



# HIGH COURT BULLETIN

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

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## SUMMARY OF NEW ENTRIES

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

Case	Title
<u><a href="#">Barbaro v The Queen; Zirilli v The Queen</a></u>	Criminal Law
<u><a href="#">Smith v The State of Western Australia</a></u>	Criminal Law
<u><a href="#">Milne v The Queen</a></u>	Criminal Law
<u><a href="#">Australian Electoral Commission v Johnston &amp; Ors; Wang v Johnson &amp; Ors; Mead v Johnson &amp; Ors</a></u>	Electoral Law

## 2: Cases Reserved

<b>Case</b>	<b>Title</b>
<a href="#">Attorney-General for the Northern Territory &amp; Anor v Emmerson &amp; Anor</a>	Constitutional Law
<a href="#">Achurch v The Queen</a>	Criminal Law
<a href="#">Australian Financial Services and Leasing Pty Limited v Hills Industries Limited &amp; Anor</a>	Equity
<a href="#">The State of Western Australia v Brown &amp; Ors</a>	Native Title
<a href="#">Taylor v The Owners – Strata Plan No 11564 &amp; Ors</a>	Statutes

## 3: Original Jurisdiction

<b>Case</b>	<b>Title</b>
<a href="#">Williams v Commonwealth of Australia &amp; Ors</a>	Constitutional Law
<a href="#">Tajjour v State of New South Wales &amp; Anor; Hawthorne v State of New South Wales &amp; Anor; Forster v State of New South Wales &amp; Anor</a>	Constitutional Law
<a href="#">Plaintiff S297/2013 v Minister for Immigration and Border Protection &amp; Anor</a>	Migration
<a href="#">Plaintiff M150/2013 by his litigation guardian Sister Brigid Marie Arthur v Minister for Immigration and Border Protection &amp; Anor</a>	Migration
<a href="#">Plaintiff S156/2013 v Minister for Immigration and Border Protection &amp; Anor</a>	Migration

## 4: Special Leave Granted

<b>Case</b>	<b>Title</b>
<a href="#">MacarthurCook Fund Management Limited &amp; Anor v TFML Limited</a>	Corporations Law

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# 1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the February 2014 sittings.

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## Criminal Law

*Barbaro v The Queen; Zirilli v The Queen*

M1; M3/2013: [\[2014\] HCA 2](#).

**Judgment delivered:** 12 February 2014.

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

**Catchwords:**

Criminal law – Sentence – Principles – Appellants pleaded guilty to offences against laws of Commonwealth after prosecution expressed views about available range of sentences that could be imposed on each appellant – Sentencing judge refused to receive submission from prosecution about available range of sentences – Whether duty of prosecution to make submission as to available range of sentences – Whether submission as to range amounts to submission of law – Whether failure to receive prosecution submission as to range procedurally unfair – Whether failure to receive prosecution submission as to range failure to take account of relevant consideration.

Words and phrases – "available range of sentences", "submission of law".

**Appealed from VSC (CA):** [\[2012\] VSCA 288](#).

**Held:** Appeal dismissed.

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*Smith v The State of Western Australia*

P51/2013: [\[2014\] HCA 3](#).

**Judgment delivered:** 12 February 2014.

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

**Catchwords:**

Criminal law – Evidence – Exclusionary rule – Where appellant convicted upon verdict of jury – Where note suggesting juror

physically coerced into changing verdict found in jury room after jury discharged – Whether evidence of unlawful coercion of juror by fellow juror admissible – Whether Sheriff should be ordered to conduct inquiry.

Words and phrases – "exclusionary rule", "free and frank deliberation", "physical coercion".

**Appealed from WASC (CA):** [\[2013\] WASCA 7](#).

**Held:** Appeal allowed.

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*Milne v The Queen*

**S278/2013; S279/2013:** [\[2014\] HCA 4](#).

**Judgment delivered:** 14 February 2014.

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

**Catchwords:**

Criminal law – Money laundering – Criminal offence under s 400.3(1) of *Criminal Code* (Cth) to deal with property intending it will become "instrument of crime" – Appellant dealt with shares intending not to declare resulting capital gain – Whether shares "instrument of crime".

Words and phrases – "instrument of crime", "money laundering", "used in the commission", "used to facilitate".

