



# HIGH COURT BULLETIN

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High Court of Australia Library  
[2015] HCAB 5 (26 June 2015)

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

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## 3: Original Jurisdiction

<b>Case</b>	<b>Title</b>
<a href="#">North Australian Aboriginal Justice Agency Limited &amp; Anor v Northern Territory of Australia</a>	Criminal Law
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## 4: Special Leave Granted

<b>Case</b>	<b>Title</b>
<a href="#">Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate &amp; Ors</a>	Procedure
<a href="#">Allen v Chadwick</a>	Torts

# 1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the June 2015 sittings.

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## Administrative Law

*Isbester v Knox City Council*

**M19/2015:** [\[2015\] HCA 20](#).

**Judgment Delivered:** 10 June 2015.

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

### Catchwords:

Administrative law – Natural justice – Bias – Reasonable apprehension of bias – Incompatibility of roles – Where respondent made order under s 84P(e) of Domestic Animals Act 1994 (Vic) for destruction of appellant's dog – Where there was panel hearing and deliberation prior to decision being made – Where member of panel had been involved in prosecuting related criminal charges – Whether fair-minded observer might reasonably apprehend that panel member might not bring impartial mind to decision – Whether interest of panel member might affect decision-making of others on panel.

Words and phrases – "conflict of interest", "incompatibility of roles".

**Appealed from VSC (CA):** [\[2014\] VSCA 214](#).

**Held:** Appealed allowed.

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## Migration

*Minister for Immigration and Border Protection v WZAPN & Anor; WZARV v Minister for Immigration and Border Protection*

**M17/2015; P10/2015:** [\[2015\] HCA 22](#).

**Judgment delivered:** 17 June 2015.

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

**Catchwords:**

Migration – Refugee status – Section 91R(1)(b) of *Migration Act* 1958 (Cth) provides persecution must involve "serious harm to the person" – Section 91R(2)(a) lists "threat to the person's life or liberty" as instance of serious harm – Where person faces period or periods of temporary detention – Whether that constitutes "threat to liberty" amounting to serious harm, without qualification as to severity of threat.

Migration – Refugee status – Section 91R(1)(a) of *Migration Act* 1958 (Cth) requires Refugees Convention reason to be "essential and significant reason" for persecution – Where Federal Court held there was failure to accord procedural fairness to claimant – Whether independent merits reviewer failed to draw claimant's attention to relevant issue or information – Whether no fair opportunity to address argument that could materially affect assessment.

Words and phrases – "persecution", "serious harm", "threat to life or liberty"

**Appealed from FCA:** [\[2014\] FCA 947](#); [\[2014\] FCA 894](#).

**Held in M17/2015:** Appeal allowed.

**Held in P10/2015:** Appeal dismissed.

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## Negligence

*King v Philcox*

**A26/2014:** [\[2015\] HCA 19](#).

**Judgment Delivered:** 10 June 2015.

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

**Catchwords:**

Negligence – Duty of care – Mental harm – Motor accident – *Civil Liability Act* 1936 (SA) – Appellant negligently drove motor vehicle resulting in death of passenger – Respondent witnessed aftermath – Respondent later realised brother died in accident – Whether appellant as driver owed duty of care to passenger's brother not to cause mental harm – Whether mental harm to brother of person killed foreseeable under s 33 of *Civil Liability Act* – Whether sibling relationship relevant to foreseeability

Negligence – Damages for mental harm – *Civil Liability Act 1936* (SA) – Whether respondent present at scene of accident when accident occurred – Whether accident includes aftermath.

Words and phrases – "accident", "duty of care", "incident", "present at the scene of the accident when the accident occurred", "proximity", "reasonably foreseeable".

**Appealed from SASC (FC):** (2014) 119 SASR 71; [\[2014\] SASCFC 38](#); (2014) MVR 356.

**Held:** Appeal allowed.

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## Practice and Procedure

*Construction, Forestry, Mining and Energy Union v Boral Resources (Vic) Pty Ltd & Ors*

**M18/2015:** [\[2015\] HCA 21](#).

**Judgment Delivered:** 17 June 2015.

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

### Catchwords:

Practice and procedure – Contempt of court – Discovery – Where proceeding brought under r 75. 06(2) of Supreme Court (General Civil Procedure) Rules 2005 (Vic) ("Rules") to punish appellant for contempt of court – Where appellant is a corporation – Whether a corporation may be ordered to make discovery under r 29. 07(2) of Rules in a contempt proceeding – Whether a contempt proceeding is a criminal proceeding or a civil proceeding.

