



HIGH COURT BULLETIN

Produced by the Legal Research Officer,
High Court of Australia Library
[2017] HCAB 6 (1 September 2017)

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

1: Summary of New Entries	1
2: Cases Handed Down	4
3: Cases Reserved	10
4: Original Jurisdiction	19
5: Court of Disputed Returns	22
6: Special Leave Granted.....	25
7: Cases Not Proceeding or Vacated.....	34
8: Special Leave Refused.....	35

1: SUMMARY OF NEW ENTRIES

2: Cases Handed Down

Case	Title
<i>Ramsay Health Care Australia Pty Ltd v Compton</i>	Bankruptcy
<i>Transport Accident Commission v Katanas</i>	Compensation
<i>Knight v State of Victoria & Anor</i>	Constitutional Law
<i>IL v The Queen</i>	Criminal Law
<i>Plaintiff S195/2016 v Minister for Immigration and Border Protection & Ors</i>	Migration
<i>Forrest & Forrest Pty Ltd v Wilson & Ors</i>	Mining
<i>Commissioner of Taxation v Jayasinghe</i>	Taxation

3: Cases Reserved

Case	Title
<i>Commissioner of the Australian Federal Police v Hart & Ors; Commonwealth of Australia v Yak 3 Investments Pty Ltd as Trustee for Yak 3 Discretionary Trust & Ors; Commonwealth of Australia & Anor v Flying Fighters Pty Ltd & Ors</i>	Criminal Law
<i>Koani v The Queen</i>	Criminal Law
<i>Thorne v Kennedy</i>	Family Law
<i>Aldi Foods Pty Limited v Shop, Distributive & Allied Employees Association & Anor</i>	Industrial Law
<i>Esso Australia Pty Ltd v The Australian Workers' Union; The Australian Workers' Union v Esso Australia Pty Ltd</i>	Industrial Law

4: Original Jurisdiction

Case	Title
<i>Australian Marriage Equality Ltd & Anor v Minister for Finance & Anor</i>	Constitutional Law
<i>Wilkie & Ors v The Commonwealth of Australia & Ors</i>	Constitutional Law

5: Court of Disputed Returns

Case	Title
<i>Re Canavan</i>	Court of Disputed Returns
<i>Re Ludlam</i>	Court of Disputed Returns
<i>Re Waters</i>	Court of Disputed Returns
<i>Re Roberts</i>	Court of Disputed Returns
<i>Re Joyce</i>	Court of Disputed Returns

6: Special Leave Granted

Case	Title
<i>Pipikos v Trayans</i>	Contracts
<i>Irwin v The Queen</i>	Criminal Law
<i>Rozenblit v Vainer & Anor</i>	Procedure

[7: Cases Not Proceeding or Vacated](#)

2: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the August 2017 sittings.

Bankruptcy

Ramsay Health Care Australia Pty Ltd v Compton

S53/2017: [\[2017\] HCA 28](#)

Orders pronounced: 4 May 2017

Reasons published: 17 August 2017

Coram: Kiefel CJ, Gageler, Keane, Nettle and Edelman JJ

Catchwords:

Bankruptcy – Creditor's petition – Where petitioning creditor relied upon judgment debt – Where judgment debt resulted from contested hearing – Where no suggestion of fraud or collusion in obtaining judgment – Where evidence adduced to suggest debt not truly owing – Whether Bankruptcy Court has, and should exercise, discretion to "go behind" judgment to investigate debt.

Words and phrases – "debt truly owing", "fraud, collusion or miscarriage of justice", "'go behind' a judgment", "miscarriage of justice".

Bankruptcy Act 1966 (Cth) – s 52.

Appealed from FCA (FC): [\[2016\] FCAFC 106](#); (2016) 246 FCR 508

[Return to Top](#)

Compensation

Transport Accident Commission v Katanas

M160/2016: [\[2017\] HCA 32](#)

Judgment delivered: 17 August 2017

Coram: Kiefel CJ, Keane, Nettle, Gordon and Edelman JJ

Catchwords:

Accident compensation – Transport accident – Statutory compensation scheme – Where respondent involved in motor vehicle accident and subsequently suffered mental disorder or disturbance – Where mental disorder or disturbance required to be "severe" to allow bringing of common law proceedings – Where respondent did not require inpatient psychiatric treatment – Where respondent found not to have suffered symptoms of psychological trauma at upper echelon of range – Whether severity of mental disorder or disturbance assessed only by reference to extent of treatment – Whether narrative test laid down in *Humphries v Poljak* [1992] 2 VR 129 followed by Court of Appeal.

Words and phrases – "mental disturbance or disorder", "narrative test", "range or spectrum of comparable cases", "serious injury", "severe", "symptoms and consequences".

Transport Accident Act 1986 (Vic) – s 93.

Appealed from VSC (CA): [\[2016\] VSCA 140](#); (2016) 76 MVR 161

[Return to Top](#)

Constitutional Law

Knight v State of Victoria & Anor

M251/2015: [\[2017\] HCA 29](#)

Judgment delivered: 17 August 2017

Coram: Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ

Catchwords:

Constitutional law (Cth) – Constitution – Ch III – State Supreme Courts – Principle in *Kable v Director of Public Prosecutions* (NSW) (1996) 189 CLR 51; [1996] HCA 24 – Where s 74AA of *Corrections Act* 1986 (Vic) prevents parole order in respect of plaintiff unless Adult Parole Board satisfied plaintiff in imminent danger of dying or seriously incapacitated and does not have physical ability to harm any person – Where s 74AA identifies plaintiff by name and only applies to plaintiff – Whether s 74AA interferes with sentences imposed by Supreme Court in manner which substantially impairs institutional integrity of Supreme Court – Whether *Crump v New South Wales* (2012) 247 CLR 1; [2012] HCA 20 distinguishable – Whether necessary or appropriate to decide if function conferred by s 74AA could validly be exercised by division of Adult Parole Board which includes current judicial officer.

Words and phrases – "enlistment of judicial officers", "institutional integrity", "minimum term", "non-parole period", "parole", "party-specific legislation", "sentencing".

Constitution – Ch III.

Corrections Act 1986 (Vic) – ss 61, 61A, 64, 74, 74AA, 74AAB.

Corrections Amendment (Parole) Act 2014 (Vic) – ss 1, 3.

Interpretation of Legislation Act 1984 (Vic) – ss 4, 6.

Penalties and Sentences Act 1985 (Vic) – s 17.

Sentencing Act 1991 (Vic) – Sched 1, cl 2.

[Return to Top](#)

Criminal Law

IL v The Queen

S270/2016: [\[2017\] HCA 27](#)

Judgment delivered: 9 August 2017

Coram: Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ

Catchwords:

Criminal law – Murder and manslaughter – Where appellant and deceased engaged in joint criminal enterprise – Where act causing death committed in course of joint criminal enterprise – Where Crown could not exclude possibility that deceased had committed act causing death – Where appellant charged with murder or manslaughter of deceased – Whether s 18(1) of *Crimes Act 1900* (NSW) encompasses self-killing.

Criminal law – Joint criminal enterprise liability – Whether acts or liability for actus reus of crimes committed in course of joint criminal enterprise attributed to co-participant – Whether act of deceased causing death attributable to appellant.

Words and phrases – "attribution of acts", "complicity", "constructive murder", "derivative liability", "felo de se", "felony murder", "joint criminal enterprise liability", "primary liability", "rules of attribution", "self-murder", "suicide".