**Appealed from NSWSC (CCA):** (2012) 259 FLR 42; (2012) 219 A Crim R 237; [\[2012\] NSWCCA 24](#).

**Held:** Appeal allowed.

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## Electoral Law

*Australian Electoral Commission v Johnston & Ors; Wang v Johnson & Ors; Mead v Johnson & Ors*

**C17/2013; P55/2013; P56/2013:** [\[2014\] HCA 5](#).

**Judgment delivered:** 14 February 2014.

**Coram:** Hayne J, sitting as the Court of Disputed Returns.

Parliamentary elections (Cth) – Senate – Court of Disputed Returns – Petitions disputing election – Election of six senators for State of Western Australia – Election for fifth and sixth Senate places very close – Re-count of ballot papers directed – 1,370 ballot papers lost before re-count – Re-count of available ballot papers led to different candidates being elected to fifth and sixth Senate places from those determined upon "fresh scrutiny" under s 273 of *Commonwealth Electoral Act 1918* (Cth) ("Act") – Whether result of election likely affected by loss of ballot papers – Whether electors who cast lost ballot papers "prevented from voting" in election – Whether Court precluded by s 365 of Act from admitting evidence of records made at earlier counts about lost ballot papers in determining whether result of election affected – Whether Court could declare candidate duly elected by combining records made in earlier counts about lost ballot papers with results of re-count.

Words and phrases – "duly elected", "prevented from voting", "result of the election was likely to be affected".

**Held:** Questions answered.

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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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### Contract Law

*Woodside Energy Ltd & Ors v Electricity Generation Corporation t/as Verve Energy; Electricity Generation Corporation t/as Verve Energy v Woodside Energy Ltd & Ors*

**P47; P48/2013:** [\[2013\] HCATrans 300](#); [\[2013\] HCATrans 301](#).

**Date heard:** 4 and 5 December 2013.

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

**Catchwords:**

Contract law – Proper construction of contractual terms – Breach of obligation under contract – Verve a statutory corporation which supplied electricity to South Western Australia – Verve obtained gas from Woodside and third party pursuant to Gas Supply Agreement (“Agreement”) – Clause 3.3 of the Agreement obliged Woodside to use reasonable endeavours to supply supplemental gas having regard to all relevant commercial, economic and operational matters – Third party’s plant shut down following fire – Woodside declined to supply supplemental gas but offered to supply same gas under separate short term agreement at higher price – Whether Woodside in breach of clause 3.3 of the Agreement.

Contract law – Voidable contract – Unjust enrichment – Restitution – Economic duress – Whether short term agreement voidable for economic duress – Whether restitution available where short term agreement not rescinded.

**Appealed from WASC (CA):** [2011] WASC 268; [\[2013\] WASCA 36](#).

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### Constitutional Law

*Attorney-General for the Northern Territory & Anor v Emmerson & Anor*

**D5/2013:** [\[2014\] HCATrans 6](#); [\[2014\] HCATrans 8](#).

**Date heard:** 4 and 5 February 2014.

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

**Catchwords:**

Constitutional law – Judicial power – Institutional integrity – *Kable* principle – Criminal Property Forfeiture Act (NT) (“CPFA”), s 94(1) and Misuse of Drugs Act (NT) (“MDA”), s 36A(3) operate to forfeit certain property of a person declared to be a drug trafficker – Respondent convicted of various possession and supply offences – DPP obtained restraining order over all property owned or controlled by respondent under CPFA ss 41 and 44 on basis that conviction could lead to him being declared a drug trafficker under s 36A(3) MDA – Only small component of that property was derived from crime – Whether CPFA and MDA impermissibly conscript Supreme Court to the implementation of a legislative or executive purpose – Whether CPFA and MDA undermine institutional integrity of NTSC to degree incompatible with its role as repository of federal jurisdiction.

**Appealed from NTSC (CA):** (2013) 33 NTLR 1; (2013) 166 NTR 12; (2013) 275 FLR 368; [\[2013\] NTCA 04](#).

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## Criminal Law

*Achurch v The Queen*

**S276/2013:** [\[2014\] HCATrans 15](#).

**Date heard:** 13 February 2014.

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

**Catchwords:**

Criminal law – Sentencing – *Crimes (Sentencing Procedure) Act* 1999 (NSW) (“Act”) – Appellant convicted of drugs offences and sentenced to non-parole period of 6 years – Crown successfully appealed against sentence and non-parole period increased to 13 years – Court of Criminal Appeal held trial judge had erred in approach to sentencing – Court of Criminal Appeal issued new sentence in line with *R v Way*; *R v Sellars*; and *R v Knight* – Two months after successful crown appeal High Court handed down judgment in *Muldrock v The Queen*, holding that *Way*, *Sellars* and *Knight* wrongly decided – Whether sentence imposed contrary to

law pursuant to s 43(1)(a) of Act – Whether appropriate that s 43(1)(a) of Act be used as proxy for appeal.

