



# HIGH COURT BULLETIN

Produced by the Legal Research Officer,  
High Court of Australia Library  
[2015] HCAB 2 (24 March 2015)

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

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## SUMMARY OF NEW ENTRIES

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

<b>Case</b>	<b>Title</b>
<a href="#">Grant Samuel Corporate Finance Pty Limited v Fletcher: JP Morgan Chase Bank National Association &amp; Anor v Fletcher</a>	Corporations
<a href="#">Fortress Credit Corporation (Australia) II v Fletcher</a>	Corporations
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## 2: Cases Reserved

<b>Case</b>	<b>Title</b>
<a href="#">Selig &amp; Selig v Wealthsure Pty Ltd &amp; Ors</a>	Corporations
<a href="#">Lindsay v The Queen</a>	Criminal Law
<a href="#">Uelese v Minister for Immigration and Border Protection</a>	Migration
<a href="#">Independent Commission Against Corruption v Cunneen &amp; Ors</a>	Statutes
<a href="#">King v Philcox</a>	Torts

## 3: Original Jurisdiction

No new entries for March 2015.

## 4: Special Leave Granted

<b>Case</b>	<b>Title</b>
<a href="#">Filippou v The Queen</a>	Criminal Law
<a href="#">Police v Dunstall</a>	Criminal Law
<a href="#">WZARV v Minister for Immigration and Border Protection &amp; Anor</a>	Migration
<a href="#">AstraZeneca AB &amp; Anor v Apotex Pty Ltd; AstraZeneca AB &amp; Anor v Watson Pharma Pty Ltd' AstraZeneca AB &amp; Anor v Ascent Pharma Pty Ltd</a>	Patents
<a href="#">PT Bayan Resources TBK v BCBC Singapore Pte Ltd &amp; Ors</a>	Procedure
<a href="#">Gnych &amp; Anor v Polish Club Limited</a>	Property Law

# 1: CASES HANDED DOWN

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

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## Constitutional Law

See also [Statutes](#): *Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd*.

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## Corporations

*Grant Samuel Corporate Finance Pty Limited v Fletcher: JP Morgan Chase Bank National Association & Anor v Fletcher*  
[S228/2014](#): [\[2015\] HCA 8](#).

**Judgment Delivered:** 11 March 2015.

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

**Catchwords:**

Corporations – Winding up – Voidable transactions – Section 588FF(3) of *Corporations Act 2001* (Cth) provided that application with respect to voidable transactions under s 588FF(1) "may only be made" during period set out in s 588FF(3)(a) or "within such longer period as the Court orders" on an application made by liquidator during par (a) period – On application made by liquidators after par (a) period had expired, Supreme Court made order under r 36.16(2)(b) of Uniform Civil Procedure Rules 2005 (NSW) varying date by which liquidators could make application under s 588FF(1) – Whether UCPR could be utilised to extend time within which proceedings under s 588FF(1) could be brought – Whether s 588FF(3) "otherwise provided" within meaning of s 79(1) of *Judiciary Act 1903* (Cth).

Words and phrases – "otherwise provided", "picked up".

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 31](#).

**Held:** Appeals allowed with costs.

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*Fortress Credit Corporation (Australia) II v Fletcher*  
**S276/2014:** [\[2015\] HCA 10](#).

**Judgment Delivered:** 11 March 2015.

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

**Catchwords:**

Corporations – Winding up – Voidable transactions – Section 588FF(3)(b) of *Corporations Act* 2001 (Cth) empowers courts to make orders extending time for liquidator to make application under s 588FF(1) with respect to voidable transactions – Order extending time for respondents to make s 588FF(1) application did not refer to identified transaction – Respondents made s 588FF(1) application within extended time period – Whether courts can make order under s 588FF(3)(b) extending time to make s 588FF(1) application without identifying particular transaction or transactions to which it would apply.

Words and phrases – "extension of time", "re-enactment presumption", "shelf orders".

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 148](#).

**Held:** Appeal dismissed with costs.

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## Criminal Law

*CMB v Attorney General for New South Wales*  
**S257/2014:** [\[2014\] HCA 9](#).