Crimes Act 1900 (NSW) – s 18.

Appealed from NSWSC (CCA): [\[2016\] NSWCCA 51](#)

[Return to Top](#)

Migration

Plaintiff S195/2016 v Minister for Immigration and Border Protection & Ors

[S195/2016](#): [\[2017\] HCA 31](#)

Judgment delivered: 17 August 2017

Coram: Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ

Catchwords:

Migration – Regional processing – Where plaintiff "unauthorised maritime arrival" – Where plaintiff taken to regional processing centre in Papua New Guinea pursuant to s 198AD of *Migration Act* 1958 (Cth) – Where Commonwealth entered into arrangements with Papua New Guinea and took other actions in relation to regional processing functions – Where Supreme Court of Papua New Guinea held treatment of unauthorised maritime arrivals at Manus Island regional processing centre contrary to law of Papua New Guinea – Whether Commonwealth had power to enter into arrangements – Whether certain past and potential future actions of Commonwealth, its officers, and Minister invalid under Constitution or s 198AHA of *Migration Act* 1958 (Cth) by reason of Supreme Court decision – Whether arrangements entered into by Commonwealth not "arrangement[s]" for purpose of s 198AHA by reason of Supreme Court decision.

Constitutional law (Cth) – Legislative and executive power – Whether Constitution denies Commonwealth legislative or executive power to authorise or to take part in activity in another country that is unlawful under domestic law of that country.

Words and phrases – "domestic law of another country", "ministerial designation", "ministerial direction", "regional processing arrangements", "regional processing country", "regional resettlement arrangement", "unauthorised maritime arrival".

Migration Act 1958 (Cth) – ss 198AB(1), 198AD, 198AHA.

[Return to Top](#)

Mining

Forrest & Forrest Pty Ltd v Wilson & Ors

P59/2016: [\[2017\] HCA 30](#)

Judgment delivered: 17 August 2017

Coram: Kiefel CJ, Bell, Gageler, Keane and Nettle JJ

Catchwords:

Mining – Application for mining lease – Statutory conditions – Proper construction of s 74(1)(ca)(ii) of *Mining Act* 1978 (WA) – Where statutory regime conferred power on executive government of State to grant exclusive rights to exploit resources of State – Where s 74(1)(ca)(ii) provided application for mining lease "shall be accompanied by" mineralisation report – Effect of non-compliance with s 74(1)(ca)(ii) – Whether non-compliance with s 74(1)(ca)(ii) invalidated exercises of jurisdiction to progress application through to grant.

Words and phrases – "condition precedent", "indefeasibility", "informality", "irregularity", "jurisdictional error", "shall be accompanied by".

Mining Act 1978 (WA) – ss 71, 74, 74A, 75, 116(2).

Appealed from WASC (CA): [\[2016\] WASCA 116](#); (2016) 10 ARLR 81

[Return to Top](#)

Taxation

Commissioner of Taxation v Jayasinghe

S275/2016: [\[2017\] HCA 26](#)

Judgment delivered: 9 August 2017

Coram: Kiefel CJ, Gageler, Keane, Gordon and Edelman JJ

Catchwords:

Income tax – *International Organisations (Privileges and Immunities) Act* 1963 (Cth) ("the IOPI Act"), s 6(1)(d)(i) – Whether taxpayer "holds an office in" an international organisation to which the IOPI Act applies – Whether taxpayer entitled to exemption from taxation on salaries and emoluments.

Income tax – *Taxation Administration Act* 1953 (Cth), Sched 1, s 357-60(1) – Taxation Determination TD 92/153 – Whether Commissioner bound to exempt taxpayer from taxation.

Words and phrases – "expert on mission", "incidents of the relationship", "international organisation", "person who holds an office", "skills and expertise", "specialist services", "terms of engagement".

International Organisations (Privileges and Immunities) Act 1963 (Cth) – s 6(1)(d), Fourth Schedule, Pt I.

Taxation Administration Act 1953 (Cth) – Sched 1, s 357-60(1).

United Nations (Privileges and Immunities) Regulations 1986 (Cth) – reg 10.

Taxation Determination TD 92/153.

Convention on the Privileges and Immunities of the United Nations [1949] ATS 3 – Art V, s 18.

Appealed from FCA(FC): [\[2016\] FCAFC 79](#); (2016) 247 FCR 40; (2016) 103 ATR 357

[Return to Top](#)

3: CASES RESERVED

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

Constitutional Law

Brown & Anor v The State of Tasmania

H3/2016: [\[2017\] HCATrans 93](#); [\[2017\] HCATrans 94](#)

Date heard: 2 and 3 May 2017

Coram: Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ

Catchwords:

Constitutional Law – Implied freedom of political communication – *Workplaces (Protection from Protesters) Act 2014 (Tas)* – Where Forestry Tasmania was authorised to undertake forestry operations in the Lapoinya Forest – Where plaintiffs protested against forestry operations in vicinity of the operations – Where plaintiffs were charged on separate occasions for breaching s 8 of the Act – Where charges were dismissed against both plaintiffs – Whether Act impermissibly burdens the implied freedom of political communication.

[Return to Top](#)

Criminal Law

Chiro v The Queen

A9/2017: [\[2017\] HCATrans 133](#); [\[2017\] HCATrans 134](#)

Date heard: 20 and 21 June 2017

Coram: Kiefel CJ, Bell, Keane, Nettle and Edelman JJ

Catchwords:

Criminal law – Sentencing – Where appellant convicted by jury of “persistent sexual exploitation of a child” pursuant to *Criminal Law Consolidation Act 1935 (SA)* s 50 – Where complainant gave evidence of sexual exploitation ranging in seriousness – Where trial judge directed jury they may convict if satisfied appellant kissed complainant in circumstances amounting to indecent assault on two occasions – Whether Court of Criminal Appeal erred in failing to

hold trial judge erred in failing to ask jury which two or more sexual offences were subject of guilty verdict for purposes of sentencing – Whether in absence of such answer it was open to trial judge to sentence on basis appellant guilty of all alleged sexual offending.

Appealed from SASC (CCA): [\[2015\] SASCF 142](#); (2015) 123 SASR 583

[Return to Top](#)

Commissioner of the Australian Federal Police v Hart & Ors; Commonwealth of Australia v Yak 3 Investments Pty Ltd as Trustee for Yak 3 Discretionary Trust & Ors; Commonwealth of Australia & Anor v Flying Fighters Pty Ltd & Ors

B21/2017; B22/2017; B23/2017: [\[2017\] HCATrans 153](#); [\[2017\] HCATrans 155](#); [\[2017\] HCATrans 156](#)

Date heard: 14, 15 and 17 August 2017

Coram: Kiefel CJ, Bell, Gageler, Gordon and Edelman JJ

Catchwords:

Criminal law – Proceeds of crime – *Proceeds of Crime Act 2002* (Cth) – Where Commonwealth obtained restraining order under s 17 of the Act over property under first respondent’s effective control – Where first respondent subsequently found guilty of nine offences of defrauding the Commonwealth – Where property forfeited to Commonwealth under s 92 – Where Commonwealth granted pecuniary penalty order (PPO) against first respondent under s 116 – Where Commonwealth sought declaration under s 141 that forfeited property available to satisfy PPO – Where primary judge dismissed application under s 141 on discretionary grounds – Where majority of Court of Appeal dismissed Commonwealth’s appeals on basis that s 141 did not apply to property the subject of a restraining order under s 17 – Whether majority of Court of Appeal erred in holding that s 141 does not apply to property subject to restraining orders under s 17 – Whether majority of Court of Appeal erred in construing date of effective control under s 141(1)(c) as date on which application is determined notwithstanding that property was subject of restraining orders under s 17 – Whether majority of Court of Appeal erred in construing words “not ... derived or realised ... by any person from any unlawful activity” in s 102(3)(a) as meaning wholly derived or wholly realised from unlawful activity.