**Appealed from NSWSC (CCA):** [\[2013\] NSWCCA 117](#).

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*James v The Queen*

**M102/2013:** [\[2013\] HCATrans 266](#).

**Date heard:** 7 November 2013.

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

**Catchwords:**

Criminal law – Alternative verdicts – Appellant convicted of intentionally causing serious injury – On Appeal appellant contended that trial judge’s failure to leave to jury possible alternative verdict of intentionally causing injury (as opposed to serious injury) constituted miscarriage of justice – Court of Appeal rejected contention – Defence counsel had chosen not to leave alternative verdict open for forensic reasons – Whether Court of Appeal erred in holding that trial judge not bound to leave the alternative verdict open for consideration by jury – Whether Court of Appeal erred in holding that trial judge’s duty to leave to jury for its consideration lesser alternative verdicts, that are realistically, or fairly and practically open, does not transcend forensic decision of trial counsel.

**Appealed from VSC (CA):** [\[2013\] VSCA 55](#); [\[2011\] VSC 596](#).

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## Equity

*Australian Financial Services and Leasing Pty Limited v Hills Industries Limited & Anor*

**S163/2013:** [\[2014\] HCATrans 13](#).

**Date heard:** 11 February 2014.

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

**Catchwords:**

Equity – Restitution – “Change of position” defence – Fraudulent third party fabricated invoices for the purchase of equipment from



first and second respondents and presented invoices to appellant to obtain finance for their purchase – Appellant, not knowing the invoices were fabricated and the equipment did not exist, paid first and second respondents and entered into a leaseback agreement with the third party in respect of the equipment – In response, first respondent discharged debts owed by third party and second respondent filed consent orders setting aside its default judgments and discontinued recovery against third party – Appellant commenced proceedings in restitution against first and second respondents – Trial judge found for appellant on basis that first respondent gave no consideration for monies received from appellant and first respondent had not suffered detriment arising out of a speculative change of its position after receiving those monies – Trial judge dismissed claim against second respondent – Decision in relation to first respondent reversed on appeal but affirmed in relation to second respondent – Court of Appeal held that by discharging debts owed to first respondent by third party, first respondent had given up opportunity to enforce payment of those debts – Whether defence of “change of position” in claims for money paid to third party by financier under mistake of fact extended to this situation – Whether in order to make out defence of change of position respondents were required to point to specific and quantifiable expenditure or financial loss because of mistaken payment.

**Appealed from NSWSC (CA):** (2012) 295 ALR 147; [\[2012\] NSWCA 380](#).

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## Native Title

*The State of Western Australia v Brown & Ors*  
**P49/2013:** [\[2014\] HCATrans 14](#).

**Date heard:** 12 February 2014.

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

### Catchwords:

Native title – Extinguishment – Mining leases – Respondents held non-exclusive native title rights in relation to areas subject of mining leases – Whether those leases conferred right of exclusive possession extinguishing native title rights – Whether exercise of rights under leases were inconsistent with exercise of native title rights.

Words and phrases – “inconsistency”.

**Appealed from FCA (FC):** (2012) 208 FCR 505; (2012) 294 ALR 223; [\[2012\] FCAFC 154](#); [\[2013\] FCAFC 18](#).

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## Statutes

*Taylor v The Owners – Strata Plan No 11564 & Ors*  
S179/2013: [\[2014\] HCATrans 11](#).

**Date heard:** 7 February 2014.

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

**Catchwords:**

Statutes – Interpretation – *Civil Liability Act 2002* (NSW) (“CLA”) – Appellant brought claim under *Compensation to Relatives Act 1897* (NSW) for compensation for accidental death of her husband – CLA s 12(2) directs court to disregard “excess” earnings of a high-earning “claimant” but does not refer to earnings of “deceased” – Late husband had earned in excess of three times average weekly earnings – Whether reference to “a deceased person’s” earnings can be read into s 12(2) of CLA so as to disregard deceased person’s earnings above statutory formula – Whether additional words can be read into a statute where ordinary meaning of text was not unreasonable or absurd.

