SHORT PARTICULARS OF CASES

JUNE 2016

No.	Name of Matter	Page No
	TUESDAY, 7 JUNE	
1.	MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR v. SZSSJ & ANOR; MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ORS v. SZTZI	**1**
	WEDNESDAY, 8 JUNE	
2.	DEAL v. FATHER PIUS KODAKKATHANATH	**3**
	THURSDAY, 9 AND FRIDAY, 10 JUNE	
3.	NH v. THE DIRECTOR OF PUBLIC PROSECUTIONS; JAKAJ v. THE DIRECTOR OF PUBLIC PROSECUTIONS; ZEFI v. THE DIRECTOR OF PUBLIC PROSECUTIONS; STAKAJ v. THE DIRECTOR OF PUBLIC PROSECUTIONS	**5**
	TUESDAY, 14 JUNE	
4.	GRAHAM v. THE QUEEN	**7**
	WEDNESDAY, 15 JUNE	
5.	SIO v. THE QUEEN	**9**
	THURSDAY, 16 JUNE	
6.	CUNNINGHAM & ORS v. COMMONWEALTH OF AUSTRALIA & ANOR	**11**

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MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR v SZSSJ & ANOR (S75/2016);
MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ORS v SZTZI (S76/2016)

Court appealed from: Full Court of the Federal Court of Australia [2015] FCAFC 125

Date of judgment: 2 September 2015

Special leave granted: 11 March 2016

SZSSJ and SZTZI (together, "the respondents") are unrelated foreign nationals who each applied for a protection visa after being placed in immigration detention. Both applications were refused, and those refusals were confirmed upon review by the Refugee Review Tribunal.

On 10 February 2014, a statistical document was published on the website of the Department of Immigration and Border Protection ("the Department"). That document mistakenly contained links to personal information about persons, including each of the respondents, who were in immigration detention on 31 January 2014. The incident came to be known as "the Data Breach".

SZSSJ applied to the Federal Circuit Court ("the FCCA"), seeking declarations and injunctions against the Minister for Immigration and Border Protection ("the Minister") in relation to the disclosure of SZSSJ's personal information through the Data Breach. The application was dismissed, on the basis that it did not impugn a decision made under the *Migration Act* 1958 (Cth) ("the Act") so as to enliven the jurisdiction of the FCCA. The Federal Court then allowed an appeal by SZSSJ and remitted the matter to the FCCA, holding that certain conduct by the Department was preparatory to a decision by the Minister as to whether SZSSJ would be removed from Australia under s 198(6) of the Act, and that the FCCA's jurisdiction was attracted under s 476 of the Act.

The relevant conduct was the Department's inviting SZSSJ, on three occasions in 2014, to communicate any concerns he had about the impact of the Data Breach on his ability to return to his home country. The third invitation, made in October 2014, also stated that the information provided by SZSSJ in his proceedings in the FCCA and the Federal Court would be considered by the Department as part of an International Treaties Obligations Assessment ("ITOA") it had commenced. The ITOA was to assess Australia's non-refoulement obligations under international law in respect of SZSSJ.

On 16 December 2014 s 197C of the Act commenced operation. Section 197C provides that Australia's non-refoulement obligations are irrelevant for the purposes of s 198 of the Act.

On 28 April 2015 Judge Cameron dismissed SZSSJ's remitted application. His Honour found that the Department was duly giving procedural fairness to SZSSJ in the ITOA process and that it was not obliged to provide information about the Data Breach to the extent that SZSSJ had sought. Judge Cameron also held that by virtue of s 197C of the Act the Minister could not be restrained, on the basis that the ITOA had not been completed, from removing SZSSJ from Australia under s 198.

In the meantime, an ITOA was carried out in respect of SZTZI. It concluded that Australia's non-refoulement obligations were not engaged in respect of her.

SZTZI then applied to the FCCA, impugning the ITOA and seeking an injunction restraining the Minister from relying on it. On 12 May 2015 Judge Street dismissed the application. His Honour held that the report that resulted from the ITOA was not a decision made under the Act and that s 197C prevented any argument about the ITOA insofar as s 198 was concerned. Judge Street found that in any event SZTZI had been afforded procedural fairness during the ITOA.