**Judgment Delivered:** 11 March 2015.

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

**Catchwords:**

Criminal law – Sentencing – Sentence increased on prosecution appeal under s 5D of *Criminal Appeal Act* 1912 (NSW) – Appellant charged with sexual assault of daughter – Director of Public Prosecutions referred appellant for assessment for pre-trial diversion program – During assessment appellant disclosed further offences committed against daughter – First set of offences dealt with under program – Appellant charged with further offences and sentenced to good behaviour bonds with condition appellant complete program – Attorney General filed notice of appeal – Court of Criminal Appeal

allowed appeal and re-sentenced appellant to five years and six months' imprisonment – Whether Court of Criminal Appeal erred in not exercising residual discretion to decline to interfere – Whether Court of Criminal Appeal erred in placing onus upon appellant with regard to exercise of residual discretion to dismiss appeal and limiting purpose of Crown appeals – Whether Court of Criminal Appeal erred in application of s 23 of *Crimes (Sentencing Procedure) Act 1999* (NSW) and principles regarding voluntary disclosure of otherwise unknown guilt.

Words and phrases – "discretion not to intervene", "leniency", "manifestly inadequate", "onus", "proper sentence", "residual discretion", "restraint", "unreasonably disproportionate".

**Appealed from NSWSC (CCA):** [\[2014\] NSWCCA 5](#).

**Held:** Appeal allowed.

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## Equity

*Korda & Ors v Australian Executor Trustees (SA) Limited*

**M82/2014:** [\[2015\] HCA 6](#).

**Judgment Delivered:** 4 March 2015.

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

### **Catchwords:**

Trusts – Express trust – Two companies, "the Forest Company" and "the Milling Company", operated timber plantation investment scheme – Forest Company sought investment in scheme – Forest Company entered into Trust Deed with Trustee Company as trustee for holders of interests Forest Company issued – Whether proceeds of the sale of standing timber and scheme land payable to Forest Company and Milling Company subject to express trust in favour of scheme investors.

Words and phrases – "express trust".

**Appealed from VSC (CA):** [\[2014\] VSCA 65](#).

**Held:** Appeal allowed.

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## Statutes

*Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd*

[S225/2014](#): [\[2015\] HCA 7](#).

**Judgment Delivered:** 4 March 2015.

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

### Catchwords:

Statutes – Statutory construction – Clause 8(1)(g) of Sched 2 to *Broadcasting Services Act* 1992 (Cth) ("BSA") conditioned commercial radio broadcasting licence on licensee not using broadcasting service in commission of offence against another Commonwealth Act or a law of a State or Territory – Authority's functions included suspension and cancellation of licences and taking enforcement action under BSA – Authority authorised to conduct investigations for purposes of its functions – Where, as part of investigation, Authority made finding that licensee used broadcasting service to commit offence against State law and thereby breached cl 8(1)(g) licence condition – Whether Authority had power to do so in absence of criminal court finding offence proven.

Constitutional law (Cth) – Judicial power – Where ss 10 and 12 of *Australian Communications and Media Authority Act* 2005 (Cth), ss 5, 170 and 178 of BSA and cl 8(1)(g) of Sched 2 to BSA authorised Authority to find licensee of commercial radio broadcasting licence breached cl 8(1)(g) licence condition and to take enforcement action under ss 141 and 143 of BSA prior to criminal court finding offence proven – Whether provisions thereby impermissibly confer judicial power on Authority.

Words and phrases – "adjudging and punishing criminal guilt", "administrative enforcement action", "judicial power", "used in the commission of an offence".

