied to AIRC for leave to change its rules — Applicant objected to application and FCAFC reserved decision — On 1 July 2009, s 26A of the Act, which provides that registration of an organisation which would have been valid but for the absence of a purging rule is taken to be valid and always have been valid, came into effect — First respondent informed applicant and third respondent that Fair Work Australia regarded itself as obliged by s 26A of the Act to treat third respondent as registered organisation — Third respondent withdrew application to AIRC to alter rules — Whether s 26A of the Act validates registration of third respondent when such registration previously quashed by FCAFC prior to commencement of s 26A — Whether s 26A invalid as impermissible usurpation of, or interference with, judicial power of Commonwealth.

Appealed from FC FCA: [2010] FCAFC 153.

Board of Bendigo Regional Institute of Technical and Further Education v Barclay & Anor

M18/2011: [2011] HCATrans 243.

Date heard: 2 September 2011 — *Special leave granted.*

Catchwords:

Industrial law — Adverse action — General protection — First respondent ("Barclay") an employee of applicant ("Institute") and Sub-Branch President at Institute of second respondent ("AEU") — Barclay sent email to AEU members employed at Institute noting reports of serious misconduct by unnamed persons at Institute — Barclay did not advise managers of details of alleged misconduct —

Chief Executive Officer ("CEO") of Institute wrote to Barclay requiring him to show cause why he should not be disciplined for failing to report alleged misconduct — Barclay suspended on full pay — Respondents alleged action taken by CEO of Institute constituted adverse action under s 342 of *Fair Work Act* 2009 (Cth) ("Act") — Trial judge found adverse action taken by CEO on basis of breach of Institute's code of conduct rather than Barclay's union activity — Full Court of Federal Court held that sending of email was part of Barclay's functions as AEU officer and therefore adverse action had been taken within meaning of Act — Whether evidence that adverse action taken for innocent and non-proscribed reason sufficient to establish defence to cause of action under Pt 3.1 of Act ("general protections provisions") — Whether a decision-maker who is not conscious of a proscribed reason able to be found to have engaged in adverse action contrary to general protection provisions — Whether a distinction exists between the cause of conduct said to constitute adverse action and the reason a person took adverse action — Act, ss 341, 342, 346, 360, 361 — *General Motors Holden Pty Ltd v Bowling* (1976) 12 ALR 605; *Purvis v State of New South Wales* (2003) 217 CLR 92.

Appealed from FCA FC: [2011] FCAFC 14.

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

Intellectual Property

Roadshow Films Pty Ltd & Ors v iiNet Limited

S115/2011: [2011] HCATrans 210.

Date heard: 12 August 2011 — *Special leave granted on limited grounds*.

Catchwords:

Intellectual property — Copyright — Infringement — Authorisation — Applicants owners and exclusive licensees of copyright in commercially-released motion pictures — Respondent an internet service provider whose agreements with customers contained terms requiring customers to comply with all laws and reasonable directions by respondent as well as obligation not to use service to infringe copyright — Respondent availed of legal and technical capacity to issue warnings to customers whose services being used to infringe copyright — Australian Federation Against Copyright Theft, on behalf of applicants, served copyright infringement notices on respondent, alleging users of respondent's network infringing

copyright in cinematographic films by making them available online — Respondent took no action in response to notices — Whether respondent authorised infringements of applicants' copyright by users of respondent's internet services — Whether proper account taken of matters listed in s 101(1A) of *Copyright Act* 1968 (Cth) — Whether respondent had sufficient knowledge of infringing acts to support finding of authorisation — Whether applicants required to present respondent with "unequivocal and cogent evidence" of infringing acts and undertaking to reimburse and indemnify respondent — Application of principles in *University of New South Wales v Moorhouse* (1975) 133 CLR 1 — Whether respondent's conduct constituted "countenancing" of infringing acts.

Words and phrases — "authorise", "copyright", "countenance", "infringe", "unequivocal and cogent evidence".

Appealed from FCA FC: (2011) 275 ALR 1; (2011) 89 IPR 1; [2011] FCAFC 23.

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 NSW SC (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

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.

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.

Taxation and Duties

The Commissioner of Taxation of the Commonwealth of Australia v Bargwanna & Anor

S104/2011: [2011] HCATrans 211.

