



HIGH COURT BULLETIN

Produced by the Legal Research Officer,
High Court of Australia Library
[2022] HCAB 4 (13 May 2022)

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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1: SUMMARY OF NEW ENTRIES

2: Cases Handed Down

Case	Title
<i>Citta Hobart Pty Ltd v Cawthorn</i>	Constitutional Law
<i>Fairbairn v Radecki</i>	Family Law
<i>Plaintiff M1/2021 v Minister for Home Affairs</i>	Immigration

3: Cases Reserved

Case	Title
<i>Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor</i>	Administrative Law
<i>Hore v The Queen; Wichen v The Queen</i>	Criminal Law

<i>O'Dea v The State of Western Australia</i>	Criminal Law
<i>Google LLC v Defteros</i>	Defamation

4: Original Jurisdiction

5: Section 40 Removal

6: Special Leave Granted

Case	Title
<i>Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Ors; DCM20 v Secretary of Department of Home Affairs & Anor</i>	Administrative Law
<i>Attorney-General (Cth) v Huynh & Ors</i>	Constitutional Law
<i>Metal Manufacturers Pty Limited v Gavin Morton as Liquidator of MJ Woodman Electrical Contractors Pty Ltd (in liquidation) & Anor</i>	Corporations Law
<i>Self Care IP Holdings Pty Ltd & Anor v Allergan Australia Pty Ltd & Anor; Self Care IP Holdings Pty Ltd & Anor v Allergan Australia Pty Ltd & Anor</i>	Intellectual Property

7: Cases Not Proceeding or Vacated

8: Special Leave Refused

2: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the May 2022 sittings.

Constitutional law

Citta Hobart Pty Ltd v Cawthorn

H7/2021: [\[2022\] HCA 16](#)

Judgment: 4 May 2022

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

Catchwords:

Constitutional law (Cth) – Chapter III – Where respondent's complaint made under *Anti Discrimination Act 1998* (Tas) ("State Act") was referred to Anti-Discrimination Tribunal ("Tribunal") – Where appellants in defence asserted provisions in State Act inconsistent with *Disability Discrimination Act 1992* (Cth) and *Disability (Access to Premises – Buildings) Standards 2010* (Cth) – Where Tribunal dismissed complaint for want of jurisdiction without addressing merits of defence – Where Full Court of Supreme Court of Tasmania on appeal considered merits of, and rejected, defence – Where Tribunal not "court of a State" within meaning of ss 77(ii) and 77(iii) of *Constitution* – Where Chapter III implication recognised in *Burns v Corbett* (2018) 265 CLR 304 prevents State Parliament conferring on State tribunal that is not "court of a State" judicial power with respect to any matter of kind described in ss 75 and 76 of *Constitution* – Whether Tribunal exercised judicial power when determining complaint under State Act – Whether Tribunal had jurisdiction to hear and determine complaint – Whether defence needed to meet some threshold of arguability to give rise to matter of kind described in ss 76(i) and 76(ii) of *Constitution*.

Words and phrases – "abuse of process", "claim or defence that amounts to 'constitutional nonsense'", "colourable", "genuinely in controversy", "involving no 'real question'", "issue capable of judicial determination", "judicial power", "justiciable controversy", "limits of jurisdiction", "manifestly hopeless", "matter", "no reasonable prospects of success", "not incapable on its face of legal argument", "single justiciable controversy", "State jurisdiction", "State tribunal", "summarily dismissed", "threshold of arguability".

Constitution, Ch III, ss 75, 76, 77, 109.

Anti-Discrimination Act 1998 (Tas), ss 89, 90.