Appealed from QSC (CA): [\[2016\] QCA 215](#); (2016) 336 ALR 492; (2016) 314 FLR 1 and [\[2016\] QCA 284](#)

[Return to Top](#)

Director of Public Prosecutions v Dalgliesh (A Pseudonym)

M1/2017: [\[2016\] HCATrans 122](#)

Date heard: 14 June 2017

Coram: Kiefel CJ, Bell, Gageler, Keane and Gordon JJ

Catchwords:

Criminal law – Sentencing – *Sentencing Act* 1991 (Vic) s 5(2)(b) – Where respondent pleaded guilty to four sexual acts on two children under age of 16 – Where Charge 1 alleged respondent, contrary to *Crimes Act* 1958 (Vic) s 44 (“incest”), took part in act of sexual penetration of person under age of 18 years whom respondent knew was child of de facto wife – Where child, aged 13, fell pregnant – Where sentencing judge imposed sentence of 3 years 6 months imprisonment for Charge 1 and total effective sentence of 5 years 6 months for all counts – Where appellant appealed to Court of Appeal on grounds sentence imposed for Charge 1 and total effective sentence were manifestly inadequate – Where Court informed parties that Court would consider adequacy of “current sentencing practices” for incest – Where Court of Appeal dismissed appeal but stated current sentencing practices for incest inadequate – Whether Court of Appeal erred in failing to find sentence for Charge 1 manifestly inadequate – Whether s 5(2)(b) alters common law principle of “instinctive synthesis” in sentencing.

Appealed from VSC (CA): [\[2016\] VSCA 148](#)

[Return to Top](#)

Hamra v The Queen

A14/2017: [\[2017\] HCATrans 133](#); [\[2017\] HCATrans 134](#)

Date heard: 20 and 21 June 2017

Coram: Kiefel CJ, Bell, Keane, Nettle and Edelman JJ

Catchwords:

Criminal law – Persistent sexual exploitation of child under *Criminal Law Consolidation Act* 1935 (SA) s 50 – Where trial judge held no case to answer because allegations of generalised nature such that it was not possible to identify two or more proved sexual offences within meaning of s 50 – Where Court of Criminal Appeal quashed acquittal and remitted matter for retrial – Whether s 50 requires proof of commission of two or more prescribed sexual offences on

particular occasions – Whether Court of Criminal Appeal failed to address appellant’s submission that respondent’s appeal should not be granted having regard to considerations relating to double jeopardy.

Appealed from SASC (CCA): [\[2016\] SASCFC 130](#); (2016) 126 SASR 374

[Return to Top](#)

Koani v The Queen

B20/2017: [\[2017\] HCATrans 157](#)

Date heard: 17 August 2017

Coram: Kiefel CJ, Bell, Gageler, Nettle and Gordon JJ

Catchwords:

Criminal law – Murder – Criminal negligence – *Criminal Code* 1899 (Qld) ss 23(1)(a), 289 – Where appellant convicted of murdering de facto partner – Where there was evidence on which jury could find reasonable possibility appellant intended only to frighten deceased – Where trial judge directed jury that, if not satisfied discharge of gun resulted from willed act of appellant, jury could still convict for murder if discharge was consequence of omission to perform duty under s 289 to use reasonable care in control of shotgun and at time of discharge appellant intended to kill or cause grievous bodily harm – Where Court of Appeal by majority dismissed appeal – Whether majority of Court of Appeal erred in holding criminal negligence in breach of s 289 can found conviction for murder.

Orders made on 17 August 2017 allowing appeal.

Written reasons of the Court to be published at a future date.

Appealed from QSC (CA): [\[2016\] QCA 289](#)

[Return to Top](#)

The Queen v Dookheea

M159/2016: [\[2017\] HCATrans 132](#)

Date heard: 19 June 2017

Coram: Kiefel CJ, Bell, Gageler, Keane, Nettle and Edelman JJ

Catchwords:

Criminal law – Jury directions – Where trial judge directed jury that prosecution must prove element of crime “not beyond any doubt, but beyond reasonable doubt” – Where respondent convicted of murder – Where Court of Appeal quashed conviction and ordered re-trial – Whether Court of Appeal erred in finding trial judge impermissibly explained meaning of “beyond reasonable doubt” – Whether Court of Appeal erred in concluding that jury direction occasioned substantial miscarriage of justice.

Appealed from VSC (CA): [\[2016\] VSCA 67](#)

[Return to Top](#)

The Queen v Holliday

C3/2017: [\[2017\] HCATrans 123](#)

Date heard: 15 June 2017

Coram: Kiefel CJ, Bell, Gageler, Nettle and Gordon JJ

Catchwords:

Criminal law – Where respondent in custody awaiting trial offered to reward fellow inmate for arranging third person to kidnap and murder two witnesses in case against respondent – Whether offence of incitement under *Criminal Code* 2002 (ACT) s 47 can be committed by inciting another person to procure a third person to commit an offence – Whether offence of incitement complete at the point of the urging – Whether *Criminal Code* 2002 (ACT) ss 45(2)(a) and 45(3) constitute a “limitation or qualifying provision” for purposes of s 47(5) such that offence of incitement not complete until offence of kidnapping committed.

Appealed from ACTSC (CA): [\[2016\] ACTCA 42](#); (2016) 312 FLR 77; (2016) 12 ACTLR 16

[Return to Top](#)

Van Beelen v The Queen

A8/2017: [\[2017\] HCATrans 135](#); [\[2017\] HCATrans 137](#)

Date heard: 21 and 22 June 2017

Coram: Bell, Gageler, Keane, Nettle and Edelman JJ

Catchwords:

Criminal law – *Criminal Law Consolidation Act* 1935 (SA) s 353A – Second or subsequent appeal – Where appellant seeks to appeal

against murder conviction on basis that new evidence shows expert evidence as to time of victim's death flawed – Whether new evidence is “compelling” – Whether majority of Court of Criminal Appeal erred in holding further attack on expert evidence precluded because expert evidence contested at trial – Whether evidence could have been adduced at original trial – Whether majority of Court of Criminal Appeal erred in finding principle of finality relevant to s 353A appeal – Whether in “interests of justice” to allow appeal.

Appealed from SASC (CCA): [\[2016\] SASCF 71](#); (2016) 125 SASR 253

[Return to Top](#)

Family Law

Thorne v Kennedy

B14/2017: [\[2017\] HCATrans 148](#)

Date heard: 8 August 2017

Coram: Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ

Catchwords:

Family law – *Family Law Act* 1975 (Cth) ss 90K, 90KA – Where husband and wife entered into financial agreements prior to and shortly after wedding – Where husband and wife subsequently separated – Where trial judge found wife signed agreements under duress – Where Full Family Court declared second financial agreement binding – Whether Full Court erred in failing to find financial agreements not binding and should be set aside on grounds of duress, undue influence or unconscionable conduct.