The respondents each appealed. The Full Court of the Federal Court (Rares, Perram & Griffiths JJ) unanimously allowed both appeals. (The Full Court dealt with SZSSJ's appeal before briefly determining SZTZI's for similar reasons.) Their Honours held that s 197C of the Act did not apply to SZSSJ because at the time of its introduction a right had accrued to SZSSJ, under s 198, not to be removed from Australia until non-refoulement had been assessed in a procedurally fair manner. This was due to the operation of s 7(2) of the *Acts Interpretation Act* 1901 (Cth). The Full Court then found that the Minister had in effect decided to consider whether to exercise his discretionary powers under ss 48B, 195A and 417 of the Act in relation to SZSSJ and that the ITOA was conduct preparatory to decisions to be made by the Minister under those sections. Their Honours found that obligations of procedural fairness were owed to SZSSJ that had not been met by the ITOA or the Department's invitations to SZSSJ to communicate his concerns. In particular, SZSSJ had not been informed of the decision-maker, the powers being exercised or the full circumstances of the Data Breach. The Full Court held that s 197C of the Act did not prevent the Department from considering Australia's non-refoulement obligations where the Minister was considering whether to exercise his powers under ss 48B, 195A and 417 of the Act. Their Honours also held that s 476(2)(d) of the Act did not deprive the FCCA of jurisdiction over SZSSJ's claim, as the relief sought was in relation to an anticipated decision under s 198 and to the *process* that might lead to a decision under ss 48B, 195A or 417 rather than to a privative clause decision as described in s 474(7) of the Act.

In each appeal, the grounds of appeal include:

- The Full Court erred in finding that s 197C of the Act did not apply in the proceeding by operation of s 7(2) of the *Acts Interpretation Act* 1901 (Cth) on the basis that the Act prior to its amendment to insert s 197C gave the respondent a right arising under s 198 not to be removed until a procedurally fair assessment of his non-refoulement claims was conducted.

- The Full Court erred in finding the Federal Circuit Court had jurisdiction to hear and determine the respondent's claims for declaratory and injunctive relief.

DEAL v KODAKKATHANATH (M252/2015)

Court appealed from: Court of Appeal, Supreme Court of Victoria [2015] VSCA 191

Date of judgment: 24 July 2015

Date special leave granted: 11 December 2015

The appellant was employed by the respondent as a primary school teacher. On 19 September 2007, she had to remove a number of large sheets to which were attached papier mache displays, from a pin board on a wall of a classroom. The respondent had provided a two step ladder ('the steps') for use when performing this task. The steps, which were an 'A' frame configuration, had to be set at right angles to the pin-board. The appellant had to ascend the steps, unpin the displays, and whilst carrying one or more of them, descend the steps backwards. As she was descending, she held the displays by putting both hands underneath them. She thus had no hand free to steady herself. Because of their size, she also had an impaired view of the steps which she was descending. She missed her footing and fell, suffering injury to her right knee.

The appellant issued proceedings in the County Court of Victoria in which she claimed damages for injury by reason of negligence and breach of statutory duty on the part of the respondent. During the course of the trial the respondent submitted that the evidence adduced did not permit a conclusion that the appellant had suffered injury in breach of regs 3.1.1, 3.1.2 and 3.1.3 of the *Occupational Health and Safety Regulations* 2007 (Vic), as pleaded by the appellant. Regulation 3.1.1 requires an employer to identify any task undertaken, or to be undertaken, by an employee 'involving hazardous manual handling'; reg 3.1.2 requires an employer to ensure that the risk of a musculoskeletal disorder associated with a hazardous manual handling task is eliminated or reduced so far as is reasonably practicable; and reg 3.1.3 requires review, and if necessary revision, of any measures which have been implemented to control risks in relation to musculoskeletal disorders. The trial judge (Judge McInerney) found there was no circumstance whereby the definition of hazardous manual handling could be met in this case, so the pleading could not be put to the jury.