Date heard: 12 August 2011 — *Special leave granted.*

Catchwords:

Taxation and duties — Income tax — Non-assessable income — Exempt entities — Funds established for public charitable purposes by instrument of trust — Section 50-105 of *Income Tax Assessment Act* 1997 (Cth) ("ITAA") requires Commissioner to endorse entity as exempt from income tax in certain circumstances — Section 50-60 of ITAA provides that funds established in Australia for public charitable purposes by will or instrument of trust are not exempt from income tax unless, inter alia, "the fund is applied for the purposes for which it was established" — Respondents constituted by deed the Kalos Metron Charitable Trust ("Fund") for public charitable purposes — Fund administered by accountant and held in accountant's trust account — Interest from Fund applied to pay accountant's fees — Respondents obtained housing loan with provision of mortgage security — Loan arrangements involved Fund depositing $210,000 into interest-offset account with lender — Respondents deposited other funds into account and withdrew funds in excess of deposits — Applicant refused Fund's application for endorsement under s 50-105 of ITAA — Whether application of part of Fund for purposes other than public charitable purposes meant criteria in s 50-60 of ITAA not satisfied — Whether misapplication of Fund moneys must be deliberate or intentional for conclusion that "is applied" criterion in s 50-60 not satisfied — Whether relevant inquiry is to application of Fund as a whole rather than individual transactions.

Words and phrases — "deliberate", "the fund is applied for the purposes for which it was established".

Appealed from FCA FC: [2010] FCAFC 126.

Torts

Australian Native Landscapes Pty Ltd v Minogue & Anor

S277/2010: [2010] HCATrans 243.

Date heard: 2 September 2011 — *Referred to an enlarged Court.*

Catchwords:

Torts — Damages — Contribution between tortfeasors — Applicant and first respondent found liable in action for personal injuries pursuant to *Motor Accidents Compensation Act* 1999 (NSW) ("MAC Act") — First respondent deemed to be applicant's agent by s 112 of MAC Act — Second respondent, employer of plaintiff and first respondent, found not liable because case pleaded and conducted against it not within MAC Act — Damages reduced by 50 per cent pursuant to s 151Z(2) of *Workers Compensation Act* 1987 (NSW) ("WC Act") — Applicant sought contribution and indemnity from respondents pursuant to s 5(1)(c) of *Law Reform (Miscellaneous Provisions) Act* 1946 (NSW) ("LRMP Act") — Primary judge held s 5(1)(c) of LRMP Act did not apply because second respondent not liable, and first respondent liable as applicant's agent rather than second respondent's agent — Court of Appeal held applicant prevented from seeking contribution because plaintiff in personal injury action unable to recover from second respondent under WC Act, and applicant's s 5(1)(c) claim raised issue not previously raised — Whether respondents' negligence able to be considered in applicant's proceeding for contribution under s 5(1)(c) of LRMP Act — Whether Court of Appeal erred in failing to allow applicant's claims against respondents — Effect of s 151E of WC Act — Application of *James Hardie & Co v Seltsam* (1998) 196 CLR 53.

Appealed from NSW SC (CA): [2010] NSWCA 279.

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.

5: CASES NOT PROCEEDING OR VACATED

There are no cases in the High Court of Australia that are not proceeding or have been vacated since High Court Bulletin 06 [2011] HCAB 06.

6: SPECIAL LEAVE REFUSED

Melbourne: 2 September 2011

Civil

Applicant	*Respondent*	*Court appealed from*	*Result*
Watson & Ors	Ebsworth & Ebsworth & Anor (M7/2011)	Supreme Court of Victoria (Court of Appeal) [2010] VSCA 335	Special leave refused with costs [2011] HCATrans 246
Perfek Pty Ltd	Deputy Commissioner of Taxation (M14/2011)	Full Court of the Federal Court of Australia [2010] FCAFC 6	Special leave refused with costs [2011] HCATrans 247
Lansell House Pty Ltd	Deputy Commissioner of Taxation (M15/2011)	Full Court of the Federal Court of Australia [2010] FCAFC 6	Special leave refused with costs [2011] HCATrans 247
Telstra Corporation Limited & Anor	Phone Directories Company Pty Ltd & Ors (M5/2011)	Full Court of the Federal Court of Australia [2010] FCAFC 149	Special leave refused with costs [2011] HCATrans 248
Walker	Carter & Ors (M4/2011)	Supreme Court of Victoria (Court of Appeal) [2010] VSCA 340	Special leave refused with costs [2011] HCATrans 250