Appealed from FamFC (FC): [\[2016\] FamCAFC 189](#); [2016] FLC 93-737

[Return to Top](#)

Industrial Law

Aldi Foods Pty Limited v Shop, Distributive & Allied Employees Association & Anor

M33/2017: [\[2017\] HCATrans 149](#)

Date heard: 9 August 2017

Coram: Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ

Catchwords:

Industrial law – Jurisdictional error – *Fair Work Act 2009* (Cth) – Approval of enterprise agreements – Where enterprise agreement approved by Deputy President of Fair Work Commission – Where appeal dismissed by Full Bench of Fair Work Commission – Where majority of Federal Court held employees not “covered by the agreement” as required by Act – Where majority also held Full Bench erred in finding agreement satisfied “better off overall test” under s 193 – Whether majority erred in finding Fair Work Commission fell into jurisdictional error in exercising functions under s 186 – Whether majority erred in finding Fair Work Commission fell into jurisdictional error in determining agreement satisfied “better off overall test”.

Appealed from FCA (FC): [\[2016\] FCAFC 161](#); (2016) 245 FCR 155; (2016) 262 IR 329

[Return to Top](#)

Esso Australia Pty Ltd v The Australian Workers' Union; The Australian Workers' Union v Esso Australia Pty Ltd

M185/2016; M187/2016: [\[2017\] HCATrans 150](#); [\[2017\] HCATrans 151](#)

Date heard: 10 August 2017

Coram: Kiefel CJ, Gageler, Keane, Nettle and Edelman JJ

Catchwords:

Industrial Law – *Fair Work Act 2009* (Cth) s 413(5) – Where Australian Workers' Union (“AWU”) organised industrial action against Esso Australia Pty Ltd (“Esso”) – Where AWU asserted industrial action “protected” under Act – Where Fair Work Commission made order under s 418 stopping disputed industrial action – Where AWU continued to organise industrial action in contravention of order – Where trial judge held that due to contraventions, all industrial action including forms notionally “protected” could not be “protected” because of operation of s 413(5) – Where trial judge rejected Esso’s claim for injunction restraining AWU from organising further industrial action – Where Full Court rejected appeal by Esso – Whether Full Court erred in concluding s 413(5) only operates where taking or organising industrial action was itself in contravention of order and order still operated and applied to contravention at time of action – Whether Full Court erred by failing to construe s 413(5) as limited in operation to contraventions where contravening conduct continuing or occurring at time of organising or taking industrial action.

Industrial Law – *Fair Work Act* 2009 (Cth) ss 343, 348 – Where sections prevent actions being taken “with intent to coerce” other person to take or not take industrial action – Whether majority of Full Court erred in holding contravention of ss 343, 348 may be established without proof of intent to take action that was unlawful, illegitimate or unconscionable – Whether majority of Full Court erred by failing to consider actual intent to take protected industrial action.

Appealed from FCA (FC): [\[2016\] FCAFC 72](#); (2016) 245 FCR 39; (2016) 258 IR 396

[Return to Top](#)

Migration

Graham v Minister for Immigration and Border Protection; Te Puia v Minister for Immigration and Border Protection

M97/2016; P58/2016: [\[2017\] HCATrans 63](#)

Date heard: 30 March 2017

Coram: Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ

Catchwords:

Migration – Constitutional law – Where plaintiffs are citizens of New Zealand – Where plaintiffs were granted a class TY subclass 444 Special Category (Temporary) visa when they each respectively last entered Australia – Where defendant cancelled plaintiffs’ visas under s 501(3) of the *Migration Act* 1958 (Cth) – Where defendant received information in accordance with s 503A(1) of the *Migration Act* 1958 (Cth) – Where s 503A(2) prevents defendant from disclosing confidential information to the Court – Whether ss 501(3) and 503A(2) invalid as requiring a Federal court to exercise judicial power in a manner inconsistent with the essential character of a court – Whether invalid as limiting ability of affected person to seek relief under s 75(v) of Constitution.

[Return to Top](#)

SZTAL v Minister for Immigration and Border Protection & Anor; SZTGM v Minister for Immigration and Border Protection & Anor

S272/2016; S273/2016: [\[2017\] HCATrans 68](#)

Date heard: 5 April 2017

Coram: Kiefel CJ, Gageler, Nettle, Gordon and Edelman JJ

Catchwords:

Migration – Statutory interpretation – *Migration Act 1958* (Cth) – s 36(2)(aa), complementary protection criteria – Where appellants are nationals of Sri Lanka – Where appellants left Sri Lanka illegally – Where Tribunal accepted that it was likely that appellants would be jailed upon return to Sri Lanka – Whether Full Court of the Federal Court erred in holding that requirement of intentional infliction of “cruel and inhuman treatment or punishment” or “degrading treatment or punishment” requires proof of subjective intention.

Appealed from FCA (FC): [\[2016\] FCAFC 69](#); (2016) 243 FCR 556

[Return to Top](#)

4: ORIGINAL JURISDICTION

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

Constitutional Law

Australian Marriage Equality Ltd & Anor v Minister for Finance & Anor

M106/2017: *Special Case*

Catchwords:

Constitutional law – Constitution ss 54, 75(v), 83 – Postal survey of opinions on same-sex marriage – Where Advance to the Finance Minister Determination (No 1 of 2017-2018) (“Determination”) increased departmental item for Australian Bureau of Statistics by \$122m to make funding available for “voluntary postal plebiscite” – Whether Determination invalid because *Appropriation Act (No 1) 2017-2018* (Cth) s 10 does not authorise Minister to make determination amending sch 1 of Act to appropriate funds for expenditure outside “ordinary annual services” of government – Whether Determination invalid because expenditure not “unforeseen” within meaning of s 10(1)(b) – Whether Determination invalid because any expenditure not because of “erroneous omission or understatement” within meaning of s 10(1)(a).

[Return to Top](#)

Wilkie & Ors v The Commonwealth of Australia & Ors

M105/2017: *Application to Show Cause*

Catchwords:

Constitutional law – Constitution ss 51(xi), 61, 75(iii), 75(v) – Postal survey of opinions on same-sex marriage – Where Advance to the Finance Minister Determination (No 1 of 2017-2018) (“Determination”) increased departmental item for Australian Bureau of Statistics by \$122m to make funding available for “voluntary postal plebiscite” – Whether Determination invalid because Minister’s satisfaction “urgent need for expenditure” or expenditure “unforeseen” under *Appropriation Act (No 1) 2017-2018* (Cth) s 10(1) not reasonable or involved error of law – Whether s 10(1), (2) and (4) of Act invalid as impermissible exercise of legislative power to enact appropriation Acts or impermissible delegation of legislative power to Minister or not

supported by any incidental power – Whether Census and Statistics (Statistical Information) Direction 2017 (“Direction”) invalid on basis opinions sought not “statistical information” within meaning of *Australian Bureau of Statistics Act 1975* (Cth) or *Census and Statistics Act 1905* (Cth) and not “statistics” within meaning of Constitution s 51(xi) – Whether Direction invalid because opinions sought not related to matters prescribed by *Census and Statistics Regulation 2016* (Cth) s 13 – Whether Electoral Commissioner not authorised by *Commonwealth Electoral Act 1918* (Cth) to conduct or participate in conduct of postal survey – Whether s 61 permits Australian Statistician to carry out postal survey without statutory authorisation.