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

**Held:** Appeal allowed.

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## 2: CASES RESERVED

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

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### Constitutional Law

*Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia & Ors v Queensland Rail & Anor*

**B63/2013:** [\[2015\] HCATrans 6](#) and [\[2015\] HCATrans 7](#).

**Date Heard:** 3 and 4 February 2015.

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

**Catchwords:**

Constitutional law – Commonwealth Constitution, ss 51(xx) and 109 – Employees who are members of ten unions previously employed by Queensland Rail Limited were transferred to Queensland Rail – Queensland Government intended to implement New Generation Rolling Stock project (“NGR project”) – Unions informed Queensland Rail of their concerns for potential impact of NGR project and sought discussions pursuant to cl 22 of Rollingstock Agreement – Queensland Rail did not consider itself bound by *Fair Work Act* 2009 (Cth) (“FW Act”) but instead bound by *Industrial Relations Act* 1999 (Qld) (“IR Act”) and by reason of s 691C of IR Act, considered Rollingstock Agreement of no effect – Unions informed Queensland Rail of desire to pursue negotiations for new enterprise agreement to replace Traincrew Agreement in accordance with FW Act – New enterprise agreement certified pursuant to IR Act – Whether Queensland Rail is corporation within meaning of s 51(xx) of Constitution – Whether Queensland Rail is trading corporation within meaning of s 51(xx) of Constitution – Whether FW Act applies to Queensland Rail and its employees by operation of s 109 of Constitution to exclusion of *Queensland Rail Transit Authority Act* 2013 (Qld) or IR Act or both.

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*Queensland Nickel Pty Limited v Commonwealth of Australia*

**B25/2013:** [\[2015\] HCATrans 8](#).

**Date Heard:** 5 February 2015.

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

**Catchwords:**

Constitutional law – Preference between States – Commonwealth Constitution, s 99 – *Clean Energy Act* 2011 (Cth) (“Act”) – *Clean Energy Regulations* 2011 (Cth) (“Regulations”) – Plaintiff operates nickel and cobalt refinery in Queensland and was “liable entity” for purposes of s 20(3) of Act – Despite repeal of Act, its operation was preserved insofar as it related to liability of liable entities to pay unit shortfall charges for years beginning on 1 July 2012 and 1 July 2013 by items 323(1) and 324(3) of Schedule 1, Part 3 of *Clean Energy Legislation (Carbon Tax Repeal) Act* 2014 (Cth) – In carrying out operational activities, there are differences with respect to level of covered emissions per unit of production produced by plaintiff and other similar refineries in Western Australia – Whether Divisions 48 of Part 3 of Schedule 1 to Regulations invalid in its application to plaintiff on ground that it gave preference to one State over another contrary to s 99 of Constitution – Whether impugned provisions should be read down so as to avoid contravening s 99 of Constitution – Whether, upon their proper construction, impugned provisions imposed upon plaintiff any liability for any “unit shortfall charge” in respect of production of nickel.

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*Duncan v The State of New South Wales; NuCoal Resources Ltd v State of New South Wales; Cascade Coal Pty Ltd & Ors v The State of New South Wales*

[S119/2014](#); [S138/2014](#); [S206/2014](#); [\[2015\] HCATrans 9](#) and [\[2015\] HCATrans 11](#).

**Date Heard:** 10 and 11 February 2015.

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

**Catchwords:**

Constitutional law – Chapter III – Judicial power – Independent Commission Against Corruption (ICAC) commenced public inquiry styled “Operation Acacia” investigating the application and allocation of mining lease – ICAC commenced second public inquiry styled “Operation Jasper” investigating, amongst other things, decision of Minister for Mineral Resources to open mining area for coal exploration and award mining licences – Both inquiries produced reports which recommended Parliament pass special legislation to expunge or cancel authorities granted under *Mining Act* 1992 (NSW) (“Mining Act”) – *Mining Amendment (Operations Jasper and Acacia) Act* 2014 (NSW) inserted Sch 6A into Mining Act – Whether cl 1 to 13 of Sch 6A of Act are invalid because they constitute exercise of



judicial power and Parliament of NSW may not exercise judicial power.

Constitutional law – Commonwealth Constitution, s 109 – Inconsistency between Commonwealth law and State law – Cl 11 of Sch 6A of Mining Act authorises appropriate official to publish or reproduce literary or artistic works in which plaintiffs hold copyright – Whether cl 11 of Sch 6A of Mining Act inconsistent with *Copyright Act 1968* (Cth).

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## Corporations

*Selig & Selig v Wealthsure Pty Ltd & Ors*  
**A11/2014:** [\[2015\] HCATrans 54](#).