**Appealed from NSWSC (CA):** (2013) 83 NSWLR 1; [\[2013\] NSWCA 55](#).

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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

*Williams v Commonwealth of Australia & Ors*

**S154/2013:** *Special case.*

**Catchwords:**

Constitutional law – Powers of Commonwealth Parliament – Commonwealth entered funding agreement with Scripture Union of Queensland for provision of chaplaincy services at State school ("Funding Agreement") – Whether Appropriation Acts authorised Funding Agreement – If not, whether s 32B of *Financial Management and Accountability Act 1997* (Cth) ("FMA Act") or Part 5AA and Schedule 1AA of *Financial Management and Accountability Regulations 1997* ("FMA Regulations") or item 9 of Schedule 1 to *Financial Framework Amendment Act* ("FFA Act") were invalid – If not, whether Funding Agreement was authorised by s 32B of FMA Act or Part 5AA and Schedule 1AA of FMA Regulations or, where applicable, item 9 of Schedule 1 to FFA Act.

Constitutional law – Executive power of Commonwealth – Expenditure – Whether Funding Agreement supported by executive power – Whether payments unlawful because not authorised by statute and beyond executive power.

Constitutional law – Standing – Plaintiff's children attended State school party to Funding Agreement – Whether plaintiff has standing to challenge validity of payments made in 2012 to service provider.

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*Tajjour v State of New South Wales & Anor; Hawthorne v State of New South Wales & Anor; Forster v State of New South Wales & Anor*

**S266; S267; S268/2013:** *Causes removed from NSWSC (CA).*

**Catchwords:**

Constitutional law – Limitation on State legislative power – *Crimes Act 1900* (NSW) ("Act") s 93X – Implied freedom of association – Whether s 93X of Act impermissibly burdens implied freedom of association.

Constitutional law – Limitation on State legislative power – Implied freedom of political communication – Whether s 93X of Act impermissibly burdens implied freedom of political communication.

Constitutional law – Commonwealth executive power conferred by s 61 of the Constitution – Exercise of executive power ratifying *International Covenant on Civil and Political Rights* article 22 – Whether s 93X of Act undermines executive power of Commonwealth in circumstances where it restricts exercise of freedom of association.

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See also [Migration](#): *Plaintiff S156/2013 v Minister for Immigration and Border Protection & Anor*

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## Migration

*Plaintiff S297/2013 v Minister for Immigration and Border Protection & Anor*

**S297/2013**: *Demurrer*.

### Catchwords:

Migration – Refugees – Plaintiff assessed as person in respect of whom Australia owed protection obligations – Plaintiff subsequently met definition of "unauthorised maritime arrival" due to commencement of amendments to *Migration Act 1958* (Cth) – *Migration Amendment (Temporary Protection Visas) Regulation 2013* ("TPV Regulation") subsequently commenced rendering unauthorised maritime arrivals ineligible for grant of subclass 866 permanent protection visa – Senate disallowed TPV Regulation pursuant to s 42 *Legislative Instruments Act 2003* (Cth) ("LIA") – Whether *Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013* (Cth) ("UMA Regulation") has same substance as TPV Regulation within meaning of s 48 LIA as regards unauthorised maritime arrivals.

Statutes – Validity of delegated legislation – Whether clause 866.222 of UMA Regulation invalid – Whether clause 866.222 inconsistent with, or repugnant to, ss 36 or 46A of *Migration Act 1958* (Cth) – Whether s 196 requires Minister to consider and decide plaintiff's application by reference to criteria excluding clause 866.222.

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*Plaintiff M150/2013 by his litigation guardian Sister Brigid Marie Arthur v Minister for Immigration and Border Protection & Anor*  
**M150/2013:** *Demurrer.*

**Catchwords:**

Migration – Refugees – Plaintiff person in respect of whom Australia owed protection obligations – *Migration Amendment (Temporary Protection Visas) Regulation 2013* ("TPV Regulation") subsequently commenced rendering unauthorised maritime arrivals ineligible for grant of subclass 866 permanent protection visa – Senate disallowed TPV Regulation pursuant to s 42 *Legislative Instruments Act 2003* (Cth) ("LIA") – Whether *Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013* (Cth) ("UMA Regulation") has same substance as TPV Regulation within meaning of s 48 LIA as regards unauthorised maritime arrivals.

Statutes – Validity of delegated legislation – Whether clause 866.222 of UMA Regulation invalid – Whether clause 866.222 inconsistent with, or repugnant to, s 36 of *Migration Act 1958* (Cth).