The appellant appealed to the Court of Appeal (Warren CJ and Ashley JA, Digby AJA dissenting) on the ground, inter alia, that the trial judge wrongly removed the breach of statutory duty claim from the jury's consideration. The majority of the Court held that hazardous manual handling could be constituted by a single episode of manual handling of an unstable or unbalanced load or one that is difficult to grasp or hold; and it was not necessary that the activity carry with it the risk of associated musculoskeletal injury. Therefore, it could be said that Regulation 3.1.1 was potentially engaged. But the question which then arose was what was comprehended, in reg 3.1.2, by 'the risk of a musculoskeletal injury associated with a hazardous manual handling task'? The majority did not accept that it was enough to show that an appellant in fact suffered a musculoskeletal injury whilst performing a hazardous manual handling task. If such a connection was sufficient, the expression 'associated with' would not be given due regard.

The majority found that it should not be regarded as reasonably practicable for an employer considering the generic task of removing light displays from pin boards using steps of the kind used by the appellant to conclude that the task would, or even might, involve hazardous manual handling. The circumstances in which the

appellant suffered injury illustrated the point. Assuming that the task nominally fell within paragraph (c) of the definition of 'hazardous manual handling', it did so because the appellant chose to handle multiple displays at the one time, which meant holding them horizontally. Although it could be said that the evidence permitted a conclusion that the carrying of the displays had a certain causative relationship with the appellant's fall - either because the displays obscured her vision of the steps; or because, using both hands to handle the displays, she could not steady herself - such a connection could not satisfy the relationship between risk and activity which was required by regulation 3.1.2.

Digby AJA (dissenting) considered that the appellant had a real prospect of ultimate success on the breach of statutory duty cause of action. Regulation 3.1.1 required the respondent to identify any task involving hazardous manual handling. It was open on the evidence for the jury to conclude that the respondent had failed to undertake and complete such identification. Regulation 3.1.2 required the respondent to reduce the risk of a musculoskeletal disorder associated with a hazardous manual handling task by, insofar as reasonably practicable, changing the relevant systems of work used to undertake that task. On the evidence, the respondent's systems of work should arguably have been altered to ensure that a person in the appellant's position was assisted by another person when demounting displays and before descending the ladder used for that task.

The grounds of appeal include:

- The Court of Appeal was wrong in holding that the risk of injury, or the musculoskeletal disorder, to the appellant was not a risk "associated with" the hazardous manual handling tasks in which she was engaged, within the meaning of reg 3.1.2 of the *Occupational Health and Safety Regulations* 2007 (Vic).

The respondent has filed a Notice of Contention which submits that any contravention of reg 3.1.1, 3.1.2 or 3.1.3 of *Occupational Health and Safety Regulations* 2007 (Vic), properly construed, did not confer upon the appellant a private right of action in damages for breach of statutory duty.

<u>NH v THE DIRECTOR OF PUBLIC PROSECUTIONS</u> (A14/2016);
<u>JAKAJ v THE DIRECTOR OF PUBLIC PROSECUTIONS</u> (A15/2016);
<u>ZEFI v THE DIRECTOR OF PUBLIC PROSECUTIONS</u> (A16/2016);
<u>STAKAJ v THE DIRECTOR OF PUBLIC PROSECUTIONS</u> (A19/2016)

<u>Court appealed from</u>: Full Court, Supreme Court of South Australia [2015] SASFC 139

<u>Date of judgment</u>: 25 September 2015

<u>Date special leave granted</u>: 11 March 2016

The appellants were charged with murder. Following a trial in the Supreme Court of South Australia, on 22nd September 2014, the jury returned to deliver its verdict. In response to questions from the judge's associate, the foreperson of the jury announced that the jury found the appellants not guilty of murder and guilty of manslaughter. In answer to a further question by the associate, the foreperson affirmed that the verdict of not guilty to murder was the verdict of ten or more of the jury. The questions were repeated in relation to each of the appellants, and the same answers were given. Each of them was found not guilty of murder and guilty of manslaughter.

Later that day, the foreperson telephoned the Court and asked to see the Jury Manager. In the next few days, the Sheriff met with the foreperson and each of the other jurors and obtained signed statements from them regarding the accuracy of the verdicts. The statements indicated that there was an irregularity in the announcement of the verdict, in that the foreperson responded ‘yes’ to the question as to whether each of the not guilty verdicts on the charge of murder was the verdict of ten or more of the jury, when the correct response was 'no'.