Sydney: 2 September 2011

Civil

Applicant	*Respondent*	*Court appealed from*	*Result*
Commissioner of Taxation	Clark (B10/2011)	Full Court of the Federal Court of Australia [2010] FCAFC 5	Special leave refused with costs [2011] HCATrans 236
Commissioner of Taxation	Clark (B11/2011)	Full Court of the Federal Court of Australia [2010] FCAFC 5	Special leave refused with costs [2011] HCATrans 236
Re Green	(S150/2011)	High Court of Australia [2011] HCA 5	Leave to appeal refused [2011] HCATrans 237
Re Freemantle	(S151/2011)	High Court of Australia [2011] HCA 6	Leave to appeal refused [2011] HCATrans 237

AVS Group of Companies Pty Limited & Anor	Commissioner of Police & Anor (S82/2011)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 81	Special leave refused with costs [2011] HCATrans 239
Kinsella & Ors	Cooper (S135/2011)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 45	Special leave refused with costs [2011] HCATrans 241
SZOIN	Minister for Immigration and Citizenship & Anor (S140/2011)	Full Court of the Federal Court of Australia [2010] FCAFC 38	Special leave refused with costs [2011] HCATrans 242

Canberra: 8 September 2011

(Publication of reasons)

Applicant	*Respondent*	*Court appealed from*	*Result*
Andrews	The Parole Board of South Australia (A11/2011)	Supreme Court of South Australia (Full Court) [2008] SASC 237	Application dismissed [2011] HCASL 134
Coleman	Hindle & Ors (B13/2011)	Family Court of Australia (Full Court)	Application dismissed [2011] HCASL 135
SZOEK	Minister for Immigration and Citizenship & Anor (B30/2011)	Federal Court of Australia [2011] FCA 198	Application dismissed [2011] HCASL 136
Ong	Minister for Immigration and Citizenship & Anor (M167/2010)	Federal Court of Australia [2010] FCA 1259	Application dismissed with costs [2011] HCASL 137
Bahonko	Attorney-General for Victoria (M33/2011)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application dismissed [2011] HCASL 138
Finch	Heat Group Pty Ltd & Ors (M34/2011)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 100	Application dismissed [2011] HCASL 139
MZYJN	Minister for Immigration and Citizenship & Anor (M41/2011)	Federal Court of Australia [2011] FCA 548	Application dismissed [2011] HCASL 140
Bahonko	Attorney-General for Victoria (M48/2011)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application dismissed [2011] HCASL 141
Karam	Palmone Shoes Pty Ltd (M50/2011; M51/2011)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 144	Application dismissed [2011] HCASL 142

Sherman	Roads Corporation & Anor (M55/2011)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 149	Application dismissed [2011] HCASL 143
Jeray	Blue Mountains City Council & Ors (S94/2011; S95/2011)	High Court of Australia [2011] HCATrans 36	Application dismissed [2011] HCASL 144
BZAAF	Minister for Immigration and Citizenship & Anor (B29/2011)	Federal Court of Australia [2011] FCA 480	Application dismissed [2011] HCASL 145
Nilsson	State of Tasmania (H1/2011)	Supreme Court of Tasmania (Full Court) [2010] TASFC 7	Application dismissed [2011] HCASL 146
Green	Knowles (M6/2011)	Family Court of Australia (Full Court)	Application dismissed with costs [2011] HCASL 147
Spry	Moylan & Ors (M137/2011; M148/2011)	Family Court of Australia (Full Court)	Application dismissed with costs [2011] HCASL 148
Furia	The Queen (S26/2011)	Supreme Court of New South Wales (Court of Criminal Appeal) [2010] NSWCCA 326	Application dismissed [2011] HCASL 149
Dorante-Day	Martin (S76/2011; S77/2011)	Applications for removal	Application dismissed with costs [2011] HCASL 150