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*Plaintiff S156/2013 v Minister for Immigration and Border Protection & Anor*  
**S156/2013:** *Stated case with questions reserved.*

**Catchwords:**

Migration – Refugees – Papua New Guinea ("PNG") designated a regional processing country to assess refugee claims – Plaintiff entered Australia by sea at Christmas Island and became "unlawful non-citizen" and "unauthorised maritime arrival" – On direction of Minister, plaintiff taken to PNG for processing of refugee application ("Direction") – Whether decision of Minister to designate PNG regional processing country pursuant to s 198AB of *Migration Act 1958* (Cth) was made without power and was invalid – Whether Minister's Direction under s 198AD was invalid.

Constitutional law – Powers of Commonwealth Parliament – Whether ss 198AB and 198AD are supported by head of power in s 51 of the Constitution.

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## Statutes

See also [Migration](#): *Plaintiff S297/2013 v Minister for Immigration and Border Protection & Anor* and *Plaintiff M150/2013 by his litigation guardian Sister Brigid Marie Arthur v Minister for Immigration and Border Protection & Anor*

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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

*FTZK v Minister for Immigration and Citizenship & Anor*  
**M143/2013**: [\[2013\] HCATrans 270](#).

**Date heard:** 8 November 2013 – *Special leave granted*.

**Catchwords:**

Administrative law – Jurisdictional error – Appellant asylum seeker accused of involvement in kidnapping-murder while in China – Appellant argued accusation motivated by appellant’s religious practices – Administrative Appeals Tribunal (“AAT”) found appellant’s account and conduct subsequent accusation constituted “serious reasons” for considering appellant had committed a serious political crime – AAT therefore found that Refugee Convention did not apply – Whether decision of AAT took into account irrelevant considerations – Whether decision affected by jurisdictional error.

**Appealed from FCA (FC):** [\[2013\] FCAFC 44](#).

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### Constitutional Law

See also **Statutes**: *NSW Registrar of Births, Deaths and Marriages v Norrie*

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### Contract Law

*Commonwealth Bank of Australia v Barker*  
**A23/2013**: [\[2013\] HCATrans 325](#).

**Date heard:** 13 December 2013 – *Special leave granted*.

**Catchwords:**

Contract law – Employment contracts – Implied terms – Whether common law requires employment contracts contain implied term that employer will not, without reasonable cause, conduct itself in manner likely to destroy or seriously damage relationship of confidence and trust between parties – Whether, if so, to what extent implied term requires employer to take account redundancy of employee’s position prior to making decision to terminate, particularly in circumstances where express contractual right of termination on notice exists – Whether, if so, damages are available for breach.

**Appealed from FCA (FC):** [\[2012\] FCA 942](#); [\[2013\] FCAFC 83](#).

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## Corporations Law

*MacarthurCook Fund Management Limited & Anor v TFML Limited*  
**S183/2013:** [\[2014\] HCATrans 26](#).

**Date heard:** 14 February 2014 - *Special leave granted*.

**Catchwords:**

Corporations – *Corporations Act 2001* (Cth) Ch 5C, Part 5C.6 – Managed investment schemes – Subscribed units held by appellant provided for redemption after 12 months - Respondent suspended withdrawals of trust units – Whether Part 5C.6 governs all exits from managed investment scheme – Whether prohibition in s 601KA(3)(b) applies to every power of compulsory redemption of units in registered managed investment scheme – Whether concept of “withdrawal” used in Part 5C.6 requires element of volition by withdrawing member.

**Appealed from NSWSC (CA):** [\[2013\] NSWCA 291](#).

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*Stewart & Anor v Atco Controls Pty Ltd (In Liquidation)*  
**M141/2013:** [\[2013\] HCATrans 267](#).

**Date heard:** 8 November 2013 – *Special leave granted*.

**Catchwords:**

Corporations law – Liquidation – Appellant brought action against secured creditor and receiver claiming equitable lien for remuneration, costs and expenses – Action settled with receiver



and sum recovered in litigation – Whether liquidator entitled to priority over secured creditor.

Equity – Equitable lien – Whether unconscientious for secured creditor to assert priority.

**Appealed from VSC (CA):** [\[2013\] VSCA 132](#).

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### *Wellington Capital Limited v Australian Securities & Investments Commission & Anor*

**S275/2013:** [\[2013\] HCATrans 281](#).

**Date heard:** 8 November 2013 – *Special leave granted on limited grounds.*

#### **Catchwords:**

Corporations Law – *Corporations Act 2001* (Cth) (“Act”) – Appellant responsible entity of registered scheme sold portion of managed investment scheme to listed company in return for entire issued share capital of that company – Appellant then distributed *in specie* to unit holders of fund in proportion to their holdings – Whether appellant was permitted to make an *in specie* distribution of shares to unit holders – Whether appellant’s power to make distributions of income or capital in cash only limited general trustee powers outlined in Fund’s constitution – Whether question must be approached through prism of trust law.