[Return to Top](#)

ResourceCo Material Solutions Pty Ltd & Anor v State of Victoria & Anor

[M32/2016](#): *Demurrer*

Catchwords:

Constitutional law – Section 92 – *Environment Protection (Industrial Waste Resource) Regulations 2009* (Vic) – Where reg 26(3) prohibits interstate transport of prescribed industrial waste for destruction/deposit unless interstate facility has better environmental performance standards – Contract to dispose of contaminated soil in Victoria by transporting to and disposing of in South Australia – Where second plaintiff obtained approval from South Australian Environment Protection Authority (“EPA”) for treatment of soil in South Australia – Where first plaintiff sought approval from EPA Victoria for transport of waste from Victoria to South Australia – Where approval refused because EPA Victoria not satisfied waste would be deposited at facility in South Australia with better environmental performance standards than in Victoria – Whether reg 26 or 26(3) *Environment Protection (Industrial Waste Resource) Regulations 2009* (Vic) contrary to s 92 and therefore invalid – Whether protectionist effect of reg 26(3) can be inferred from discriminatory burden imposed on interstate trade – Whether objects of reg 26(3) must be actual motivating objects of the regulation.

Hearing vacated (1 February 2017).

[Return to Top](#)

Migration

Plaintiff M174/2016 v Minister for Immigration and Border Protection

[M174/2016](#): *Special Case*

Catchwords:

Constitutional law – Migration – *Migration Act* 1958 (Cth) ss 57(2), 473CA, 473CC – Where plaintiff applied for Temporary Protection (Class XD) (Subclass 785) visa – Where delegate of Minister refused to grant visa – Whether delegate failed to comply with s 57(2) of Act – If so, whether failure to comply with s 57(2) had consequence that there was no decision capable of referral to Immigration Assessment Authority under s 473CA or essential precondition for valid exercise of power by Authority under s 473CC not satisfied – Whether Authority failed to conduct review in accordance with Pt 7AA by unreasonably failing to exercise statutory powers to obtain or consider new information.

[Return to Top](#)

Falzon v Minister for Immigration and Border Protection

[S31/2017](#): *Application to Show Cause*

Catchwords:

Constitutional law – Migration – Where plaintiff's visa cancelled pursuant to *Migration Act* 1958 (Cth) s 501(3A) – Where Minister decided not to revoke cancellation under s 501CA – Whether s 501(3A) is invalid because it purports to confer judicial power of Commonwealth on Minister.

[Return to Top](#)

5: COURT OF DISPUTED RETURNS

The following questions have been referred to the High Court of Australia sitting as the Court of Disputed Returns pursuant to section 376 of the *Commonwealth Electoral Act 1918* (Cth).

Re Canavan

C11/2017: Questions referred to the Court of Disputed Returns pursuant to section 376 of the *Commonwealth Electoral Act 1918* (Cth).

Questions:

- (a) whether, by reason of s 44(i) of the Constitution, there is a vacancy in the representation of Queensland in the Senate for the place for which Senator Matthew Canavan was returned;
- (b) if the answer to Question (a) is "yes", by what means and in what manner that vacancy should be filled;
- (c) what directions and other orders, if any, should the Court make in order to hear and finally dispose of this reference; and
- (d) what, if any, orders should be made as to the costs of these proceedings.

[Return to Top](#)

Re Ludlam

C12/2017: Questions referred to the Court of Disputed Returns pursuant to section 376 of the *Commonwealth Electoral Act 1918* (Cth).

Questions:

- (a) whether by reason of s 44(i) of the Constitution there is a vacancy in the representation of Western Australia in the Senate for the place for which Senator Ludlam was returned;
- (b) if the answer to Question (a) is "yes", by what means and in what manner that vacancy should be filled;
- (c) if the answer to Question (a) is "no", is there a causal vacancy in the representation of Western Australia in the Senate within the meaning of s 15 of the Constitution; and

- (d) what directions and other orders, if any, should the Court make in order to hear and finally dispose of this reference.

[Return to Top](#)

Re Waters

C13/2017: Questions referred to the Court of Disputed Returns pursuant to section 376 of the *Commonwealth Electoral Act 1918* (Cth).

Questions:

- (a) whether by reason of s 44(i) of the Constitution there is a vacancy in the representation of Queensland in the Senate for the place for which Senator Waters was returned;
- (b) if the answer to Question (a) is "yes", by what means and in what manner that vacancy should be filled;
- (c) if the answer to Question (a) is "no", is there a causal vacancy in the representation of Queensland in the Senate within the meaning of s 15 of the Constitution; and
- (d) what directions and other orders, if any, should the Court make in order to hear and finally dispose of this reference.

[Return to Top](#)

Re Roberts

C14/2017: Questions referred to the Court of Disputed Returns pursuant to section 376 of the *Commonwealth Electoral Act 1918* (Cth).

Questions:

- (a) whether by reason of s 44(i) of the Constitution there is a vacancy in the representation of Queensland in the Senate for the place for which Senator Roberts was returned;
- (b) if the answer to Question (a) is "yes", by what means and in what manner that vacancy should be filled;
- (c) what directions and other orders, if any, should the Court make in order to hear and finally dispose of this reference; and

- (d) what, if any, orders should be made as to the costs of these proceedings.

[Return to Top](#)

Re Joyce

C15/2017: Questions referred to the Court of Disputed Returns pursuant to section 376 of the *Commonwealth Electoral Act 1918* (Cth).

Questions:

- (a) whether, by reason of s 44(i) of the Constitution, the place of the Member for New England (Mr Joyce) has become vacant;
- (b) if the answer to Question (a) is “yes”, by what means and in what manner that vacancy should be filled;
- (c) what directions and other orders, if any, should the Court make in order to hear and finally dispose of this reference; and
- (d) what, if any, orders should be made as to the costs of these proceedings.

[Return to Top](#)

6: SPECIAL LEAVE GRANTED

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

Administrative Law

Woollahra Municipal Council v Minister for Local Government & Ors

S141/2017: [\[2017\] HCATrans 108](#)

Date heard: 12 May 2017 – *Special leave granted.*

Catchwords:

Administrative law – *Local Government Act* 1993 (NSW) – Where Minister made proposal under s 218E(1) for forced amalgamation of Woollahra, Waverley and Randwick local government areas – Where Government published document disclosing part of analysis by KPMG – Where Delegate heard evidence in secret from KPMG – Whether obligation to hold inquiry under s 263(2A) did not permit evidence to be heard in secret and not disclosed to public – Whether Court of Appeal erred in failing to find that no prescribed inquiry at which there was examination of required statutory factors had been held – Whether Court of Appeal erred in failing to find that requirement to inquire into financial advantages and disadvantages of proposed amalgamation not discharged without having regard to specific financial advantages and disadvantages to residents and ratepayers of each local government area.