Words and phrases – "accusatorial proceeding", "civil proceeding", "companion principle", "criminal proceeding".

**Appealed from VSC (CA):** [\[2014\] VSCA 261](#).

**Held:** Appeal dismissed.

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## Property

*Gnych & Anor v Polish Club Limited*

**S58/2015:** [\[2015\] HCA 23](#).

**Judgment delivered:** 17 June 2015

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

**Catchwords:**

Property – Leases – Section 92(1)(d) of *Liquor Act* 2007 (NSW) provides that licensee must not grant lease over certain parts of licensed premises without approval of Independent Liquor and Gaming Authority – Where lease granted in breach of s 92(1)(d) – Whether lease void and unenforceable.

Contracts – Statutory illegality – Where lease granted in contravention of s 92(1)(d) of *Liquor Act* 2007 (NSW) – Where *Liquor Act* imposes statutory penalty for breach – Whether lease void and unenforceable.

**Appealed from NSWSC (CA):** (2015) 17 BPR 33; [\[2014\] NSWCA 321](#).

**Held:** Appeal allowed.

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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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### Constitutional Law

*McCloy & Ors v State of New South Wales & Anor*

**S211/2014:** [\[2015\] HCATrans 141](#); [\[2015\] HCATrans 142](#).

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

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

**Catchwords:**

Constitutional Law – Operation and Effect of Commonwealth Constitution – Restrictions on Commonwealth and State Legislation – Rights and freedoms implied in Commonwealth Constitution – Freedom of Political Communication – Whether Divs 2A and 4A of Pt 6, and s 96E in Div 4 of Pt 6 of the *Funding Expenditure and Disclosure Act* 1981 (NSW) infringe the implied freedom of communication regarding political or governmental matters.

Statutes – Acts of Parliament – Validity of legislation – *Election Funding Expenditure and Disclosure Act* 1981 (NSW) – Where the first plaintiff was subjected to compulsory examination pursuant to s 30 of the *Independent Commission Against Corruption Act* 1988 (NSW) by the second defendant concerning the circumstances of a donation made for the benefit of persons including a candidate in connection with the 2011 New South Wales election in breach of the *Funding Expenditure and Disclosure Act* 1981 (NSW) – Where the plaintiffs claim the provisions that they purportedly breached, Divs 2A and 4A of Pt 6, and s 96E in Div 4 of Pt 6 of the Act infringe the implied freedom of communication regarding political or governmental matters.

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### Criminal Law

*Police v Dunstall*

**A5/2015:** [\[2015\] HCATrans 102](#).

**Date heard:** 6 May 2015.

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

**Catchwords:**

Criminal law – Evidence – Judicial discretion to admit or exclude evidence – Evidence unfair to admit or improperly obtained – Generally – Where the respondent was charged with driving a motor vehicle while there was present in his blood the prescribed concentration of alcohol in contravention of s 47K(5) of the *Road Traffic Act 1961* (SA) – Where the respondent was subject to a breath analysis test and two blood samples were taken – Where the blood samples were denatured and unsuitable for analysis – Where the breath analysis evidence was excluded on the basis of unfairness – Whether there is a general judicial discretion to exclude lawfully obtained, non-confessional evidence for reasons of unfairness – If there is a general judicial discretion, what amounts to unfairness to enliven the discretion.

**Appealed from SASC (FC):** (2014) 120 SASR 88; [\[2014\] SASFC 85](#).

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*Filippou v The Queen*

**S59/2015:** [\[2015\] HCATrans 104](#).

**Date heard:** 12 May 2015.

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

**Catchwords:**

Criminal law – Appeal against conviction and sentence – s 23 *Crimes Act 1900* (NSW) – Where the appellant was convicted of murder by a judge sitting alone – Where it was not determined beyond reasonable doubt whether the appellant or one of the deceased brought the murder weapon to the scene – Whether the judge at first instance erred in the application of the test of provocation – Whether as a consequence of this error the Court of Criminal Appeal should have held this to be an error of law requiring the convictions to be quashed – Whether the Court of Criminal Appeal erred in failing to take into account matters mitigating the sentence imposed in respect of the fact that it was not reasonably possible to conclude who brought the murder weapon to the scene.