Corporations law – Membership – Whether unit holders had consented to becoming members of relevant corporation pursuant to s 231 of Act by virtue of shares being transferred to them.

Equity – Equitable remedies – Whether Full Court erred in exercising discretion to grant purely declaratory relief.

**Appealed from FCA (FC):** [\[2013\] FCAFC 52](#).

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## **Criminal Law**

### *Gillard v The Queen*

**C20/2013:** [\[2013\] HCATrans 285](#).

**Date heard:** 8 November 2013 – *Special leave granted.*

**Catchwords:**

Criminal law – Offences against the person – Sexual offences – Consent – Appellant convicted of sexual intercourse without consent contrary to s 60 of the *Crimes Act 1900* (ACT) (“the Act”) – Absence of consent established through breach of trust per s 67(1)(h) of the Act – Whether, where absence of consent established through s 67(1)(h) mental element of offence is established through recklessness as to the circumstances – Whether knowledge required by operation of s 67(3) of the Act.

**Appealed from ACTSC (CA):** [\[2013\] ACTCA 17](#).

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*Lee & Anor v The Queen*

**S101; S102/2013:** [\[2013\] HCATrans 314](#).

**Date heard:** 13 December 2013 – *Special leave granted*.

**Catchwords:**

Criminal law – Appeal against conviction – *Criminal Appeal Act 1912* (NSW) (“CAA”) – Proper characterisation of “miscarriage of justice” limb of s 6(1) of CAA – Whether Court of Criminal Appeal (“CCA”) erred in application of limb – Whether limb requires a causal connection be established between an irregularity and conviction at trial – Whether onus falls on applicant to prove both miscarriage of justice and application of proviso.

Criminal law – Appeal against conviction – *New South Wales Crime Commission Act* (NSW) (“NSWCC Act”) – Whether Court CCA erred in construction of ss 6, 7, 13 and 18B of NSWCC Act – Whether CCA failed to properly assess illegality and/or impropriety of New South Wales Crime Commission.

**Appealed from NSWSC (CCA):** [\[2013\] NSWCCA 68](#).

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## Equity

*Howard v Commissioner of Taxation*

**M140/2012:** [\[2013\] HCATrans 269](#).

**Date heard:** 8 November 2013 – *Special leave granted*.

**Catchwords:**

Equity – Fiduciary duties – Duty to account – Extinguishment of duty to account – Extent of duty to account – Whether fiduciary duty to account for gains is extinguished by circumstance that gain realised results from award to fiduciary of equitable compensation – Whether fiduciary's duty extends to bringing proceedings to protect rights in respect of which duty subsists, and to accounting for proceeds of such proceedings.

**Appealed from FCA (FC):** [\[2011\] FCA 1421](#); [\[2012\] FCAFC 149](#).

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*Sidhu v van Dyke*

**S148/2013:** [\[2013\] HCATrans 312](#).

**Date heard:** 13 December 2013 – *Special leave granted*.

**Catchwords:**

Equity – Estoppel – Equitable estoppel – Proprietary estoppel – Promises by man to woman to give her cottage property – Promise unperformed – Whether presumption of reliance should be applied.

Equity – Equitable compensation – Whether equitable compensation should be assessed by reference to detriment suffered or position plaintiff would have been in had promise been fulfilled.

**Appealed from NSWSC (CA):** [\[2013\] NSWCA 198](#).

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See also [Corporations Law](#): *Stewart & Anor v Atco Controls Pty Ltd (In Liquidation)*

See also [Corporations Law](#): *Wellington Capital Limited v Australian Securities & Investments Commission & Anor*

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## Statutes

*ADCO Constructions Pty Ltd v Goudappel & Anor*

**S201/2013:** [\[2013\] HCATrans 250](#).

**Date heard:** 11 October 2013 – *Special leave granted*.

**Catchwords:**

Statutes – Interpretation – *Workers Compensation Act 1987* (NSW) (“WCA”), s 66 – First respondent suffered injury in course of employment – Assessed as having a degree of whole person impairment of 6% – *Workers Compensation Legislation Amendment Act 2012* (NSW), Schedule 2 amended WCA s 66 – New s 66 provided that no compensation payable unless impairment was greater than 10% – Schedule 12 inserted Pt 19H into Schedule 6 WCA which provided that amendments extend to claims for compensation made before commencement of the amendment – Whether first respondent entitled to compensation.