**Date heard:** 12 March 2015.

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

**Catchwords:**

Corporations – Provision of financial advice – Contravention of *Corporations Act 2001* (Cth) (Act) – First and second respondents were appellants' financial advisors - First and second respondents recommended financial product and provided appellants with disclosure document that did not comply with s 953A of Act – Financial product was insolvent and appellants lost their investment – First and second respondents argued that loss was apportionable and that promoters of financial product should bear majority of claim – Whether claim for damages for misleading financial advice pursuant to ss 769C, 945A, 945B and/or 1041E of Act apportionable under ss 1041H-1041S of Act – Whether claims should be reduced by reference to contributory conduct under s 1041I(1B) of Act.

**Appealed from FCA (FC):** [\[2014\] FCAFC 64](#).

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## Criminal Law

*Lindsay v The Queen*  
**A24/2014:** [\[2015\] HCATrans 52](#).

**Date heard:** 11 March 2015.

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

**Catchwords:**

Criminal law – Defences – Provocation – Appellant convicted of murder – Circumstances of offence included two incidents where victim had made homosexual advances – Court of Criminal Appeal found errors in directions of trial judge as to provocation – Court of Criminal Appeal applied proviso without positive submission by prosecution and held that partial defence of provocation should not have been left to jury – Court of Criminal Appeal relied on academic literature on contemporary attitudes to homosexual behaviour to support conclusion – Whether appropriate for Court of Criminal Appeal to initiate consideration of and then apply proviso – Whether academic literature is relevant in consideration of objective limb of provocation – Whether it is permissible for Court of Criminal Appeal to rely on academic literature without affording parties opportunity to make submissions.

**Appealed from SASC (CCA):** [\[2014\] SASFC 56](#).

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## Migration

*Ueese v Minister for Immigration and Border Protection*

**S277/2014:** [\[2015\] HCATrans 48](#).

**Date heard:** 5 March 2015.

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

**Catchwords:**

Migration – Application of s 500(6H) of *Migration Act* 1958 (Cth) (“Act”) – Appellant’s visa was cancelled – In deciding whether to affirm Minister’s decision, Administrative Affairs Tribunal (AAT) was required to take into account best interests of minor children in Australia – AAT declined to consider or make determination as to best interests of two of appellant’s children – Information as to those children was not adduced by appellant but was apparent from documents tendered by first respondent – Whether Full Court erred in failing to find jurisdictional error in decision of AAT holding that s 500(6H) of Act prohibited AAT from having regard to information concerning two of appellant’s children unless appellant had set out information in written statement to first respondent at least two days before hearing – Whether Full Court erred in failing to find jurisdictional error in AAT holding that date upon which AAT “holds a hearing” for purposes of ss 500(6H) and 500(6I) of Act is first day of

any such hearing, and does not include date upon which adjourned hearing is resumed.

**Appealed from FCA (FC):** [\[2013\] FCAFC 86](#).

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## Native Title

*State of Queensland v Congo & Ors*

**B39/2014:** [\[2014\] HCATrans 271](#); [\[2014\] HCATrans 273](#).

**Date heard:** 2 and 3 December 2014.

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

### Catchwords:

Native title – Extinguishment – *National Security Act 1939* (Cth) (“NSA”), s 5(1) – *National Security (General) Regulations*, reg 54 – NSA enacted shortly after Australia’s entry into World War II authorising Governor-General to make regulations for securing public safety and defence of Commonwealth – Between 1943 and 1945 five orders were made under reg 54 over land over which native title determination sought – Whether orders made under reg 54 have effect of extinguishing all native title rights and interests on land – Whether reg 54 enabled Commonwealth to take possession of land simply by making orders purporting to take possession of land.