**Appealed from NSWSC (CCA):** [\[2013\] NSWCCA 92](#).

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# Estoppel

*Tomlinson v Ramsey Food Processing Pty Limited*  
[S7/2015: \[2015\] HCATrans 77.](#)

**Date heard:** 10 April 2015.

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

**Catchwords:**

Estoppel – Issue estoppel – Appellant was employee at abattoir owned by respondent – Appellant was injured as result of respondent’s negligence – Appellant and others complained to Fair Work Ombudsman about abattoir’s failure to pay all wage entitlements – Fair Work Ombudsman brought proceedings in its name against respondent – Appellant separately commenced proceedings claiming damages against respondent for personal injury under *Civil Liability Act 2002* (NSW) – Appellant argued in proceedings that abattoir was relevant employer – Respondent pleaded by way of defence that appellant was issue estopped by reason of earlier proceedings on the issue of employee/employer such that respondent was appellant’s relevant employer – Whether Fair Work Ombudsman was privy of appellant employee in earlier proceedings – Whether appellant was issue estopped by earlier decision made in proceedings commenced by Fair Work Ombudsman to which appellant was not party.

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 237.](#)

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# Juries

*Smith v The Queen*  
[B18/2015: \[2015\] HCATrans 143.](#)

**Date Heard:** 12 June 2015.

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

**Catchwords:**

Jury – Verdicts and findings – Majority verdict – s 59A *Jury Act 1995* (Q) - Where the appellant was convicted of one count of rape on a majority verdict – Where the jury had disclosed its voting pattern to the judge before the judge exercised the discretionary power pursuant to s 59A – Where the judge did not disclose the

voting pattern to counsel – Whether a trial judge can elect not to disclose a jury communication which discloses the numerical state of its deliberations and still exercise further discretions concerning the jury in the trial.

**Appealed from QSC (CA):** [\[2014\] QCA 277](#).

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## Patents

*AstraZeneca AB & Anor v Apotex Pty Ltd; AstraZeneca AB & Anor v Watson Pharma Pty Ltd; AstraZeneca AB & Anor v Ascent Pharma Pty Ltd*

[S54/2015](#); [S55/2015](#); [S56/2015](#): [\[2015\] HCATrans 106](#); [\[2015\] HCATrans 107](#).

**Date heard:** 13 May 2015; 14 May 2015.

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

### Catchwords:

Intellectual property – Patents – Requirements for a valid patent - Novelty – Prior art information – Inventive step – Common general knowledge – ss 7(2), 7(3), 22A and 138(3)(a) of the *Patents Act* 1990 (Cth) (“Act”) – Where the applicants are the patentees and exclusive licensees of Australian Patent No 051 which relates to a method of treating high cholesterol – Whether the patent was successfully assigned to the appellants - Where there was an order for the revocation of the patent on the basis that the claimed invention lacked an inventive step pursuant to ss 7(2) and 7(3) as the invention was obvious in light of common general knowledge and available prior art information – Whether prior art information and common general knowledge can be considered together pursuant to s 7(3) of the Act – Whether when assessing whether an invention is obvious in light of common general knowledge and any s 7(3) information, can sources of prior art information that teach towards an invention as the only avenues available to a skilled person be considered in disregard of any consideration of alternative sources – Whether there can be an order for revocation pursuant to s 138(3)(a) of the Act – Whether s 22A of the Act was applicable in the current case.

**Appealed from FCA (FC):** (2014) 312 ALR 1; (2014) 107 IPR 177; [\[2014\] FCAFC 99](#).

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*D’Arcy v Myriad Genetics & Anor*

**S28/2015:** [\[2015\] HCATrans 146](#); [\[2015\] HCATrans 147](#).

**Date Heard:** 16 June 2015; 17 June 2015.

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

**Catchwords:**

Intellectual property – Patents – Requirements for a valid patent – Human beings and their biological processes – s 18(1)(a) of the *Patents Act* 1990 (Cth) – Where appellant submitted that the Full Court of the Federal Court erred in holding that each of claims 1 -3 of Australian Patent No 686004 claimed a patentable invention being a manner of manufacture – Australian Patent No 686004 is described as the identification of “a human breast and ovarian cancer disposing gene (BRCA1)” – Whether claims 1 – 3, which relate to isolated nucleic acid, are claims for a manner of manufacture for the purposes of s 18(1)(a) of the *Patents Act* 1990 (Cth).

**Appealed from FCA (FC):** (2014) 224 FCR 479; (2014) 313 ALR 627; (2014) 107 IPR 478; [\[2014\] FCAFC 115](#).

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## Taxation

*Ausnet Transmission Group Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia*

**M35/2014:** [\[2015\] HCATrans 76](#).

**Date heard:** 9 April 2015.

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

**Catchwords:**

Taxation – Income Tax – *Income Tax Assessment Act* 1997 (Cth) (“ITAA”) – Appellant paid three imposts to State of Victoria under s 163AA(1) of *Electricity Industry Act* 1993 (Vic) on purchase of transmission licence – Whether three imposts deductible pursuant to s 8-1 of ITAA – Whether observations of Fullagar J in *Colonial Mutual Life Assurance Society Ltd v Federal Commissioner of Taxation* were qualified by Court’s decision in *Cliffs International Inc v FCT* – Whether practical and business advantage secured by payment of compulsory exaction to State can be capital in nature.