**Appealed from NSWSC (CA):** [\[2013\] NSWCA 94](#).

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*Thiess v Collector of Customs & Ors*

**B57/2013:** [\[2013\] HCATrans 239](#).

**Date heard:** 11 October 2013 – *Special leave granted*.

**Catchwords:**

Statutes – Interpretation – *Customs Act 1901* (Cth) (“Act”) s 167 – Appellant’s customs broker paid customs duty and GST on imported yacht – Customs broker input incorrect import duty into self-assessment system as result of mistaken belief about weight of yacht – Appellant later became aware of mistake and commenced proceedings to recover monies paid – Whether s 167(4) of Act prevents action for recovery of customs duty paid due to mistake of fact where no protest under s 167(1).

**Appealed from QSC (CA):** [\[2013\] QCA 54](#).

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*NSW Registrar of Births, Deaths and Marriages v Norrie*

**S273/2013:** [\[2013\] HCATrans 283](#).

**Date heard:** 8 November 2013 – *Special leave granted*.

**Catchwords:**

Statutes – Interpretation – *Births, Deaths and Marriages Registration Act 1995* (NSW) (“BDMR Act”) – Whether Pt 5A of BDMR Act includes category other than “male” and “female” – Respondent, born male and underwent sexual reassignment surgery, applied to register change of sex to “non-specific” –

Application approved but later revoked – Court of Appeal allowed respondent’s appeal subject to evidence whether “non-specific” fell within meaning of “sex” – Whether “sex” has binary meaning – Extent to which Court may permissibly have regard to extrinsic materials.

Constitutional law – *Sex Discrimination Act 1984* (Cth) (“SDA”) – Whether statutory construction favoured by the appellant would place the appellant in breach of s 22 of SDA.

**Appealed from NSWSC (CA):** [\[2013\] NSWCCA 145](#).

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

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# 6: SPECIAL LEAVE REFUSED

## Canberra: 12 February 2014

(Publication of Reasons)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Ferdinands	Chief of Army (A25/2013)	Full Court of the Federal Court of Australia [2013] FCAFC 103	Application Dismissed <a href="#">[2014] HCASL 1</a>
2.	Lindsay	Baker & Anor (B53/2013)	Full Court of the Family Court of Australia	Application Dismissed <a href="#">[2014] HCASL 2</a>
3.	Howlin	Clarence City Council (H2/2013)	Full Court of the Supreme Court of Tasmania [2013] TASFC 7	Application Dismissed <a href="#">[2014] HCASL 3</a>
4.	Forster	Legal Services Board & Ors (M72/2013; M73/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 131	Application Dismissed <a href="#">[2014] HCASL 4</a>
5.	Barrow	Bolt & Anor (M91/2013)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application Dismissed <a href="#">[2014] HCASL 5</a>
6.	SZRRH & Anor	Minister for Immigration Multicultural Affairs and Citizenship & Anor (M96/2013)	Federal Court of Australia [2013] FCA 783	Application Dismissed <a href="#">[2014] HCASL 6</a>
7.	MZZBZ	Minister for Immigration Multicultural Affairs and Citizenship & Anor (M99/2013)	Federal Court of Australia [2013] FCA 792	Application Dismissed <a href="#">[2014] HCASL 7</a>
8.	MZZBR & Anor	Minister for Immigration Multicultural Affairs and Citizenship & Anor (M110/2013)	Federal Court of Australia [2013] FCA 786	Application Dismissed <a href="#">[2014] HCASL 8</a>
9.	Zhong	Royal Melbourne Hospital & Ors (M112/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 220	Application Dismissed <a href="#">[2014] HCASL 9</a>
10.	Rose	Frankston City Council (M113/2013)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application Dismissed <a href="#">[2014] HCASL 10</a>
11.	Bride	Shire of Katanning (P38/2013)	Supreme Court of Western Australia (Court of Appeal) [2013] WASCA 154	Application Dismissed <a href="#">[2014] HCASL 11</a>