**Appealed from FCA (FC):** [\[2014\] FCAFC 9](#).

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## Statutes

*Independent Commission Against Corruption v Cunneen & Ors*

**S302/2014:** [\[2015\] HCATrans 47](#).

**Date heard:** 4 March 2015.

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

### Catchwords:

Statutes – Interpretation – *Independent Commission Against Corruption Act 1988* (NSW) (“Act”), ss 8(2) and 13(1) – Respondents were summoned to public inquiry by applicant regarding allegations

that first and second respondents had intended to pervert course of justice – Respondents challenged inquiry on basis that allegations could not constitute “corrupt conduct” under Act – Whether allegation amounting to perverting the course of justice could also amount to conduct that “adversely affects, or could adversely affect... the exercise of official functions by any public official” within meaning of s 8(2) of Act – Whether allegation capable of being investigated by applicant.

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 421](#).

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## Equity

*King v Philcox*

**A26/2014:** [\[2015\] HCATrans 50](#) and [\[2015\] HCATrans 51](#).

**Date heard:** 10 and 11 March 2015.

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

**Catchwords:**

Tort law – Negligence – Duty of care – Mental harm – Respondent’s brother (victim) was passenger in car driven by appellant which was involved in collision killing victim – Respondent drove past the accident scene five times, each time unaware that victim was his brother – Respondent later developed psychiatric illness upon realising scene of accident was where victim died – Whether appellant owes duty of care to sibling of victim to avoid causing mental harm caused by learning about death of victim in motor accident – Whether existence of duty of care determined solely by reference to s 33(1), *Civil Liability Act 1936 (SA)* (“CLA”) – Whether respondent’s psychiatric illness reasonably foreseeable – Whether respondent was “present at the scene of the accident when the accident occurred” as required by s 51(1)(a) of CLA.

**Appealed from SASC (FC):** [\[2014\] SASCFC 38](#).

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## 3: ORIGINAL JURISDICTION

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

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### Constitutional Law

See also **Native Title**: *Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland*

See also **Statutes**: *McCloy & Ors v State of New South Wales & Anor*

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### Native Title

*Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland*

**B26/2014**: *Special case.*

#### Catchwords:

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

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

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## Statutes

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

[S211/2014](#): *Special case.*

### **Catchwords:**

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

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

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## 4: SPECIAL LEAVE GRANTED

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

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### Administrative Law

*Isbester v Knox City Council*  
**M19/2015:** [\[2015\] HCATrans 25](#).

**Date Heard:** 13 February 2015 – *Special leave granted*.

**Catchwords:**

Administrative law – Procedural Fairness – Where respondent’s delegate ordered pursuant to s 84P of the *Domestic Animals Act* 1994 (Vic) (Act) for the destruction of appellant’s dog due to an incident the year before in which the appellant’s dog bit a person – Where appellant plead guilty to offences under the Act relating to that incident – Where appellant claimed that she was not afforded procedural fairness at the hearing to determine whether appellant’s dog should be destroyed – Where appellant claims that there was apprehended bias because one of the panel members had previously been an accuser in appellant’s criminal prosecution for the same incident – Whether the Victorian Court of Appeal erred in failing to find that the decision was affected by apprehended bias.

Animals – Various statutory provisions – Regulation of Companion animals – seizure and destruction.

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

**Listed:** 14 April 2015.

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### Animals

See also **[Administrative Law](#)**: *Isbester v Knox City Council*

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### Constitutional Law

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

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## Criminal Law

*Filippou v The Queen*

**S284/2014:** [\[2015\] HCATrans 61](#).

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

**Catchwords:**

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

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

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*Police v Dunstall*

**A19/2014:** [\[2015\] HCATrans 63](#).

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

**Catchwords:**

Criminal law – Evidence – Judicial discretion to admit or exclude evidence – Evidence unfair to admit or improperly obtained – Generally – Where the respondent was charged with driving a motor vehicle while there was present in his blood the prescribed concentration of alcohol in contravention of s 47K(5) of the *Road Traffic Act* 1961 (SA) – Where the respondent was subject to a breath analysis test and two blood samples were taken – Where the blood samples were denatured and unsuitable for analysis – Where the breath analysis evidence was excluded on the basis of



unfairness – Whether there is a general judicial discretion to excluded lawfully obtained, non-confessional evidence for reasons of unfairness – If there is a general judicial discretion, what amounts to unfairness to enliven the discretion.