**Appealed from FCA (FC):** (2014) 22 FCR 355; [\[2014\] FCAFC 36](#).

**Note:** *Ausnet Transmission Group Pty Ltd* formally *SPI Powernet Pty Ltd*.

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## Torts

*Correy Fuller-Lyons by his tutor Nita Lyons v State of New South Wales*

**S81/2015:** [\[2015\] HCATrans 148](#).

**Date Heard:** 18 June 2015.

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

### Catchwords:

Torts - Negligence – Where appellant was injured after falling from a moving train which was operated by respondent – Where trial judge found that appellant had fallen from the doors of the train as a consequence of the respondent’s negligence – Where the Court of Appeal reversed this finding based on the possibility of other hypothetical occurrences – Whether the Court of Appeal was entitled to reject the findings of the trial judge based on these other possibilities.

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 424](#).

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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

See also [Criminal Law](#): *North Australian Aboriginal Justice Agency Limited & Anor v Northern Territory of Australia*

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

See also [Statutes](#): *Duncan v Independent Commission Against Corruption*

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### Criminal Law

*North Australian Aboriginal Justice Agency Limited v Northern Territory of Australia*

[M45/2015](#): *Special case.*

#### Catchwords:

Criminal procedure – Arrest and detention – Effecting arrest – *Police Administration Act* (NT) (“Act”) Div 4AA of Pt VII– Where Div 4AA of the Act allows for a member of the Police Force to take a person into custody for a period of up to four hours for an infringement notice offence – Where the offence in respect of which a person can be taken into custody can be an offence for which the maximum penalty is not imprisonment – Where the Act does not require a person to be brought before a justice of the peace or a Court – Whether Div 4AA is beyond the powers of the Northern Territory Assembly pursuant to s 122 of the *Constitution* and the *Northern Territory (Self-Government) Act* – Whether Div 4AA confers on the executive a power of detention which is penal or punitive in character.

**Listed:** 1 September 2015.

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## Native Title

*Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland*

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

### Catchwords:

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

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

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## Statutes

*Duncan v Independent Commission Against Corruption*  
**S101/2015**

**Procedure in the High Court:** *Orders made on 25 May 2015 removing matter into the High Court under section 40 of the Judiciary Act 1903* (Cth).

### Catchwords:

Statutes – *Independent Commission Against Corruption Act 1988* (NSW) (“Act”) Pt 13 of Sch 4 – Where Pt 13 of the Act allows for the Independent Commission Against Corruption (“ICAC”) to act on the assumption that the definition of “corrupt conduct” in s 8(2) of the Act extends to conduct that adversely affects or could adversely affect the efficacy of the exercise of official function – Whether Pt 13 ousts the power of the Supreme Court of New South Wales to grant relief for a specific category of jurisdictional error of respondent – Whether Pt 13 is an impermissible command or direction by the Parliament of New South Wales to the Courts of

New South Wales and any other Courts empowered to hear appeals.

**Listed:** 5 August 2015.

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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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### Constitutional Law

See also **Procedure**: *PT Bayan Resources TBK v BCBC Singapore Pte Ltd & Ors*.

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### Contracts

*Wright Prospecting Pty Limited v Mount Bruce Mining Pty Limited & Anor; Mount Bruce Mining Pty Limited v Wright Prospecting Pty Limited & Anor*

**S102/2015; S99/2015**: [\[2015\] HCATrans 108](#).

**Date heard**: 15 May 2015 – *Special leave granted*.

**Catchwords:**

Contracts – General contractual principles – Construction and interpretation of contracts – Where appellant and respondents entered into written agreements which allowed for rights to particular reserves to be divided – Whether Mount Bruce Mining Pty Limited was required to pay royalties that were payable on mining activities undertaken in the Channar region – Whether a strict and narrow construction of language in a commercial agreement can account for the purposes or objects of the agreement.