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
12.	Cape	Cape & Anor (P41/2013)	Full Court of the Family Court of Australia	Application Dismissed <a href="#">[2014] HCASL 12</a>
13.	SZSIF & Anor	Minister for Immigration Multicultural Affairs and Citizenship & Anor (S161/2013)	Federal Court of Australia [2013] FCA 855	Application Dismissed <a href="#">[2014] HCASL 13</a>
14.	SZRWA	Minister for Immigration, Multicultural Affairs and Citizenship & Anor (S171/2013)	Federal Court of Australia [2013] FCA 834	Application Dismissed <a href="#">[2014] HCASL 14</a>
15.	SZRSC	Minister for Immigration, Multicultural Affairs and Citizenship & Anor (S174/2013)	Federal Court of Australia [2013] FCA 819	Application Dismissed <a href="#">[2014] HCASL 15</a>
16.	SZRJV	Minister for Immigration, Multicultural Affairs and Citizenship & Anor (S176/2013)	Federal Court of Australia [2013] FCA 857	Application Dismissed <a href="#">[2014] HCASL 16</a>
17.	Flora	The Queen (M131/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 192	Application Dismissed <a href="#">[2014] HCASL 17</a>
18.	Carnemolla & Anor	Bendigo & Adelaide Bank Ltd & Ors (S93/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 122	Application Dismissed with Costs <a href="#">[2014] HCASL 18</a>
19.	Gajjar	Minister for Immigration and Citizenship (B16/2013)	High Court of Australia [2013] HCA 13	Application Dismissed with Costs <a href="#">[2014] HCASL 19</a>
20.	Forster	Legal Services Board (M45/2013)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 73	Application Dismissed with Costs <a href="#">[2014] HCASL 20</a>
21.	Vink	LED Technologies Pty Ltd (M74/2013)	Federal Court of Australia [2013] FCA 443	Application Dismissed with Costs <a href="#">[2014] HCASL 21</a>

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## Canberra: 14 February 2014

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Mizikovsky	Queensland Television Limited & Ors (B22/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 68	Special leave refused with costs <a href="#">[2014] HCATrans 21</a>
2.	Playford	The Queen (B29/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 109	Special leave refused <a href="#">[2014] HCATrans 20</a>
3.	SCCASP Holdings Pty Ltd ATF The H & R Super Fund	Commissioner of Taxation (B30/2013)	Full Court of the Federal Court of Australia [2013] FCAFC 45	Special leave refused with costs <a href="#">[2014] HCATrans 17</a>
4.	Knight & Ors	The Queen (B32/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 144	Special leave refused <a href="#">[2014] HCATrans 19</a>
5.	Wright & Anor	Minister for Employment, Skills & Mining for the State of Queensland & Ors (B34/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 141	Special leave refused with costs <a href="#">[2014] HCATrans 18</a>
6.	SBZ	The Queen (B41/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 176	Special leave refused <a href="#">[2014] HCATrans 23</a>
7.	Griffiths	The Queen (B45/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 120	Special leave refused <a href="#">[2014] HCATrans 20</a>
8.	Crouch and Lyndon (a firm)	IPG Finance Australia Pty Ltd & Anor (B49/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 220	Special leave refused with costs <a href="#">[2014] HCATrans 16</a>
9.	State of Queensland	Bank of Queensland & Anor (B50/2013)	Supreme Court of Queensland (Court of Appeal) [2013] QCA 225	Special leave refused with costs <a href="#">[2014] HCATrans 22</a>

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## Sydney: 14 February 2014

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Macedonian Orthodox Community Church St. Petka Incorporated	His Eminence Petar the Diocesan Bishop of the Macedonian Orthodox Diocese of Australia and New Zealand & Ors (S155/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 223 [2013] NSWCA 385	Special leave refused with costs <a href="#">[2014] HCATrans 28</a>
2.	City of Sydney	Streetscape Projects (Australia) Pty Limited & Anor (S157/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 2 [2013] NSWCA 240	Special leave refused with costs <a href="#">[2014] HCATrans 30</a>
3.	Atradius Credit Insurance N.V.	Prepaid Services Pty Limited & Ors (S167/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 252	Stood over
4.	Dickinson	Commissioner of Taxation (S181/2013)	Full Court of the Federal Court of Australia [2013] FCAFC 99	Special leave refused with costs <a href="#">[2014] HCATrans 27</a>
5.	Fitzsimmons	Coles Supermarkets Australia Pty Ltd (S182/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 273	Special leave refused with costs <a href="#">[2014] HCATrans 29</a>
6.	Paul	Cooke (S193/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 311	Special leave refused with costs <a href="#">[2014] HCATrans 25</a>

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