Stakaj and NH lodged applications for permission to appeal against the convictions of manslaughter. On 16 January 2015, the respondent filed a cross-application, seeking that the Court exercise its inherent jurisdiction to expunge or quash all verdicts and order new trials. On 5 March 2015, the respondent filed a further application, requesting that the trial Judge refer to the Full Court five questions of law for its consideration and determination. The Full Court (Kourakis CJ dissenting, Gray and Sulan JJ,) granted the respondent's application and ordered that the jury verdicts of not guilty of murder and the convictions of manslaughter be quashed, that the sentences be set aside and there be a retrial on the charge of murder.

The majority first considered whether strict compliance with s 57 of the *Juries Act 1927 (SA)* was required. They accepted the respondent’s submission that departures from the requirements of s 57 result in unauthorised verdicts and verdicts that do not accord with law.

The majority then noted that they could not determine the application without understanding the issue with the verdicts, and to do this the respondent had to convince the Court to admit the evidence of the jurors. If the respondent was successful in admitting the evidence and the Court determined it had jurisdiction to hear the application, the question became whether the Court had a power, inherent or otherwise, to expunge or quash a jury acquittal that had been entered onto the Court record.

With respect to the admissibility of the affidavits of the jurors, the majority noted that it is a general rule of the administration of criminal justice that once a trial has been determined upon the verdict of a jury, and the jury discharged, evidence of a juror or jurors as to the deliberations of the jury is not admissible to impugn the verdict. However, in this case the respondent was not asking the Court to inquire into the reasons for verdict. The affidavits tendered did not reveal anything of the jury's deliberative processes. The questioning of the jury, when the foreperson delivered the verdict of the jury, took place in open court. It was the response to those questions that was the subject of the evidence sought to be led. A verdict delivered in open court is the public pronouncement of the results of the jury's deliberations. The Court found that if that pronouncement did not reflect the true verdict, the Court could have regard to evidence which established that fact.

In considering whether the Court had jurisdiction to hear the respondent's application and to declare the acquittal of each accused void and order a retrial, the majority noted that a verdict of acquittal by a jury has long been considered as sacrosanct. However, they also noted that the inherent jurisdiction of the Court was not restricted to closed and defined categories. As a superior court of record, the Court had an inherent jurisdiction to review an order entered that was infected by error and, in particular, was noncompliant with the mandatory requirements of s 57 of the *Juries Act*. The Court had power to ensure that jury verdicts were delivered in compliance with the statutorily mandated legal provisions. The issue of the appellants receiving the full benefit of jury acquittals was not to the point, as there had been no valid jury acquittals. The powers relating to protection of abuse of process extended to precluding the undermining of confidence in courts generally. Allowing a verdict which was arrived at other than by strict compliance with mandated legal requirements would undermine this confidence.

Kourakis CJ dissented on the issue of the power of the Court to set aside a judgment of acquittal based on a jury verdict of not guilty. He noted that there was no statutory grant of jurisdiction or power to do so. He held that the Court should not delve into its inherent powers and fashion a never before contemplated power to set aside judgments of acquittal, notwithstanding the centuries old principles and procedures of the common law which have accorded such judgments, subject to certain presently immaterial exceptions, inviolability.

The grounds of appeal include:

- The Full Court erred in holding that it had jurisdiction to hear and determine the application of the respondent and to 'quash' or set aside the jury verdicts of not guilty for murder, in circumstances where the jury had dispersed, the orders were perfected, there is no avenue of appeal, and rights of appeal and review are exhaustively regulated by statute.

GRAHAM v THE QUEEN **(B14/2016)**

Court appealed from: Supreme Court of Queensland, Court of Appeal [2015] QCA 137

Date of judgment: 24 July 2015

Special leave granted: 11 March 2016

Mr Mark Graham and Mr Jacques Teamo, members of different bikie gangs, met unexpectedly in a shopping complex on 28 April 2012. After eyeballing each other for a time, Mr Teamo asked Mr Graham what he was looking at. The two then yelled at each other and postured aggressively. As Mr Graham strode towards Mr Teamo, the latter produced a flick knife and the former produced a hand gun. As Mr Teamo backed away, Mr Graham fired his gun at close range. The bullet struck Mr Teamo in the arm. As Mr Teamo started running away, Mr Graham fired a second shot at him. That bullet however struck a nearby shopper.