**Appealed from NSWSC (CA)**: [\[2014\] NSWCA 323](#).

**Listed**: 12 August 2015.

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See also **Statutes**: *State of Victoria v Tatts Group Limited and Tabcorp Holdings Ltd v State of Victoria*

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### Criminal Law



*The Queen v Beckett*

**S94/2015:** [\[2015\] HCATrans 113](#).

**Date heard:** 15 May 2015 – *Special leave granted*.

**Catchwords:**

Criminal law – Particular offences – Offences relating to the administration of justice – Perverting the course of justice – *Crimes Act 1900 (NSW) s 319* - Where respondent was questioned about a property transfer she had stamped without receiving the duty – Where respondent obtained two bank cheques for the property and altered photocopies so that the cheques appeared to pre-date the transfer – Where respondent gave false evidence under oath – Where respondent was charged with perverting the course of justice – Whether offence to pervert the course of justice only applies to conduct committed after judicial proceedings have commenced – Whether “course of justice” within the meaning of s 319 requires that the jurisdiction of a court or competent judicial tribunal has been invoked.

**Appealed from NSWSC (CCA):** [\[2014\] NSWCCA 305](#).

**Listed:** 4 September 2015.

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*The Queen v Pham*

**M82/2015:** [\[2015\] HCATrans 121](#).

**Date heard:** 15 May 2015 – *Special leave granted*.

**Catchwords:**

Criminal law – Sentence - Sentencing procedure – Sentencing statistics, schedules, tariffs, comparisons, etc. – Consistency for federal offences – Where respondent brought 577 grams of heroin into Australia and pleaded guilty to one charge of importing a marketable quantity of a border controlled drug – Where respondent was originally sentenced to eight years and six months imprisonment with a non-parole period of six years – Where sentence was reduced on appeal to six years imprisonment with a non-parole period of four years – Whether federal offenders should be sentenced in accordance with “current sentencing practices” of a particular State or Territory to the exclusion of sentencing practices in other jurisdictions – Whether it is permissible to determine objective seriousness of the offending by reference to a statistical analysis of comparable cases which grades those cases by the weight of the drugs expressed as a percentage of the statutory threshold for a more serious offence.

**Appealed from VSC (CA):** [\[2014\] VSCA 204](#).

**Listed:** 9 September 2015.

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## Foreign Judgments

*Firebird Global Master Fund II Ltd v Republic of Nauru & Anor*  
**S29/2015:** [\[2015\] HCATrans 15](#).

**Date heard:** 13 February 2015 - *Special leave granted*.

**Catchwords:**

Recognition, effect and enforcement of foreign judgments – Enforcement of foreign judgments – Foreign States immunity – Where appellant is the holder of bonds issued by an entity which was guaranteed by the government of Nauru – Where the bond issuer and guarantor defaulted – Where appellant recovered a judgment in Japan equivalent to 31 million Australian dollars – Whether s 9 of the *Foreign States Immunities Act* 1985 (Cth) renders first respondent immune to an application to the Court for an order for the registration of the foreign judgment under s 6 of the *Foreign Judgments Act* 1991 (Cth).

**Appealed from NSWSC (CA):** (2014) 316 ALR 497; (2014) 289 FLR 398; [\[2014\] NSWCA 360](#).

**Listed:** 2 September 2015.

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## Migration

*Minister for Immigration and Border Protection v WZARH & Anor*  
**S85/2015:** [\[2015\] HCA Trans 92](#).

**Date Heard:** 15 April 2015 – *Special leave granted*.

**Catchwords:**

Migration – Refugee and humanitarian visas – Procedural fairness – Where a department officer determined that respondent was not a refugee – Where respondent sought a review of this decision – Where respondent was interviewed by merits reviewer – Where

merits reviewer told respondent that they would be the person to determine the application – Where merits reviewer was unable to conclude the review and the review was concluded by another reviewer – Whether there is a breach of procedural fairness where alternate reviewer makes a decision based on the documentary materials, submissions and an audio recording of the interview but does not inform applicant of the change in decision-making, ask for submissions on how to proceed, or allow for an additional face-to-face interview.

**Appealed from FCA (FC):** (2014) 142 ALD 490; (2014) 316 CLR 389; [\[2014\] FCAFC 137](#).

**Listed:** 10 September 2015.

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## Procedure

*PT Bayan Resources TBK v BCBC Singapore Pte Ltd & Ors*  
**P14/2015:** [\[2015\] HCATrans 57](#).