Appealed from NSWSC (CA): [\[2016\] NSWCA 380](#); (2016) 219 LGERA 180

[Return to Top](#)

Constitutional Law

Burns v Gaynor & Ors; Burns v Corbett & Ors; Attorney General for New South Wales v Burns & Ors; Attorney General for New South Wales v Burns & Ors; State of New South Wales v Burns & Ors

S183/2017; **S185/2017**; **S186/2017**; **S187/2017**; **S188/2017**:
[\[2017\] HCATrans 136](#)

Date determined: 22 June 2017 – *Special leave granted.*

Catchwords:

Constitutional law – Diversity jurisdiction – Where resident of New South Wales made complaints to Anti-Discrimination Board of NSW about statements made by Victorian resident and Queensland resident – Where Victorian resident ordered to make apologies by Administrative Decisions Tribunal of New South Wales (ADT) – Where complaints against Queensland resident referred to New South Wales Civil and Administrative Tribunal (NCAT) – Where Court of Appeal held ADT and NCAT lacked jurisdiction – Whether Court of Appeal erred in failing to find state diversity jurisdiction retained by state tribunals – Whether Court of Appeal erred in concluding state law purporting to confer jurisdiction upon state tribunal with respect to matters identified in ss 75 and 76 of Constitution inconsistent with s 39(2) of *Judiciary Act* within meaning of s 109 of Constitution – Whether a state can validly confer judicial power in any matters dealt with in ss 75, 76 of Constitution on person or body that is not a “court of a State” – Whether judicial power conferred upon NCAT to determine matters under *Anti-Discrimination Act* 1977 (NSW) between residents of different states regarding conduct that occurs outside New South Wales.

Appealed from NSWSC (CA): [\[2017\] NSWCA 3](#); (2017) 316 FLR 448

[Return to Top](#)

Contracts

Pipikos v Trayans

A12/2017: [\[2017\] HCATrans 164](#)

Date heard: 18 August 2017 – *Special leave granted.*

Catchwords:

Contracts – Enforceability – Past performance – *Law of Property Act* 1936 (SA) s 26 – Memorandum or note of agreement – Part performance – Where appellant alleges parties entered into oral agreement that appellant would pay share of deposit on property in exchange for respondent selling interest in another property – Where trial judge held no oral agreement existed – Where Full Court held agreement existed but unenforceable – Whether Full Court erred in failing to find appellant’s payment of deposit amounted to part performance sufficient to entitle appellant to enforce agreement – Whether Full Court erred in holding handwritten note not sufficient “memorandum or note” of agreement for purposes of s 26 – Whether Full Court erred in

holding appellant not entitled to enforce agreement in circumstances where respondent acknowledged agreement – Whether Full Court erred in failing to consider concessions in handwritten note to identify acts of part performance.

Appealed from SASC (CA): [\[2016\] SASCFC 138](#); (2016) 126 SASR 436

[Return to Top](#)

Criminal Law

Irwin v The Queen

B10/2017: [\[2017\] HCATrans 161](#)

Date heard: 18 August 2017 – *Special leave granted.*

Catchwords:

Criminal law – *Criminal Code* 1899 (Qld) s 23(1)(b) – Where appellant convicted of causing grievous bodily harm – Where appellant gave evidence of pushing complainant – Where Court of Appeal held complainant’s evidence could not rationally be accepted but dismissed appeal on basis it was open to jury to conclude ordinary person “could” reasonably have foreseen possibility of broken hip as result of push – Whether Court of Appeal erred in application of test under s 23(1)(b) by substituting “could” for “would” – Whether Court of Appeal erred in failing to find verdict unreasonable.

Appealed from QSC (CA): [\[2017\] QCA 2](#)

[Return to Top](#)

Kalbasi v The State of Western Australia

P21/2017: [\[2017\] HCATrans 113](#)

Date heard: 12 May 2017 – *Special leave granted on limited grounds.*

Catchwords:

Criminal law – Appeal against conviction – *Criminal Appeals Act 2004* (WA) s 30(4) – Where appellant convicted of attempt to possess prohibited drug with intent to sell or supply contrary to *Misuse of Drugs Act* 1981 (WA) ss 6(1)(a), 33(1) – Where Court of Appeal concluded jury directions on intention erroneous as presumption of intent to sell or supply under s 11 of Act did not apply, but held no substantial miscarriage of justice – Whether Court of Appeal erred in finding no substantial miscarriage of justice

and applying proviso – Whether *Weiss v The Queen* (2005) 224 CLR 300 should be revisited and/or qualified and/or overruled.

Appealed from WASC (CA): [\[2016\] WASCA 144](#)

[Return to Top](#)

Craig v The Queen

B24/2017: [\[2017\] HCATrans 73](#)

Date heard: 7 April 2017 – *Special leave granted.*

Catchwords:

Criminal law – Murder – *Criminal Code* 1899 (Qld) s 668E – Miscarriage of justice – Where appellant advised by trial counsel that if he gave evidence at trial, he would likely be cross-examined on prior convictions, including manslaughter conviction – Where appellant did not give evidence – Where proposed evidence would have been relevant to defence of provocation and would have raised self-defence – Where Court of Appeal held it was not likely that appellant would have been cross-examined on criminal history – Whether Court of Appeal erred in finding erroneous advice did not result in miscarriage of justice – Whether “alternative rational basis” for not giving evidence test appropriate where counsel gave erroneous advice – Whether denial of opportunity to make informed decision as to whether to give evidence amounts to “such a serious breach of the presuppositions of the trial” that the proviso cannot apply.

Appealed from QSC (CA): [\[2016\] QCA 166](#)

[Return to Top](#)

Industrial Law

Regional Express Holdings Limited v Australian Federation of Air Pilots

M71/2017: [\[2017\] HCATrans 105](#)

Date heard: 12 May 2017 – *Special leave granted.*

Catchwords:

Industrial law – *Fair Work Act* 2009 (Cth) – *Fair Work (Registered Organisations) Act* 2009 (Cth) – Standing – Where appellant sent letter to unidentified persons who applied for cadet employment program – Where respondent, a registered organisation,

commenced proceedings in Federal Circuit Court seeking pecuniary penalty orders against appellant on basis letter contravened various provisions of *Fair Work Act* – Where appellant sought orders dismissing or striking out application on basis respondent lacked standing – Whether respondent “entitled to represent the industrial interests” of letter recipients under s 540(6)(b)(ii) because recipients capable of becoming members of respondent despite not actually being members.

Appealed from FCA (FC): [\[2016\] FCAFC 147](#); (2016) 244 FCR 344; (2016) 264 IR 192

[Return to Top](#)

Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union & Anor

M65/2017: [\[2017\] HCATrans 106](#)

Date heard: 12 May 2017 – *Special leave granted.*

Catchwords:

Industrial law – *Fair Work Act* 2009 (Cth) – Where respondents admitted contravention of s 348 of the Act – Where pecuniary penalties imposed on respondents – Where primary judge ordered first respondent not to indemnify second respondent against penalties – Where Full Federal Court set aside order on basis that Court had no power to make such order – Whether Federal Court has power to order party not to indemnify another party in respect of pecuniary penalty order made under s 546.

Appealed from FCA (FC): [\[2016\] FCAFC 184](#)

[Return to Top](#)

Judicial Review

Probuild Constructions (Aust) Pty Ltd v Shade Systems Pty Ltd & Anor

S145/2017: [\[2017\] HCATrans 112](#)

Date heard: 12 May 2017 – *Special leave granted.*

Catchwords:

Jurisdiction – Error of law on face of record – *Building and Construction Industry Security of Payment Act* 1999 (NSW) – Where adjudicator made determination under s 22(1) that progress

payment to be paid by appellant – Where primary judge made order in nature of certiorari under *Supreme Court Act 1970 (NSW)* s 69 quashing determination for error of law on face of record – Where Court of Appeal held relief not available to quash determination under Act for error of law on face of record – Whether Court of Appeal erred in holding that Supreme Court’s power to make orders in nature of certiorari for error of law on face of record ousted in relation to determinations under Act.