Appealed from TASSC (FC): [\[2020\] TASFC 15](#); (2020) 387 ALR 356

Held: Appeal allowed

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Family Law

Fairbairn v Radecki

S179/2021: [\[2022\] HCA 18](#)

Judgment: 11 May 2022

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

Catchwords:

Family law – De facto financial cause – Alteration of property interests – Meaning of "breakdown of de facto relationship" – Where appellant and respondent had been in de facto relationship and resided in appellant's home – Where appellant and respondent agreed to keep assets strictly separate – Where appellant subsequently suffered rapid cognitive decline and diagnosed with dementia – Where NSW Trustee and Guardian ("Trustee") appointed to manage appellant's financial affairs – Where Trustee moved appellant into aged care facility permanently and resolved to sell appellant's home to fund aged care facility costs – Where respondent opposed proposed sale of home – Where Trustee sought property settlement orders pursuant to s 90SM of *Family Law Act 1975* (Cth) – Whether de facto relationship had broken down within meaning of s 90SM.

Words and phrases – "assets strictly separate", "breakdown of a de facto relationship", "cognitive decline", "cohabitation", "de facto relationship", "financial manager", "living together on a genuine domestic basis", "mutual commitment to a shared life", "necessary or desirable adjustments", "NSW Trustee and Guardian", "property settlement orders", "sharing life as a couple".

Family Law Act 1975 (Cth), ss 4AA, 90SM.

Appealed from FamCA (FC): [\[2020\] FamCAFC 307](#); (2020) 62 Fam LR 62

Held: Appeal allowed.

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Immigration

Plaintiff M1/2021 v Minister for Home Affairs

[M1/2021](#): [\[2022\] HCA 17](#)

Judgment: 11 May 2022

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

Catchwords:

Immigration – Visas – Cancellation of visa – Revocation of cancellation – Where plaintiff's visa cancelled under s 501(3A) of *Migration Act 1958* (Cth) – Where plaintiff made representations seeking revocation of cancellation decision under s 501CA(4) – Where representations raised potential breach of Australia's international non refoulement obligations – Where delegate of Minister decided there was not "another reason" to revoke cancellation decision under s 501CA(4)(b)(ii) – Where delegate considered it unnecessary to determine whether non-refoulement obligations owed because plaintiff could make valid application for protection visa – Where delegate considered existence or otherwise of non-refoulement obligations would be fully assessed in course of processing protection visa application – Whether, in deciding whether there was "another reason" to revoke cancellation decision, delegate required to consider plaintiff's representations raising potential breach of Australia's non-refoulement obligations – Whether delegate failed to exercise jurisdiction conferred by s 501CA(4) – Whether delegate denied plaintiff procedural fairness – Whether delegate misunderstood *Migration Act* and its operation.

Words and phrases – "another reason", "domestic law", "due process", "international non refoulement obligations", "mandatory relevant consideration", "procedural fairness", "protection visa", "read, identify, understand and evaluate", "reasonable consideration", "representations concerning non-refoulement", "requisite level of engagement".

Migration Act 1958 (Cth), ss 36, 501, 501CA, 501E.

Special case referred to the Full Court on 30 March 2021.

Held: Questions answered.

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3: CASES RESERVED

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

Administrative Law

Nathanson v Minister for Home Affairs & Anor

M73/2021: [\[2022\] HCATrans 26](#)

Date heard: 10 March 2022

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

Catchwords:

Administrative law – Jurisdictional error – Procedural fairness – Materiality – Where appellant's visa cancelled by delegate on character grounds – Where, after delegate's decision but before Tribunal review, Minister issued new direction, which relevantly included as additional factor that violent crimes against women or children viewed "very seriously, regardless of sentence imposed" – Where appellant not put on notice prior to Tribunal hearing that past incidents of alleged domestic violence would be taken into account, despite not having been charged or convicted of any crimes – Where appellant not given opportunity to call further evidence or make further submissions on domestic violence issue – Where appellant applied for judicial review of Tribunal decision – Where Minister conceded Tribunal denied procedural fairness and majority of Full Federal Court dismissed application on basis appellant failed to show realistic possibility of different outcome – Whether Full Federal Court applied correct test of materiality – Whether appellant's denial of procedural fairness material and constituted jurisdictional error.