Mr Graham was charged with four counts, namely:

1. attempted murder of Mr Teamo;
2. wounding Mr Teamo with intent to maim him (as an alternative to count 1);
3. wounding the shopper with intent to wound Mr Teamo; and
4. unlawful possession of a hand gun.

Mr Graham pleaded guilty to count 4 and was tried before a jury on counts 1, 2 and 3. At the trial, the jury had to determine which weapon was drawn first and whether the prosecution had successfully excluded the possibility that Mr Graham had acted in self-defence to an assault committed on him by Mr Teamo. The three forms of self-defence available were those set out in ss 271(1), 271(2) and 272(1) of the *Criminal Code* (Qld).

The jury found Mr Graham guilty of counts one and three. Justice Wilson then sentenced him to imprisonment for 12 years and 3 months.

Mr Graham appealed against his conviction, contending that the prosecutor's address to the jury had been misleading and that directions given by Justice Wilson had not properly dealt with it. Mr Graham submitted that the prosecutor should not have told the jury they might conclude that the confrontation was consensual and therefore could not involve an assault. Rather, the jury should have been told only that the potential assault relevant to whether Mr Graham had acted in self-defence was Mr Teamo's drawing of the knife.

The Court of Appeal (Morrison JA, Atkinson & Applegarth JJ) unanimously dismissed the appeal. Their Honours found that Justice Wilson had fairly and correctly directed the jury as to the issue of assault, including the relevance of Mr Teamo's drawing of the knife. As the prosecutor had correctly pointed out that lack of consent was an element of the offence of assault, there was no need for Justice Wilson to further address that aspect of the issue.

The grounds of appeal include:

- In light of the case put by the Crown to the jury on the issue of self-defence, the Court of Appeal should have held that the trial judge:

- failed to properly identify the "assault" to which self-defence was made namely the threatened application of force constituted by the production of the flick knife;
- failed to properly and adequately direct the jury on the issue of "consent" to the assault to which Mr Graham made self-defence, and in particular the trial judge:
    - failed to direct the jury that the issue was not whether Mr Graham had consented to some threat of violence antecedent to the relevant "assault"; and
    - failed to direct the jury that consent arose as an issue only in relation to consent to the particular assault to which self-defence was made.

<u>SIO v THE QUEENZ</u> (S83/2016)

<u>Court appealed from</u>:	New South Wales Court of Criminal Appeal [2015] NSWCCA 42
<u>Date of judgment</u>:	31 March 2015
<u>Special leave granted & ground referred</u>:	11 March 2016

On 24 October 2012 Mr Richard Filihia, armed with a bowie knife, entered a brothel to which he had been driven by a second man. Sitting in the car's front passenger seat at the time was Ms Sarah Coffison. Inside the brothel Mr Filihia stabbed its receptionist, Mr Brian Gaudry, before running away with cash he had taken from Mr Gaudry's back pocket. Mr Filihia was then picked up by the car in which he had arrived. Mr Gaudry died from his wounds.

On the evening of 24 October 2012 police recorded electronically an interview with Mr Filihia ("the Interview"). During the Interview Mr Filihia admitted to having stabbed Mr Gaudry. He said that he had been driven to the brothel by someone named "Jacob". At one point Mr Filihia referred to "Dan", though he then said that was a mistaken reference. Mr Filihia also said that after the stabbing he had put the knife on to the front passenger seat of the car. Later that night, Mr Filihia gave a written statement ("the Statement") in which he said that someone known as "Danny" or "Dan" had given him the knife, driven him to the brothel and told him where to find cash inside, and that the men had agreed to "split the money fifty fifty" after Mr Filihia had taken it. From a photo array on 25 October 2012, Mr Filihia identified Mr Daniel Sio as the man "who took me to the brothel and put me up to rob it". At no stage however did Mr Filihia mention the presence of Ms Coffison in the car. In August 2013 Mr Filihia pleaded guilty to the armed robbery (with wounding) and murder of Mr Gaudry.