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

### Catchwords:

Procedure – Judgments and orders – Freezing orders – Jurisdiction of the Supreme Court to make freezing orders – Order 52A *Rules of the Supreme Court of Western Australia* 1971 (WA) (“Rules”) – Where the first respondent commenced proceedings against the appellant in the High Court of Singapore – Where no decision has been handed down by the High Court of Singapore in respect of the matter – Where the first respondent commenced proceedings in Western Australia against the appellant for an order to freeze the appellant’s assets in Western Australia – Where no other proceedings aside from the application for freezing orders have been commenced or will be commenced unless the first respondent is successful in its action in the High Court of Singapore – Whether order 52A of the Rules is inconsistent with Pt 2 of the *Foreign Judgments Act* 1991 (Cth) (“Act”) for the purpose of s 109 of the *Constitution* in circumstances where no substantive proceedings apart from the application for the freezing order have been or are to be commenced – Whether order 52A is *ultra vires* pursuant to s 17 of the Act – Whether freezing orders with respect to a prospective foreign judgment are within the inherent or implied jurisdiction of Australian superior courts.

**Appealed from WASC (CA):** (2014) 288 FLR 299; [\[2014\] WASCA 178](#).

**Listed:** 10 August 2015.

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*Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate & Ors*

B24/2015: [\[2015\] HCATrans 149](#).

**Date decided:** 18 June 2015 - *Special Leave granted on the papers.*

**Catchwords:**

Procedure – Civil penalty provisions – Where, in proceedings between respondent and the Construction, Forestry, Mining and Energy Union (“CFMEU”) and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (“CEPU”), respondent alleged that the CFMEU and CEPU contravened the *Building and Construction Industry Improvement Act 2005* (Cth) – Where respondent sought pecuniary penalties and associated declaratory relief against the CFMEU and CEPU – Whether the High Court of Australia’s decision in *Barbaro v The Queen* affects submissions made regarding civil penalties.

**Appealed from FCA(FC):** [\[2015\] FCAFC 59](#).

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## Statutes

*State of Victoria v Tatts Group Limited*

**M83/2015:** [\[2015\] HCA Trans 117](#).

**Date heard:** 15 May 2015 – *Special leave granted.*

**Catchwords:**

Statutory interpretation – *Gambling Regulation Act 2003* (Vic) ss 1.3, 3.4.33 and Pt 4 of Ch 3– Gaming operator licences – Where the regime changed and the ability to issue gaming operator’s licences was abolished – Where respondent’s licence expired – Whether respondent entitled to a terminal payment on the grant of gaming operator’s licence to person other than former licensee or a related entity – Whether when construing a contractual promise in an agreement between a government and private party which expressly requires the subsequent enactment of that promise in legislation can this agreement to afford the promise statutory force be relevant to ascertaining the intentions of the parties with respect

to the meaning of the promise – Whether the contractual promise survives the agreed enactment of legislation embodying the same – Whether the contractual promise continues to have operation after the enactment of the statutory right if that statutory right is legislatively nullified – Whether a prior contractual promise can survive the enactment of legislation which has the purpose and effect of nullifying the parallel statutory right.

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

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*Tabcorp Holdings Limited v State of Victoria*

**M81/2015:** [\[2015\] HCATrans 117](#).

**Date heard:** 15 May 2015 – *Special leave granted*.

**Catchwords:**

Statutory interpretation – *Gambling Regulation Act 2003 (Vic)* s 4.3.21 – Gaming operator licences – Where the regime changed and the ability to issue gaming operator’s licences was abolished – Where appellant’s licence expired – Whether appellant is entitled to a terminal payment on the grant of gaming operator’s licence to person other than former licensee or a related entity – Whether words “new licences” in s 4.3.12(1) of the *Gambling Regulation Act 2003* should be construed to have their ordinary meaning.

Contracts – General contractual principles – Whether respondent’s failure to seek to secure appellant’s right to repayment of a breach of the duty of good faith and reasonable dealing.

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

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## Taxation

*Commissioner of Taxation v Australian Building Systems Pty Ltd (In Liq); Commissioner of Taxation v Muller & Anor as Liquidators of Australian Building Systems Pty Ltd (In Liq)*

**B19/2015:** [\[2015\] HCATrans 82](#).

**Date Heard:** 17 April 2015 – *Special leave granted*.

**Catchwords:**

Taxes and duties – Income tax and related legislation – *Income Tax Assessment Act 1936* (Cth) ss 6 and 254 – Where administrators were appointed to Australia Building Systems under Pt 5.3A of the *Corporations Act 2001* (Cth) – Where it was resolved that Australian Building Systems would be wound up and the respondents in B49/2014 were appointed liquidators – Where the liquidators caused Australian Building Systems to enter into a contract for sale of a property which gave rise to a capital gains tax event pursuant to s 104-10 of the *Income Tax Assessment Act 1997* (Cth) – Whether under the 1936 Act a trustee is subject to the requirements and authorisations in s 254 only in relation to income, profits or gains for which they are assessable to tax under Part III Div 6 of the 1936 Act – Whether a trustee is subject to authorisations and requirements in s 254 of the 1936 Act only in relation to income, profits or gains for which they have liability to tax under some other provision of the Act or whether ancillary liabilities are created by s 254 – Whether, following the receipt of money in a representative capacity by a trustee but prior to an assessment for tax, the retention authorisation and requirement in s 254(1)(d) of the 1936 Act requires the trustee to retain out of moneys then in or coming to them in their representative capacity so much as is significant to pay the tax of the income, profits or gains or whether it only authorises and requires a trustee to retain such moneys after an assessment is made for tax on the income, profits or gains.