Appealed from FCA (FC): [\[2020\] FCAFC 172](#); (2020) 281 FCR 23; (2020) 171 ALD 497

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Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor

S135/2021: [\[2022\] HCATrans 86](#)

Date heard: 10 May 2022

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

Catchwords:

Administrative law – Judicial review – Extension of time – Proper test – Writ of certiorari – Writ of mandamus – Where plaintiff holder of visa cancelled by Minister pursuant to s 501(3)(b) of *Migration Act 1958* (Cth) – Where plaintiff applied for extension of time, pursuant to s 477A(2) of *Migration Act*, seeking review of Minister's decision – Where application for extension of time was refused by judge of Federal Court of Australia – Whether judge erred in assessing, in respect of plaintiff's proposed second ground of review of Minister's decision, whether plaintiff's claim had reasonable prospects of success so as to justify extension of time pursuant to s 477A(2) of the *Migration Act*.

Application for constitutional writs referred to the Full Court on 9 December 2021.

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Constitutional Law

Delil Alexander (by his litigation guardian Berivan Alexander) v Minister for Home Affairs & Anor

[S103/2021](#); [\[2022\] HCATrans 8](#); [\[2022\] HCATrans 11](#)

Date heard: 16 and 17 February 2022

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

Catchwords:

Constitutional law – Legislative power – Citizenship – Cessation of Australian citizenship – Where s 36B of *Australian Citizenship Act 2007* (Cth) provided Minister may make determination person ceases to be Australian citizen if Minister satisfied person dual citizen and person engaged in terrorist activities – Where plaintiff Australian citizen by birth and also Turkish citizen – Where, in 2013, plaintiff entered Al Raqqa Province of Syria – Where Al Raqqa province declared area for purposes of terrorism offences – Where, in 2018, plaintiff arrested and incarcerated by Syrian Government – Where plaintiff found guilty of terrorism offences against Syrian Penal Code on basis of evidence allegedly procured by torture – Where Australian Security and Intelligence Organisation advised Minister plaintiff likely engaged in foreign incursions and recruitment by remaining in declared area – Where, on 2 July 2021, Minister determined plaintiff

ceased to be Australian citizen under s 36B – Where plaintiff pardoned under Syrian law, but remains in indefinite detention because no lawful right to be in Syria, cannot be removed to Turkey because citizenship under different name, and cannot be removed to Australia because of citizenship cessation – Whether s 36B within scope of aliens power in s 51(xix) of *Constitution*, defence power in s 51(vi) of *Constitution*, external affairs power in s 51(xxix) of *Constitution* or implied nationhood power – Whether implied constitutional limitation on legislative power preventing "people of Commonwealth" from being deprived of their status as such – Whether constitutionally prescribed system of representative government incompatible with s 36B, which operates to permanently disenfranchise Australian citizens – Whether s 36B impermissibly disqualifies plaintiff from eligibility to sit as member of Parliament, contrary to ss 34 and 44 of *Constitution* – Whether s 36B punitive and unlawful exercise of judicial power by Parliament – Whether s 36B within legislative competence of Commonwealth Parliament.

Special case referred to the Full Court on 26 October 2021.

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Farm Transparency International Ltd & Anor v State of New South Wales

S83/2021: [\[2022\] HCATrans 5](#); [\[2022\] HCATrans 6](#)

Date heard: 10 and 11 February 2022

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

Catchwords:

Constitutional law – Implied freedom of political communication – Where s 7 of *Surveillance Devices Act 2007* (NSW) prohibited installation, use and maintenance of listening devices to record private conversations – Where s 8 prohibited installation, use and maintenance of optical surveillance devices on premises without owner or occupier's consent – Where s 11 created offence to communicate or publish material recorded in contravention of ss 7 or 8 – Where s 12 created offence to possess material knowing it had been recorded in contravention of ss 7 or 8 – Where plaintiffs published photographs and recordings of animal agricultural practices in New South Wales in contravention of ss 11 and 12 and intends to continue to engage in such activity – Whether ss 11 and 12 impermissibly burden implied freedom of communication – If so, whether ss 11 and 12 severable in respect of operation on political communication.

Special case referred to the Full Court on 27 September 2021.