Mr Sio was later tried on charges of murder and armed robbery with wounding, on the basis that he had participated in a joint criminal enterprise with Mr Filihia to rob the brothel armed with a knife. Mr Filihia was a witness for the Crown in Mr Sio's trial. Mr Filihia however refused to take an oath or affirmation or to answer any questions in court. The trial judge, Justice Adamson, then admitted into evidence both the Interview and the Statement. This was as an exception to the hearsay rule, under s 65(2)(d) of the *Evidence Act* 1995 (NSW) ("the Act"), on the basis that the Interview and the Statement were against Mr Filihia's interests and were made in circumstances such that they were likely to be reliable. The jury later acquitted Mr Sio of murder but found him guilty of armed robbery with wounding. Justice Adamson then sentenced Mr Sio to imprisonment for 10 years with a non-parole period of 7½ years.

Mr Sio appealed against his conviction, contending that the Interview and the Statement should not have been admitted into evidence and that the jury's verdict was unreasonable and could not be supported by the evidence.

The Court of Criminal Appeal ("CCA") (Leeming JA, Johnson & Schmidt JJ) unanimously dismissed Mr Sio's appeal. Their Honours held that a court's consideration of the reliability of representations under s 65(2)(d) of the Act was to go no further than the circumstances in which the representations were made. Any unreliability in the representations themselves, such as Mr Filihia's concealment of the presence of Ms Coffison or his reference to "Jacob", was

irrelevant. The CCA found that the circumstances indicated likely reliability, as the Interview was made within 24 hours of the incident and Justice Adamson had found that Mr Filihia's answers appeared unrehearsed. Their Honours held that there was sufficient evidence upon which the jury could infer that Mr Sio had been complicit in obtaining the knife that Mr Filihia had used to stab Mr Gaundry. Mr Sio could therefore properly be found guilty of armed robbery.

In his application to this Court for special leave to appeal, Mr Sio proposed two grounds of appeal. On 11 March 2016 Justices Bell and Gordon granted Mr Sio special leave, limited to his first ground of appeal. Their Honours referred Mr Sio's second ground of appeal to an enlarged bench of the Court for argument as on an appeal.

The first ground of appeal is:

- The verdict is unreasonable and cannot be supported by the evidence. The CCA should have:
    - held that the verdict of guilty on the charge of armed robbery with wounding was inconsistent with the verdict of not guilty on the charge of constructive murder;
    - held that the trial judge erred in her directions on armed robbery with wounding; and
    - quashed the conviction and entered a verdict of acquittal.

The second ground of appeal is:

- The CCA erred in failing to find that the trial judge erred in admitting into evidence representations contained in the Interview and the Statement. The CCA should have held that:
    - s 65(2) of the Act required the trial judge to assess each of the representations relied upon by the Crown individually;
    - s 65(2) of the Act required the trial judge to take into account the "demonstrable unreliability" of individual representations when determining whether a representation was "made in circumstances that make it likely that the representation is reliable";
    - *Shamouil v R* (2006) 66 NSWLR 228 does not limit the matters that may be taken into account in assessing the circumstances in which a representation is made for the purposes of s 65(2);
    - *Shamouil v R* (2006) 66 NSWLR 228 is wrongly decided in so far as it precludes consideration of factors affecting reliability for the purposes of the mandatory exercise in s 137 of the Act; and
    - It was an error to admit the Interview and the Statement, or it was an error to admit the representations concerning the origins of the knife contained in the Interview and the Statement.

CUNNINGHAM & ORS v COMMONWEALTH OF AUSTRALIA & ANOR (S140/2015)

Date writ of summons filed: 21 July 2015

Special case referred to Full Court: 3 February 2016

Former members of the Commonwealth Parliament (who have completed a minimum period of service) are each paid a superannuation retiring allowance ("the Retiring Allowance"), which is calculated in part upon the duration of their parliamentary service. Former members who also held a parliamentary office (such as Government Whip or Chair of a Standing Committee) or who served as Ministers of State are entitled to an additional allowance for having held such office. The allowances are provided pursuant to the *Parliamentary Contributory Superannuation Act* 1948 (Cth) ("the Superannuation Act"). Parliament has from time to time changed the form and content of the allowances payable to its former members.