**Appealed from SASC(FC):** [\[2014\] SASCFC 85](#).

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## Estoppel

*Tomlinson v Ramsey Food Processing Pty Limited*  
**S7/2015:** [\[2014\] HCATrans 284](#).

**Date heard:** 12 December 2014 – *Special leave granted*.

### **Catchwords:**

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

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

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## Foreign Judgments

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

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

**Catchwords:**

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

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 360](#).

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## Migration

*Minister for Immigration and Border Protection v WZAPN & Anor*  
**M17/2015**: [\[2015\] HCATrans 26](#).

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

**Catchwords:**

Migration – Refugee and humanitarian visas – Definition of refugee – Fear of Persecution – Serious Harm – Whether under s 91R of the *Migration Act* 1958 (Cth) a refugee claimant will suffer “serious harm” if detained for a reason mentioned in the *Convention Relating to the Status of Refugees* 1951 as amended by the *Protocol Relating to the Status of Refugees* 1967 without any need to assess the severity of that detention - Where the respondent is a stateless Faili Kurd – Where respondent claimed a fear of persecution if he was returned to Iran due to his Kurdish ethnicity and stateless personhood – Where the refugee status assessment officer concluded that the applicant was not a refugee within the meaning of the Convention – Where the officer found that whilst respondent would face arbitrary questioning and detention due to his lack of documentation this did not amount to a serious harm within the meaning of the *Migration Act* 1958 (Cth) – Federal Court

found that the assessment officer had erred by undertaking a qualitative assessment of the detention that was likely to occur if respondent was returned to Iran – Whether a qualitative assessment of the seriousness of the harm suffered by the respondent was required pursuant to s 91R of the *Migration Act* 1958 (Cth).

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

**Listed:** 15 March 2015.

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*WZARV v Minister for Immigration and Border Protection & Anor*  
**[P10/2015](#)**.

*Special leave granted without a hearing 24 February 2015.*

**Catchwords:**

Migration – Refugee and humanitarian visas – Definition of refugee – Fear of Persecution – Serious Harm – Where the appellant is a Sri Lankan citizen and applied for a Refugee Status Assessment – Where the appellant is of Tamil ethnicity – Where the Independent Merits Reviewer accepted that it was likely that the appellant would be questioned by the Sri Lankan authorities upon his return to Sri Lanka but that questioning would not amount to a serious harm to the appellant - Whether a qualitative assessment of the seriousness of the harm suffered by the respondent was required pursuant to s 91R of the *Migration Act* 1958 (Cth).

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

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## Patents

*D’Arcy v Myriad Genetics & Anor*  
**[S28/2015](#)**: [\[2015\] HCATrans 12](#).

**Date Heard:** 13 February 2015 – *Special leave granted*.

**Catchwords:**

Intellectual property – Patents – Requirements for a valid patent – Human beings and their biological processes – s 18(1)(a) of the *Patents Act* 1990 (Cth) – Where appellant submitted that the Full Court of the Federal Court erred in holding that each of claims 1 -3

of Australian Patent No 686004 claimed a patentable invention being a manner of manufacture – Australian Patent No 686004 is described as the identification of “a human breast and ovarian cancer disposing gene (BRCA1)” – Whether claims 1 – 3, which relate to isolated nucleic acid, are claims for a manner of manufacture for the purposes of s 18(1)(a) of the *Patents Act* 1990 (Cth).

**Appealed from FCA(FC):** [\[2014\] FCAFC 115](#).

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

**S240/2014; S241/2014; S242/2014:** [\[2015\] HCATrans 58](#).

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

**Catchwords:**

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

**Appealed from FCA(FC):** [\[2014\] FCAFC 99](#).

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## Procedure

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

**M18/2015:** [\[2015\] HCATrans 23](#).

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

**Catchwords:**

Procedure – Contempt – Disobedience of Court Orders – Where first to sixth respondents sought orders in the Supreme Court of Victoria that appellant be punished for contempt of Court constituted by alleged disobedience in relation to orders made by the Supreme Court of Victoria on 5 April 2013 – Where first to sixth respondents obtained orders requiring the appellant to make discovery of documents in accordance with r 29.07 of the *Supreme Court (General Civil Procedure) Rules 2005 (Vic)* for the purpose of proving appellant’s liability – Whether the Victorian Court of Appeal erred by refusing leave to appeal against the decision to order discovery because of the criminal nature of contempt proceedings – Whether a plaintiff in contempt proceedings can invoke court processes to compel the production of documents by a corporate defendant.