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Garlett v The State of Western Australia & Anor

P56/2021: [\[2022\] HCATrans 27](#); [\[2022\] HCATrans 28](#)

Date heard: 10 and 11 March 2022

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

Catchwords:

Constitutional law – Chapter III – Where appellant was sentenced to imprisonment after pleading guilty to two charges – Where appellant's previous offending included robbery – Where appellant referred to State Solicitor's Office to consider whether application should be made under s 35 of *High Risk Serious Offenders Act 2020* (WA) ("HRSO Act"), which provided for State to apply for restriction order in relation to "serious offender under custodial sentence who is not a serious offender under restriction" – Where application was made for restriction order under s 48 of HRSO Act – Where appellant argued parts of HRSO Act were incompatible with Chapter III of *Constitution* – Whether provisions of HRSO Act contravene any requirement of Chapter III as they apply to serious offender under custodial sentence who has been convicted of robbery, referred to in item 34 of Schedule 1 Division 1 of HRSO Act.

Removed from the Court of Appeal of the Supreme Court of Western Australia.

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Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor v Montgomery

S192/2021: [\[2022\] HCATrans 51](#); [\[2022\] HCATrans 52](#)

Date heard: 6 and 7 April 2022

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

Catchwords:

Constitutional law – Aliens power – Immigration detention – Indigenous Australians – Where applicant born in and citizen of New Zealand and not Australian citizen – Where applicant's parents and ancestors not Aboriginal Australian or Torres Strait Islanders – Where applicant granted visa to live in Australia in 1997 – Where Mununjali

people Indigenous society existing in Australia since prior to 1788 – Where applicant identifies as member of Mununjali people, recognised by Mununjali elders and by Mununjali traditional law and customs as such – Where, in 2018, applicant's visa cancelled – Where in 2019, applicant taken into immigration detention – Where, in *Love v Commonwealth; Thoms v Commonwealth* [2020] HCA 3, majority of High Court held Aboriginal Australian who satisfies tripartite test identified in *Mabo v Queensland (No 2)* (1992) 175 CLR 1 beyond reach of aliens power in s 51(xix) of *Constitution* – Where applicant commenced proceedings in Federal Court of Australia, relevantly seeking declaration not alien within meaning of s 51(xix) following *Love/Thoms* – Whether decision in *Love/Thoms* should be overturned – Whether applicant satisfies tripartite test despite not being biologically descended from Indigenous people – Whether applicant alien.

Courts – Jurisdiction – Appeal from single judge of Federal Court of Australia – Habeas corpus – Competent court – Where appellate jurisdiction of Federal Court defined by s 24(1)(a) of *Federal Court of Australia Act 1976* (Cth) – Where cause removed was appeal to Full Court of Federal Court from orders of single judge – Where single judge exercised original jurisdiction, relevantly issuing writ of habeas corpus – Whether appeal lies from order for issue of writ of habeas corpus.

Removed from the Federal Court of Australia.

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Thoms v Commonwealth of Australia

B56/2021: [\[2022\] HCATrans 24](#)

Date heard: 9 March 2022

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

Catchwords:

Constitutional law – Aliens power – Immigration detention – Wrongful imprisonment – Where applicant held in immigration detention pursuant to s 189 of *Migration Act 1958* (Cth) – Where officers who detained applicant suspected he was unlawful non-citizen because not Australian citizen and did not have visa – Where, in *Love v Commonwealth; Thoms v Commonwealth* [2020] HCA 3, majority of High Court declared applicant not alien for purposes of s 51(xix) of *Constitution*, and applicant released from immigration detention – Where applicant's claim remitted to Federal Court of Australia, where applicant sought declaration detention unlawful and not supported by s 189 of *Migration Act*, and damages for wrongful imprisonment –

Where Federal Court ordered question of whether detention unlawful be determined separately – Whether within scope of aliens power for s 189 of *Migration Act* to validly authorise immigration detention of persons subjectively suspected to be unlawful non-citizen, even if person later found not alien – Whether applicant's detention unlawful.

Removed from the Federal Court of Australia.