Former members of Parliament are also entitled to a travel pass known as a "Life Gold Pass" ("LGP") if their parliamentary service meets certain eligibility criteria as determined from time to time by the Remuneration Tribunal ("the Tribunal"). An LGP entitles its holder (and his or her spouse or de facto partner) to travel on various modes of public transport within Australia, for non-commercial purposes, at official expense (that is, the fees charged by carriers such as airlines are paid from the Commonwealth's Consolidated Revenue Fund).

In 2002 the *Members of Parliament (Life Gold Pass) Act* 2002 (Cth) ("the 2002 LGP Act") was enacted. Section 11(2) of the 2002 LGP Act imposed a maximum of 25 return trips per year on holders of an LGP (or 40 trips per year for former Prime Ministers). In 2012 the 25 trips maximum was reduced to 10 return trips, following an amendment of s 11(2) of the 2002 LGP Act effected by the *Members of Parliament (Life Gold Pass) and Other Legislation Amendment Act* 2012 (Cth) ("the 2012 Amendment Act").

In August 2011 the *Remuneration and Other Legislation Amendment Act* 2011 (Cth) amended various Acts in ways that changed the manner of calculation of the Retiring Allowance. Prior to those amendments, the calculation involved the application of a fixed percentage to the base salary payable to (current) members of Parliament ("the base salary"). Following the August 2011 amendments, the relevant percentage is applied to an amount less than the base salary. That lesser amount is calculated by deducting from the base salary an amount determined by the Remuneration Tribunal as not forming part of the base salary for the purposes of the Superannuation Act. The 2012 Amendment Act made similar changes to the manner of calculation of the additional allowances payable to former members who had held a parliamentary office or served as a Minister of State.

The plaintiffs are former members of the Commonwealth Parliament who held parliamentary offices and/or positions as Ministers of State. On 21 July 2015 they commenced proceedings in this Court, challenging the validity of certain statutory provisions and determinations made by the Remuneration Tribunal.

A notice of a constitutional matter was filed by the plaintiffs. No Attorney-General has given notice of an intention to intervene in the proceedings.

The parties filed a special case containing the following questions, which Justice Gageler referred for consideration by the Full Court:

1. Do any, and if so which, of the following laws and Determinations of the Tribunal constitute or authorise an acquisition of any, and if so what, property of the plaintiffs, or any of them, otherwise than on just terms, within the meaning of s 51(xxxi) of the Constitution:

    a. *Remuneration Tribunal Act* 1973 (Cth), ss 7(1A), 7(1B), 7(1C) and 7(2A);

    b. *Remuneration and Other Legislation Amendment Act* 2011 (Cth), s 3 (insofar as it made the amendments or repeals provided for in Sch 2, items 1, 16A, 17A, 19, 20, 21(2));

    c. *Members of Parliament (Life Gold Pass) and Other Legislation Amendment Act* 2012 (Cth), s 3 (insofar as it made the amendments or repeals provided for in Sch 2, items 1, 2, 3, 5, 6, 7, 8 and 9);

    d. *Members of Parliament (Life Gold Pass) Act* 2002 (Cth), s 11(2) (as originally enacted);

    e. *Members of Parliament (Life Gold Pass) and Other Legislation Amendment Act* 2012 (Cth), s 3 (insofar as it made the amendments or repeals provided for in Sch 2, item 6);

    f. Determination 2012/02, Pt 2 (cl 2.2);

    g. Determination 2012/03, Pt 2 (cl 2.3), Pt 3 (cl 3.1);

    h. Determination 2012/15, Pt 1 (cl 1.3 and cl 1.4 (insofar as it relates to cl 1.3));

    i. Determination 2013/13, Pt 2 (cl 2.2), Pt 3 (cl 3.3), Pt 4 (cl 4.1);

    j. Determination 2014/10, Pt 2 (cl 2.2), Pt 3 (cl 3.3), Pt 4 (cl 4.1);

    k. Determination 2015/06, Pt 2 (cl 2.2), Pt 3 (cl 3.3), Pt 4 (cl 4.1)?

2. If the answer to question 1 is yes, to what, if any relief are the plaintiffs, or any of them, entitled in the proceedings?

3. Who should pay the costs of the proceedings?