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

**Listed:** 8 April 2015.

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*PT Bayan Resources TBK v BCBC Singapore Pte Ltd & Ors*

**P44/2014:** [\[2015\] HCATrans 57](#).

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

**Catchwords:**

Procedure – Judgments and orders – Freezing orders – Jurisdiction of the Supreme Court to make freezing orders – Order 52A *Rules of the Supreme Court of Western Australia 1971 (WA)* ('Rules') – Where the first respondent commenced proceedings against the appellant in the High Court of Singapore – Where no decision has been handed down by the High Court of Singapore in respect of the matter – Where the first respondent commenced proceedings in Western Australia against the appellant for an order to freeze the appellant’s assets in Western Australia – Where no other proceedings aside from the application for freezing orders have

been commenced or will be commenced unless the first respondent is successful in its action in the High Court of Singapore – Whether order 52A of the Rules is inconsistent with Pt 2 of the *Foreign Judgments Act* 1991 (Cth) ('Act') for the purpose of s 109 of the *Constitution* in circumstances where no substantive proceedings apart from the application for the freezing order have been or are to be commenced – Whether order 52A is *ultra vires* pursuant to s 17 of the Act – Whether freezing orders with respect to a prospective foreign judgment are within the inherent or implied jurisdiction of Australian superior courts.

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

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## Property

*Gnych & Anor v Polish Club Limited*

**S266/2014:** [\[2015\] HCATrans 62](#).

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

### Catchwords:

Real Property – Lease of the core property of a registered club – Where the respondent is a registered club under the *Registered Club Act* 1976 (NSW) – Where the appellant operated a restaurant from the appellant's premises – Where a dispute arose and the respondent excluded the appellant's from the premises – Where the respondent argued that the lease should not be upheld due to a contravention of s 92(1)(c) of the *Liquor Act* 2007 (NSW) which provides that a licensee must not lease or sub-lease premises except with the approval of the Authority – Whether a lease granted without approval of the Authority should be considered ipso jure void – Whether the *Liquor Act* excludes the principle that where a person acquires a title by way of a transaction prohibited by statute, the Court will not deprive that person of their title unless that person has to rely upon their own illegal conduct – What conditions can be imposed on the granting of relief to remedy or ameliorate a parties illegal conduct.