Appealed from NSWSC (CA): [\[2016\] NSWCA 379](#)

[Return to Top](#)

Maxcon Constructions Pty Ltd v Vadasz & Ors
A17/2017: [\[2017\] HCATrans 112](#)

Date heard: 12 May 2017 – *Special leave granted.*

Catchwords:

Jurisdiction – Error of law on face of record – *Building and Construction Industry Security of Payment Act 2009 (SA)* – Where adjudicator made determination that amount be paid by appellant – Where appellant sought judicial review of determination – Where Full Court considered it was required by *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89 to follow *Shade Systems Pty Ltd v Probuild Constructions (Aust) Pty Ltd (No 2)* [2016] NSWCA 379 (“*Probuild*”) – Whether Full Court erred in following *Probuild* and concluding that Act excluded judicial review on ground of error of law on face of record – Whether Full Court erred in holding that error of law in application of s 12 did not amount to jurisdictional error – Whether Full Court erred in holding that, if error enlivened Court’s jurisdiction to grant certiorari, appropriate order would be to partially set aside but partially preserve determination.

Appealed from SASC (CA): [\[2017\] SASCF 2](#); (2017) 127 SASR 193

[Return to Top](#)

Negligence

Briggs v State of New South Wales
S144/2017: [\[2017\] HCATrans 109](#)

Date heard: 12 May 2017 – *Special leave granted.*

Catchwords:

Negligence – *Works Compensation Act 1987* (NSW) – Breach of duty – Where appellant suffered psychological injury due to exposure to traumatic events in course of duties as police officer – Where appellant told supervisor he was “struggling” and applied for “theoretical demotion” – Where appellant interviewed by Professional Standards Command while on sick leave – Whether Court of Appeal erred in finding respondent did not breach duty of care by failing to make enquiries as to appellant’s reasons for seeking demotion – Whether Court of Appeal erred in formulation of content of duty of care – Whether Court of Appeal erred in finding respondent did not breach duty of care in manner in which professional standards enquiry conducted while appellant was on sick leave.

Appealed from NSWSC (CA): [\[2016\] NSWCA 344](#); (2016) 264 IR 309; (2016) Aust Tort Reports 82-319

[Return to Top](#)

Procedure

Rozenblit v Vainer & Anor

M114/2017: [\[2017\] HCATrans 167](#)

Date heard: 18 August 2017 – *Special leave granted on limited grounds.*

Catchwords:

Procedure – *Supreme Court (General Civil Procedure) Rules 2005* (Vic) r 63.03(3) – Access to courts – Impecuniosity – Where appellant made applications to file and serve amended statement of claim – Where applications refused with costs – Where appellant made further application for leave to cure drafting deficiencies – Where associate judge granted leave to file and serve amended statement of claim but ordered proceeding be stayed under r 63.03(3) until appellant paid interlocutory costs orders – Where Court of Appeal dismissed appeal – Whether in circumstances where appellant unable to meet interlocutory costs orders and no finding appellant conducted litigation in manner amounting to harassment or because of collateral purpose, Court of Appeal erred in failing to find not open to associate judge to make order under r 63.06(3) or exercise inherent jurisdiction to stay proceeding.

Appealed from VSC (CA): [\[2017\] VSCA 52](#)

[Return to Top](#)

Clone Pty Ltd v Players Pty Ltd (In Liquidation) (Receivers & Managers Appointed) & Ors

[A22/2017](#); [A23/2017](#): [\[2017\] HCATrans 130](#)

Date heard: 16 June 2017 – *Special leave granted on limited grounds.*

Catchwords:

Procedure – Jurisdiction to set aside judgment – Whether power of Supreme Court to set aside perfected orders in its equitable jurisdiction extends to malpractice not amounting to fraud – Where document lodged by first respondent was contained in files of fifth respondent – Where primary judge found that appellant’s legal advisers engaged in “serious malpractice” by recklessly failing to discover document – Where primary judge found that first respondent failed to exercise reasonable diligence in searching for document – Where primary judge ordered new trial on basis that there was “real possibility” that issue would have been decided differently – Whether Court of Appeal erred in formulation and application of principles that inform jurisdiction to set aside perfected judgment on ground of malpractice for failure to disclose document.

Appealed from SASC (CA): [\[2016\] SASCFC 134](#); (2016) 127 SASR 1

[Return to Top](#)

Real Property

Pike & Anor v Tighe & Ors

[B33/2017](#): [\[2017\] HCATrans 127](#)

Date heard: 16 June 2017 – *Special leave granted.*

Catchwords:

Real property – Statutory interpretation – *Sustainable Planning Act 2009* (Qld) – Where second respondent granted approval for reconfiguration of original lot into Lots 1 and 2 – Where approval subject to condition that easement for “pedestrian and vehicle access, on-site manoeuvring and connection of services and utilities” be registered for benefit of Lot 2 – Where registered easement does not permit “on-site manoeuvring and connection of services and utilities” – Where first respondents registered owners of Lot 1 and appellants registered owners of landlocked Lot 2 – Whether Court of Appeal erred in concluding that power to make enforcement order under s 604(1) arose only upon Planning and Environment Court being satisfied that first respondents committed development offence against s 580(1) – Whether Court of Appeal

erred in failing to conclude that condition of development approval imposed continuing obligation despite reconfiguration approval by registration of survey plan.

Appealed from QSC (CA): [\[2016\] QCA 353](#)

[Return to Top](#)

Torts

Trkulja v Google Inc

M88/2017: [\[2017\] HCATrans 129](#)

Date heard: 16 June 2017 – *Special leave granted.*

Catchwords:

Torts – Defamation – Publication – Respondent internet search engine – Search results – Images – Text – Autocomplete predictions – Whether respondent “published” matter relied on by applicant.

Practice and procedure – Service outside jurisdiction – *Supreme Court (General Civil Procedure) Rules 2015* (Vic) r 7.01(1)(i) and (j) – Where respondent served in United States – Where Court of Appeal held service should be set aside because no real prospect of success in providing that respondent was publisher – Whether Court of Appeal erred in confining case to primary publisher rather than secondary.

Appealed from VSC (CA): [\[2016\] VSCA 333](#)

[Return to Top](#)

7: CASES NOT PROCEEDING OR VACATED

8: SPECIAL LEAVE REFUSED

Publication of Reasons: 9 August 2017

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Pseudos	Commonwealth Bank of Australia (A7/2017)	Federal Court of Australia [2017] FCA19	Application dismissed [2017] HCASL 151
2.	DZAEK & Ors	Minister for Immigration and Border Protection & Anor (A13/2017)	Federal Court of Australia [2017] FCA 247	Application dismissed [2017] HCASL 152
3.	Re Poyton (B18/2017)		High Court of Australia [2017] HCATrans 043	Application dismissed [2017] HCASL 153
4.	Collins	Ricardo (S103/2017)	Full Court of the Family Court of Australia	Application dismissed [2017] HCASL 154
5.	NTD 16	Minister for Immigration and Border Protection & Anor (S112/2017)	Federal Court of Australia [2017] FCA 334	Application dismissed [2017] HCASL 155
6.	Julia Yvette Wedding atf The Julia Wedding Super Fund	Attorney General (S116/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 70	Application dismissed [2017] HCASL 156
7.	AIZ15 & Anor	Minister for Immigration and Border Protection & Anor (S121/2017)	Federal Court of Australia [2017] FCA 408	Application dismissed [2017] HCASL 157
8.	Lee	Attorney General for NSW (S91/2017)	Supreme Court of New South Wales (Court of Criminal Appeal) [2017] NSWCCA 27	Application dismissed [2017] HCASL 158
9.	Lee	Attorney General for NSW (S92/2017 & S93/2017)	Supreme Court of New South Wales (Court of Criminal Appeal) [2017] NSWCCA 27	Applications dismissed [2017] HCASL 159
10.	FAL	The Queen (B15/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 22	Application dismissed [2017] HCASL 160
11.	Pham	The Queen (B19/2017)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 43	Application dismissed [2017] HCASL 161
12.	Bodycorp Repairers Pty Ltd	Oakley Thompson & Co Pty Ltd (M35/2017 & M36/2017)	Supreme Court of Victoria (Court of Appeal) [2017] VSCA 22 & 23	Applications dismissed with costs [2017] HCASL 162