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Criminal Law

Hore v The Queen; Wichen v The Queen
[A5/2022](#); [A6/2022](#): [\[2022\] HCATrans 87](#)

Date heard: 11 May 2022

Coram: Keane, Gordon, Edelman, Steward and Gleeson JJ

Catchwords:

Criminal law – Sentence – Sentencing Orders – Offenders incapable of controlling, or unwilling to control, sexual instincts – Meaning of "willing" – Where appellants detained by Court order, following application by Crown, on grounds they were incapable or unwilling to control sexual instincts – Where s 59(1a)(a) of *Sentencing Act 2017* (SA) provided person detained cannot be released unless Court satisfied person "capable of controlling and willing to control" person's sexual instincts – Where s 57, providing authority for Court to make order for indefinite detention, contained definition of "unwilling" – Where Court of Appeal held "willing" in s 59(1a)(a) had converse meaning to defined term "unwilling" in s 57(1) such that appellants could only be regarded as willing to control sexual instincts if established no significant risk they would, given opportunity to commit relevant offence, fail to exercise appropriate control of sexual instincts – Whether meaning of "willing" in s 59(1a)(a) is converse of word "unwilling" as defined in s 57 – Proper meaning of term "willing" in s 59(1a)(a).

Appealed from SASC (CCA): [\[2021\] SASCA 29](#); (2021) 289 A Crim R 216

Appealed from SASC (CCA): [\[2021\] SASCA 30](#); (2021) 138 SASR 134

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O'Dea v The State of Western Australia
[P53/2021](#): [\[2022\] HCATrans 79](#)

Date heard: 4 May 2022

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

Catchwords:

Criminal law – Joint liability – Acting in concert – Where appellant and co-accused stood trial on one count of doing grievous bodily harm with intent to do grievous bodily harm contrary to s 294(1) of *Criminal Code* (WA) – Where appellant and co-accused alleged jointly criminally responsible – Where trial judge gave jury handout, relevantly describing circumstances in which two accused may be criminally responsible as "joint principals" under s 7(a) of Code – Where appellant convicted but co-accused discharged with jury unable to reach verdict – Where Court of Appeal held criminal responsibility under s 7(a) of Code extended to cases where several persons "acting in concert" – Whether appellant and co-accused can be criminally liable as joint principals in circumstances where acts of co-accused not proved unlawful – Whether trial judge was required to direct jury that "acting in concert" requires two accused to have reached understanding or arrangement amounting to agreement to commit crime.

Appealed from WASC (CA): [\[2021\] WASCA 61](#); (2021) 288 A Crim R 451

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Defamation

Google LLC v Defteros

M86/2021: [\[2022\] HCATrans 77](#)

Date heard: 3 May 2022

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

Catchwords:

Defamation – Publication – Qualified privilege defence – Common law qualified privilege – Statutory qualified privilege – Where respondent alleged certain webpages published by appellant and defamatory – Where two webpages consisted of set of search results displayed on website www.google.com.au in response to search of respondent's name and hyperlinked article, included in search results, entitled "Underworld loses valued friend at court" (Web Matter) – Where appellant alleged it was for "common convenience and welfare of society" for appellant to return search results that hyperlinked

articles published by reputable sources – Where appellant claimed material was matter of considerable public interest such that recipients had necessary interest in material for purposes of s 30(1) of *Defamation Act 2005* (Vic) – Whether appellant published Web Matter – Whether common law qualified privilege defence applies – Whether statutory qualified privilege defence in s 30(1) applies.

Appealed from VSC (CA): [\[2021\] VSCA 167](#)

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Superannuation

Hill v Zuda Pty Ltd as Trustee for The Holly Superannuation Fund & Ors

P48/2021: [\[2022\] HCATrans 49](#)

Date heard: 5 April 2022

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

Catchwords:

Superannuation – Self-managed superannuation fund (SMSF) – Binding death benefit nomination – Where reg 6.17A(4), (6) and (7) of *Superannuation Industry (Supervision) Regulations 1994* (Cth), provided for requirements for validity of binding death benefit requirement in respect of superannuation funds – Where reg 6.17A authorised by multiple provisions, relevantly, ss 31, 55A and 59 of *Superannuation Industry (Supervision) Act 1993* (Cth) – Where applicant child and dependant of deceased person – Where deceased person established SMSF with deceased person's partner as sole members – Where cl 5 and 6 of SMSF trust deed made binding death benefit nomination, requiring trustee to distribute whole of deceased member's balance to surviving member – Where applicant argued cl 5 and 6 of deed did not constitute valid binding death benefit notification due to non-compliance with reg 6.17A(6) and (7) of Regulations and claimed portion of deceased person's account – Where claim dismissed and appeal to WA Court of Appeal dismissed – Whether reg 6.17A(4), (6) and (7) of Regulations apply to SMSF.