**Appealed from NSWSC(CA):** [\[2014\] NSWCA 321](#).

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## Taxation

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

**M35/2014:** [\[2014\] HCATrans 288](#).

**Date heard:** 12 December 2014 – *Special leave granted*.

**Catchwords:**

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

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

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

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

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## 6: SPECIAL LEAVE REFUSED

### Publication of Reasons: 5 March 2015

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	McFarlane	Reffold (A21/2014)	Full Court of the Supreme Court of South Australia [2014] SASCFC 111	Application dismissed <a href="#">[2015] HCASL 1</a>
2.	von Stieglitz	Comcare & Ors (C6/2014)	Full Court of the Federal Court of Australia [2014] FCAFC 97	Application dismissed <a href="#">[2015] HCASL 2</a>
3.	Sendak	Sendak (M71/2014)	Full Court of the Family Court of Australia [2014] FamCAFC 12	Application dismissed <a href="#">[2015] HCASL 3</a>
4.	Knorr	Commonwealth Scientific and Industrial Research Organisation (CSIRO) & Ors (M73/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 84	Application dismissed <a href="#">[2015] HCASL 4</a>
5.	Farook	Minister for Immigration and Border Protection & Anor (M93/2014)	Federal Court of Australia [2014] FCA 1017	Application dismissed <a href="#">[2015] HCASL 5</a>
6.	Strangio	Equity-one Mortgage Fund Limited & Anor (M105/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 16	Application dismissed <a href="#">[2015] HCASL 6</a>
7.	Pencious	Pencious & Anor (M109/2014)	Full Court of the Family Court of Australia	Application dismissed <a href="#">[2015] HCASL 7</a>
8.	Etta	Pearce (M122/2014)	Supreme Court of Victoria (Court of Appeal)	Application dismissed <a href="#">[2015] HCASL 8</a>
9.	D	B (P48/2014)	Supreme Court of Western Australia (Court of Appeal)	Application dismissed <a href="#">[2015] HCASL 9</a>
10.	SZSVZ	Minister of Immigration and Border Protection & Anor (S250/2014)	Federal Court of Australia [2014] FCA 904	Application dismissed <a href="#">[2015] HCASL 10</a>
11.	SZSWT	Minister for Immigration and Border Protection & Anor (S261/2014)	Federal Court of Australia [2014] FCA 953	Application dismissed <a href="#">[2015] HCASL 11</a>
12.	SZRTN	Minister for Immigration and Border Protection & Anor (S272/2014)	Federal Court of Australia [2014] FCA 303	Application dismissed <a href="#">[2015] HCASL 12</a>
13.	SZTII	Minister for Immigration and Border Protection & Anor	Federal Court of Australia	Application dismissed <a href="#">[2015] HCASL 13</a>

## 6: Special Leave Refused

		(S291/2014)	[2014] FCA 1212	
14.	Velissaris	Fitzgerald & Anor (M66/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 139	Application dismissed <a href="#">[2015] HCASL 14</a>
15.	Doppstadt Australia Pty Ltd & Anor	Lovick & Son Developments Pty Ltd & Anor (S205/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 219	Application dismissed <a href="#">[2015] HCASL 15</a>
16.	SZQBN	Minister for Immigration and Border Protection & Anor (S210/2014)	Federal Court of Australia [2014] FCA 686	Application dismissed <a href="#">[2015] HCASL 16</a>
17.	FM	Director-General, Department of Family & Community Services & Ors (S218/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 226	Application dismissed <a href="#">[2015] HCASL 17</a>
18.	Alavy	The Queen (M41/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 25	Application dismissed <a href="#">[2015] HCASL 18</a>
19.	Dao	The Queen (M48/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 93	Application dismissed <a href="#">[2015] HCASL 19</a>
20.	O'Brien (A Pseudonym)	The Queen (M52/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 94	Application dismissed <a href="#">[2015] HCASL 20</a>

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**13 March 2015: Adelaide**

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Mericka	Employers Mutual/ Workcover Corporation & Anor (A20/2014)	Full Court of the Supreme Court of South Australia [2014] SASCFC 85	Application dismissed with costs <a href="#">[2015] HCATrans 64</a>
2.	Falkingham	Hoffmans (A firm) (P31/2014)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 140	Application dismissed with costs <a href="#">[2015] HCATrans 66</a>
3.	MacDonald	L V Dohnt & Co Pty Ltd (P34/2014)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 149	Application dismissed with costs <a href="#">[2015] HCATrans 65</a>
4.	Technomin Australia Pty Ltd	Xstrata Nickel Australasia Operations Pty Ltd & Anor (P38/2014)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 164	Application dismissed with costs <a href="#">[2015] HCATrans 67</a>
5.	Thomas	The State of Western Australia (P51/2014)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 202	Application dismissed <a href="#">[2015] HCATrans 68</a>

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**13 March 2015: Sydney**

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Wambo Coal Pty Ltd & Anor	Sumiseki Materials Co Ltd (S267/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 326	Application dismissed with costs <a href="#">[2015] HCATrans 56</a>
2.	Ramsay & Anor	BigTinCan Ltd (S268/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 324	Application dismissed with costs <a href="#">[2015] HCATrans 59</a>
3.	Da-Pra	The Queen (S278/2014)	Supreme Court of New South Wales (Court of Criminal Appeal) [2014] NSWCCA 211	Application dismissed <a href="#">[2015] HCATrans 60</a>

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