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
13.	Pateras	State of Victoria (M39/2017)	Supreme Court of Victoria (Court of Appeal) [2017] VSCA31	Application dismissed with costs [2017] HCASL 163
14.	AUP15	Minister for Immigration and Border Protection & Anor (M42/2017)	Federal Court of Australia [2017] FCA 192	Application dismissed with costs [2017] HCASL 164
15.	Lee	Director of Public Prosecutions (M57/2017)	Supreme Court of Victoria [2017] VSCA 82	Application dismissed with costs [2017] HCASL 165

[Return to Top](#)

Publication of Reasons: 15 August 2017

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Bal	Minister for Immigration and Border Protection & Anor (M41/2017)	Federal Court of Australia [2017] FCA 228	Application dismissed [2017] HCASL 166
2.	Iqbal	Minister for Immigration and Border Protection & Anor (M45/2017)	Federal Court of Australia [2017] FCA 257	Application dismissed [2017] HCASL 167
3.	Reaper & Anor	Vrsecky (M46/2017)	Federal Court of Australia [2016] FCA 509	Application dismissed [2017] HCASL 168
4.	Kitanovski	Melton City Council & Anor (M48/2017)	Supreme Court of Victoria (Court of Appeal) [2017] VSCA 15	Application dismissed [2017] HCASL 169
5.	Tanius	New South Wales Land and Housing Corporation (S100/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 66	Application dismissed [2017] HCASL 170
6.	APT16	Minister for Immigration and Border Protection & Anor (S101/2017)	Federal Court of Australia [2017] FCA 318	Application dismissed [2017] HCASL 171
7.	SZTQZ	Minister for Immigration and Border Protection & Anor (S105/2017)	Federal Court of Australia [2017] FCA 282	Application dismissed [2017] HCASL 172
8.	Smith	Alison Byrne (New South Wales Electoral Commission) (S109/2017)	Supreme Court of New South Wales (Court of Criminal Appeal) [2017] NSWCCA 35	Application dismissed [2017] HCASL 173
9.	SZVRO	Minister for Immigration and Border Protection & Anor (S140/2017)	Federal Court of Australia [2017] FCA 421	Application dismissed [2017] HCASL 174
10.	Ferdinands	Commissioner of the Australian Federal Police (A15/2017)	High Court of Australia	Application dismissed [2017] HCASL 175
11.	Banerji	Minister for Immigration and Border Protection & Ors (C8/2017)	High Court of Australia [2017] HCATrans 101	Application dismissed [2017] HCASL 176
12.	MZAPQ	Minister for Immigration and Border Protection & Anor (M37/2017)	Federal Court of Australia [2017] FCA 206	Application dismissed [2017] HCASL 177
13.	BGP16	Minister for Immigration and Border Protection & Anor (S52/2017)	Federal Court of Australia [2017] FCA 261	Application dismissed [2017] HCASL 178
14.	Ramjali	Minister for Immigration and Border Protection & Anor (S95/2017)	Federal Court of Australia [2017] FCA 271	Application dismissed [2017] HCASL 179

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
15.	Mahmoud	Attorney General of NSW (S96/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 12	Application dismissed [2017] HCASL 180
16.	DN	The Queen (S102/2017)	Supreme Court of New South Wales (Court of Criminal Appeal) [2016] NSWCCA 252	Application dismissed [2017] HCASL 181
17.	Sharma	Insurance Australia Limited trading as NRMA Insurance (S104/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 55	Application dismissed [2017] HCASL 182
18.	Egitmen	The State of Western Australia (P8/2017)	Supreme Court of Western Australia (Court of Appeal) [2016] WASCA 214	Application dismissed [2017] HCASL 183
19.	DKA	The State of Western Australia (P14/2017)	Supreme Court of Western Australia (Court of Appeal) [2017] WASCA 44	Application dismissed [2017] HCASL 184
20.	Central Queensland Services Pty Ltd	Construction, Forestry, Mining and Energy Union & Anor (B16/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 43	Application dismissed with costs [2017] HCASL 185
21.	BM Alliance Coal Operations Pty Ltd	Construction, Forestry, Mining and Energy Union & Anor (B17/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 43	Application dismissed with costs [2017] HCASL 186
22.	Plaintiff M126/2016	Minister for Immigration and Border Protection & Ors (M38/2017)	High Court of Australia	Application dismissed with costs [2017] HCASL 187
23.	McMaster	Qube Ports Pty Limited (M54/2017)	Full Court of the Federal Court of Australia [2016] FCAFC 123	Application dismissed with costs [2017] HCASL 188
24.	Coretell Pty Ltd & Ors	Australian Mud Company Pty Ltd & Anor (P17/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 54	Application dismissed with costs [2017] HCASL 189
25.	Warner-Lambert Company LLC & Ors	Apotex Pty Ltd (S107/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 58	Application dismissed with costs [2017] HCASL 190
26.	Warner-Lambert Company LLC & Ors	Generic Partners Pty Ltd (S108/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 58	Application dismissed with costs [2017] HCASL 191
27.	Tanioria	Commonwealth of Australia & Anor (S50/2017)	Application for Removal	Application dismissed with costs [2017] HCASL 192

[Return to Top](#)

18 August 2017: Brisbane

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Holzinger	The Queen (B9/2017)	Supreme Court of Queensland (Court of Appeal) [2016] QCA 160	Special leave refused [2017] HCATrans 160
2.	Glen Wright bht James Stuart Wright	Optus Administration Pty Limited & Anor (S56/2017)	Supreme Court of New South Wales (Court of Appeal) [2017] NSWCA 21	Special leave refused with costs [2017] HCATrans 159
3.	Gaynor	Chief of the Defence Force (S86/2017)	Full Court of the Federal Court of Australia [2017] FCAFC 41	Special leave refused with costs [2017] HCATrans 162

[Return to Top](#)

18 August 2017: Melbourne

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Eicas	Dawson (A4/2017)	Full Court of the Supreme Court of South Australia [2016] SASCFC 124	Special leave refused with costs [2017] HCATrans 165
2.	Normandy Finance and Investments Asia Pty Ltd & Anor	Commissioner of Taxation & Ors (S97/2017)	Full Court of the Federal Court of Australia [2016] FCAFC 180	Special leave refused with costs [2017] HCATrans 166
3.	Townsing	Commissioner of Taxation & Ors (S98/2017)	Full Court of the Federal Court of Australia [2016] FCAFC 180	Special leave refused with costs [2017] HCATrans 166
4.	Townsing & Ors	Commissioner of Taxation (S99/2017)	Full Court of the Federal Court of Australia [2016] FCAFC 180	Special leave refused with costs [2017] HCATrans 166

[Return to Top](#)