Courts – Comity – Intermediate appellate courts – Where WA Court of Appeal held principle of comity required it to follow decision of SA Full Court in *Cantor Management Services Pty Ltd v Booth* [2017] SASFC 122 – Where SA Full Court held reg 6.17A did not apply to SMSF because s 59 of Act did not apply to SMSF but did not consider ss 33 or 55A – Whether intermediate appellate court bound to follow

decision of other intermediate appellate court where no consideration of relevant aspect of legislation.

Appealed from WASC (CA): [\[2021\] WASCA 59](#)

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4: ORIGINAL JURISDICTION

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

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5: SECTION 40 REMOVAL

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

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6: SPECIAL LEAVE GRANTED

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

Administrative Law

Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Ors; DCM20 v Secretary of Department of Home Affairs & Anor

M9/2022; S13/2022: [\[2022\] HCATrans 89](#); [\[2022\] HCATrans 90](#)

Date determined: 12 May 2022 – *Special leave granted*

Catchwords:

Constitutional law – Judicial review – Non-statutory executive action – Sections 61 and 64 of *Constitution* – Where s 351(1) of the *Migration Act 1958* (Cth) ("Act") provided if Minister thinks it in public interest, Minister may substitute decision of Administrative Appeals Tribunal under s 349 of Act for decision more favourable to applicant – Where s 351(3) and s 351(7) provided power under s 351(1) be exercised by Minister personally and Minister under no duty to consider whether to exercise power – Where Minister issued guidelines in relation to power conferred by s 351 setting out circumstances in which Department of Home Affairs should refer requests – Where Departmental officers concluded requests for intervention failed to satisfy criteria for referral in guidelines – Whether decision of Departmental officer not to refer to request for Minister to exercise power conferred by s 351(1) amenable to judicial review – Whether decision of Departmental officer affected by legal unreasonableness – Whether remedies available.

Appealed from FCA (FC): [\[2021\] FCAFC 213](#)

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Constitutional Law

Attorney-General (Cth) v Huynh & Ors

S2/2022: [\[2022\] HCATrans 91](#)

Date determined: 12 May 2022 – *Special leave granted*

Catchwords:

Constitutional law – Judicial power – Post-appeal application for inquiry into conviction – State courts – Supervisory jurisdiction – Where s 68(1) of *Judiciary Act 1903* (Cth) provided State laws with respect to procedures apply to persons charged with Commonwealth offences where jurisdiction conferred on courts of that State – Where s 68(2) conferred jurisdiction on State courts with respect to criminal proceedings – Where, following conviction for offences against laws of Commonwealth and unsuccessful appeal, Mr Huynh applied to NSW Supreme Court under Pt 7, Div 3 of *Crimes (Appeal and Review) Act 2001* (NSW) ("Appeal and Review Act") for review of conviction and sentence – Where NSW Supreme Court judge dismissed application and Mr Huynh sought judicial review of decision – Whether post-appeal inquiry and review procedures in Pt 7, Div 3 of Appeal and Review Act available in relation to conviction or sentence for Commonwealth offence heard in NSW court – Whether power exercised by judge under s 79 of Pt 7, Div 3 of Appeal and Review Act, to consider applications for inquiry into conviction made under s 78, judicial or administrative in nature – Whether ss 78-79 of Appeal and Review Act apply as federal law pursuant to s 68(1) of *Judiciary Act* in relation to conviction.