**Appealed from FCA (FC):** [\[2014\] FCAFC 133](#).

**Listed:** 8 September 2015.

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*Macoun v Commissioner of Taxation*

**S100/2015:** [\[2015\] HCATrans 112](#).

**Date heard:** 15 May 2015 – *Special leave granted*.

**Catchwords:**

Income Tax – Appeal from the Administrative Appeals Tribunal – *Specialised Agencies (Privileges and Immunities) Regulations 1986* (Cth) cl 8 - *International Organisations (Privileges and Immunities) Act 1963* (Cth) Sch 4 Pt 1 – *Income Tax Assessment Act 1997* (Cth) s 6-20 - Where the appellant received pension payments from a foreign retirement plan – Where appellant was no longer employed by a Specialised Agency exempt from income tax pursuant to cl 8 of the *Specialised Agencies (Privileges and Immunities) Regulations 1986* (Cth) – Whether appellant’s pension payments are exempt from income tax.

**Appealed from FCA (FC):** [\[2014\] FCAFC 162](#).

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## Torts

*Alcan Gove Pty Ltd v Zabic*

**D5/2015:** [\[2015\] HCATrans 110](#).

**Date heard:** 15 May 2015 – *Special leave granted*.

### Catchwords:

Torts – Negligence – Essentials of action for negligence – Damage – *Return to Work Act 1986 (NT)* (“Act”) ss 52, 189(1)- Where respondent was employed by appellant between 1974 – 1977 and regularly removed and replaced insulation products which contained asbestos – Where between November 2013 and January 2014 respondent began to experience chest pains and breathlessness which were found to be symptoms of malignant mesothelioma – Where respondent brought an action for common law damages arising out of appellant’s negligence – Where s 52 of the Act abolished common law damages claims against employers for injuries or diseases arising after 1 January 1987 – When dealing with an injury or a disease of insidious onset, when has sufficient damage been suffered to give rise to a cause of action – Whether liability for a negligently-inflicted mesothelioma arise at the time the asbestos was inhaled or does it arise when the symptoms become apparent.

**Appealed from NTSC (CA):** [\[2015\] NTCA 2](#).

**Date listed:** 4 August 2015.

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*Allen v Chadwick*

**A1/2015:** [\[2015\] HCATrans 154](#).

**Date heard:** 19 June 2015 – *Special leave granted*.

### Catchwords:

Torts – Negligence – Contributory negligence – *Civil Liability Act 1936 (SA)* ss 47 and 49 – Where respondent was injured in a car accident after appellant lost control of the vehicle – Where appellant was intoxicated – Where respondent was not wearing a seatbelt – Whether a reasonable person in the position of

respondent would or ought to have known that appellant was intoxicated and would have relied on appellant to drive – Whether respondent had an opportunity to fasten the seatbelt – Whether damages should include or exclude GST.