Appealed from NSW (CA): [\[2021\] NSWCA 297](#); (2021) 396 ALR 422

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SDCV v Director-General of Security & Anor
S27/2022: [\[2022\] HCATrans 20](#)

Date heard: 21 February 2022 – *Special leave granted*

Catchwords:

Constitutional law – Judicial power of Commonwealth – Ch III of *Constitution* – Validity of s 46(2) of *Administrative Appeals Tribunal Act 1975* (Cth) ("AAT Act") – Where appellant subject to adverse security assessment (ASA) by Australian Security Intelligence Office (ASIO) – Where appellant sought review of ASA by Administrative Appeal Tribunal ("AAT") – Where s 39A(8) of AAT Act provided ASIO Minister may certify evidence proposed to be adduced or submissions proposed to be made by Director-General of Security are of such nature that disclosure be contrary to public interest – Where s 39B(2)(a) of AAT Act provided ASIO Minister may certify disclosure of information in certificate, or disclosure of contents of document, would be contrary to public interest – Where ASIO Minister issued certificates under ss 39A(8) and 39B(2)(a) of AAT Act – Where AAT affirmed ASA decision – Where, when appealed to Federal Court, AAT obliged under s 46(1) of AAT Act to send documents before AAT to Court – Where, because certificates in force in respect of certain documents, Federal Court required by s 46(2) of AAT Act to do all things necessary to ensure matter not disclosed to person other than

a member of Court – Where Federal Court determined s 46(2) of AAT Act valid and proceeded to determine appeal grounds adversely to appellant while having regard to submissions and evidence to which appellant did not have access by reason of s 46(2) – Whether s 46(2) of AAT Act denies appellant procedural fairness – Whether s 46(2) is invalid by reason of Ch III of Constitution in that it requires Federal Court to act in procedurally unfair manner – Whether decisions in *Gypsy Jokers Motorcycle Club Inc v Commissioner of Police* (2008) 234 CLR 532; *Assistant Commissioner Pompano v Condon Pty Ltd* (2013) 252 CLR 38; or *Graham v Minister for Immigration and Border Protection* (2017) 263 CLR 1 should be qualified or overruled.

Appealed from FCA (FC): [\[2021\] FCAFC 51](#); (2021) 284 FCR 357; (2021) 389 ALR 372

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Copyright

Realestate.com.au Pty Ltd v Hardingham & Ors; RP Data Pty Limited v Hardingham & Ors
[S57/2022](#); [S58/2022](#): [\[2022\] HCATrans 64](#)

Date heard: 12 April 2022 – *Special leave granted*

Catchwords:

Copyright – Informal oral agreements – Inferred term – Implied term – Where Hardingham professional photographer and sole director of Real Estate Marketing Australia Pty Ltd ("REMA") – Where REMA commissioned by agencies to take photographs and prepare floor plans of properties for use on platforms concerning marketing of properties for sale or lease – Where retainer of Hardingham and REMA by agencies oral, informal and said nothing of copyright in photographs and floorplans – Where Hardingham entered into "deed of licence" with REMA by which Hardingham granted REMA exclusive licence of copyright subsisting in works originated by him – Where photographs and floor plans provided to each agency were uploaded to appellant's platform – Where appellant's terms and conditions provided that agency granted licence to appellant to use and adapt content provided by agency – Where s 15 of *Copyright Act 1968* (Cth) provided "act shall be deemed to have been done with licence of copyright owner if doing of act was authorized by a licence binding copyright owner" – Whether, in informal agreement under which owner of copyright in works intends to grant another person licence to use works, including right to grant sub-licence to third party, it is necessary for licensor and licensee to know precise terms of grant by sub-licence – Whether, for purposes of engaging s 15 of *Copyright*

Act, it is necessary to show what licence binding on owner allowed, and whether infringer acted consistently with licence.