**Appealed from SASC (FC): [\[2014\] SASCF 100](#).**

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

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## 6: SPECIAL LEAVE REFUSED

### Publication of Reasons: 18 June 2015

No.	Applicant	Respondent	Court appealed from	Result
1.	Moore-McQuillan	The Queen (A23/2014)	Supreme Court of South Australia (Court of Criminal Appeal) [2014] SASCF 113	Application dismissed <a href="#">[2015] HCASL 97</a>
2.	Markan	Queensland Police Service (B8/2015)	Supreme Court of Queensland (Court of Appeal) [2015] QCA 22	Application dismissed <a href="#">[2015] HCASL 98</a>
3.	MZZYD	Minister for Immigration and Border Protection & Anor (M25/2015)	Federal Court of Australia [2015] FCA 60	Application dismissed <a href="#">[2015] HCASL 99</a>
4.	Ponugoti	Minister for Immigration and Border Protection & Anor (M28/2015)	Federal Circuit Court [2015] FCA 67	Application dismissed <a href="#">[2015] HCASL 100</a>
5.	Tedja	Sony (M30/2015)	Family Court of Australia No medium neutral citation	Application dismissed <a href="#">[2015] HCASL 101</a>
6.	Bedi	Minister for Immigration and Border Protection & Anor (M32/2015)	High Court of Australia [2015] HCATrans 032	Application dismissed <a href="#">[2015] HCASL 102</a>
7.	Vatti	Minister for Immigration and Border Protection (M33/2015)	High Court of Australia [2015] HCATrans 031	Application dismissed <a href="#">[2015] HCASL 103</a>
8.	MZZZC	Minister for Immigration and Border Protection & Anor (M36/2015)	Federal Court of Australia [2015] FCA 1127	Application dismissed <a href="#">[2015] HCASL 104</a>
9.	Hai Shoeib	Minister for Immigration and Border Protection & Anor (M37/2015)	High Court of Australia [2015] HCATrans 034	Application dismissed <a href="#">[2015] HCASL 105</a>
10.	Julakanti	Minister for Immigration and Border Protection (M39/2015)	High Court of Australia [2015] HCATrans 040	Application dismissed <a href="#">[2015] HCASL 106</a>
11.	Bajaj	Beachtown Investments Pty Ltd	Supreme Court of Western Australia (Court of Appeal) [2015] WASCA 37	Application dismissed <a href="#">[2015] HCASL 107</a>
12.	Hannaford	Commonwealth Bank of Australia Limited (S259/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 297	Application dismissed <a href="#">[2015] HCASL 108</a>
13.	Charara	Commonwealth Bank of Australia A.C.C. 123 123 124 & Ors (S12/2015)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 402	Application dismissed <a href="#">[2015] HCASL 109</a>

## 6: Special Leave Refused

14.	SZTAZ	Minister for Immigration and Border Protection & Anor (S12/2015)	Federal Court of Australia [2015] FCA 133	Application dismissed <a href="#">[2015] HCASL 110</a>
15.	McVey	GJ & LJ Smith Pty Ltd & Ors (M140/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 293	Application dismissed <a href="#">[2015] HCASL 111</a>
16.	Ford Motor Company of Australia Limited	Merhi (M3/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 328	Application dismissed with costs <a href="#">[2015] HCASL 112</a>
17.	SZTBE	Minister for Immigration and Border Protection & Anor (S286/2014)	Federal Court of Australia [2014] FCA 1230	Application dismissed with costs <a href="#">[2015] HCASL 113</a>
18.	SZSPT	Minister for Immigration and Border Protection & Anor (S296/2014)	Federal Court of Australia [2014] FCA 1245	Application dismissed with costs <a href="#">[2015] HCASL 114</a>
19.	Arnold & Ors	Minister Administering the Water Management Act 2000 & Anor (S305/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCCA 386	Application dismissed with costs <a href="#">[2015] HCASL 115</a>
20.	Klink	The Queen (M4/2015)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 325	Application dismissed <a href="#">[2015] HCASL 116</a>

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## 19 June 2015: Sydney

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	BHP Billiton Limited	van Soest (A3/2015)	Full Court of the Supreme Court of South Australia [2014] SASCFC 135	Application dismissed with costs <a href="#">[2015] HCATrans 153</a>
2.	Walsh	Department of Human Services & Anor	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 244	Application dismissed with costs <a href="#">[2015] HCATrans 152</a>
3.	Setka	The Honourable Tony Abbott MP & Anor	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 287	Application dismissed with costs <a href="#">[2015] HCATrans 151</a>
4.	Atradius Credit Insurance N.V.	Prepaid Services Pty Limited & Ors (S167/2013)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 252	Application dismissed with costs <a href="#">[2015] HCATrans 155</a>
5.	Burwood Council	Ralan Burwood Pty Ltd & Ors (S309/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 404	Application dismissed with costs <a href="#">[2015] HCATrans 157</a>
6.	Prepaid Services Pty Ltd & Ors	Atradius Credit Insurance NV (S15/2015)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 440	Application dismissed <a href="#">[2015] HCATrans 155</a>
7.	Boele	Rinbac Pty Ltd & Ors (S22/2015)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 451	Application dismissed with costs <a href="#">[2015] HCATrans 156</a>
8.	SZUBU	Minister for Immigration and Border Protection & Anor (S25/2015)	Full Court of the Federal Court of Australia [2015] FCAFC 3	Application dismissed with costs <a href="#">[2015] HCATrans 158</a>
9.	SZTGV	Minister for Immigration and Border Protection & Anor (S26/2015)	Full Court of the Federal Court of Australia [2015] FCAFC 3	Application dismissed with costs <a href="#">[2015] HCATrans 159</a>

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