Appealed from FCA (FC): [\[2021\] FCAFC 148](#); (2021) 395 ALR 644; (2021) 162 IPR 1

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Corporations Law

Bryant & Ors as Liquidators of Gunns Limited and Auspine Limited v Badenoch Integrated Logging Pty Ltd

A10/2022: [\[2022\] HCATrans 42](#)

Date heard: 18 March 2022 – *Special leave granted*

Catchwords:

Corporations law – Voidable transactions – Unfair preferences – "Peak indebtedness" rule – Interpretation of s 588FA of *Corporations Act 2001* (Cth) – Where, pursuant to s 588FA(1), transaction an unfair preference given by company to creditor if company and creditor are parties to transaction and, as a result of transaction, creditor receives more than creditor would have were creditor to prove for debt in winding up – Where s 588FA(3)(c) provided s 588FA(1) applies to all transactions forming part of relationship as if single transaction where, relevantly, transaction an integral part of a continuing business relationship – Where Full Court set aside primary judge's finding that liquidators entitled to choose point of peak indebtedness during statutory period in endeavouring to show, from that point, preferential payment under s 588FA(1) – Whether, by enacting s 588FA(3)(c), Parliament intended to abrogate liquidator's right to choose any point during statutory period, including point of peak indebtedness, to show point from which preferential payment under s 588FA(1) – Proper point for single transaction under s 588FA(3)(c) – Whether continuing business relationship will cease if operative and mutual purpose of inducing further support is subordinated to predominant purpose of recovering past indebtedness.

Appealed from FCA (FC): [\[2021\] FCAFC 64](#); (2021) 284 FCR 590

Appealed from FCA (FC): [\[2021\] FCAFC 111](#)

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Metal Manufacturers Pty Limited v Gavin Morton as Liquidator of MJ Woodman Electrical Contractors Pty Ltd (in Liquidation) & Anor
B6/2022: [\[2022\] HCATrans 88](#)

Date determined: 12 May 2022 – *Special leave granted*

Catchwords:

Corporations law – Insolvency – Liquidators – Set-off – Unfair preferences – Mutuality – Where s 533C(1) of *Corporations Act 2001* (Cth) provided, relevantly, where mutual credits, mutual debts or other mutual dealings between insolvent company being wound up and person who wants debt or claim admitted against company: (a) account to be taken of what due in respect of mutual dealings; and (b) sum due from one party to be set off against any sum due from other party; and (c) only balance of account admissible to proof against company – Where ss 588FA, 588FE and 588FF of *Corporations Act* provide for recovery of unfair preferences – Where creditor received payments during relation back period of \$190,000 – Where quantum of creditor’s alleged set-off admitted to be \$194,727.23 – Whether statutory set-off under s 553C(1) of *Corporations Act* available to creditor against liquidator in answer to claim for recovery of unfair preference under ss 588FA, 588FE and 588FF of *Corporations Act* – Proper approach to mutuality in s 533C.

Appealed from FCA (FC): [\[2021\] FCAFC 228](#)

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Criminal Law

Dansie v The Queen

A4/2022: [\[2022\] HCATrans 14](#)

Date heard: 18 February 2022 – *Special leave granted*

Catchwords:

Criminal law – Murder – Unreasonable verdict – Verdict unsupported by evidence – Where appellant's wife drowned after her wheelchair entered pond – Where prosecution alleged intentional drowning – Where, on defence case, drowning accidental – Where s 158(1)(a) of *Criminal Procedure Act 1921* (SA) provided for appeal to be allowed where Court considers verdict should be set aside on ground that conviction unreasonable or cannot be supporting having regard to evidence – Whether Court of Criminal Appeal failed to conduct independent assessment of whole of evidence – Whether open to trial judge to exclude hypothesis of accidental drowning – Proper

approach by intermediate appellate court to "unreasonable verdict" limb of common form appeal provision following judge-alone trial.

Appealed from SASC (CCA): [\[2020\] SASCF 103](#)

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Stephens v The Queen

S53/2022: [\[2022\] HCATrans 58](#)

Date heard: 8 April 2021 – *Special leave granted*

Catchwords:

Criminal law – Presumption against retrospectivity – Where, on 8 June 1984, *Crimes Act 1900* (NSW) amended to repeal s 81, which proscribed indecent assault on male person, and inserted s 78K, which proscribed homosexual intercourse with male person between ages of 10 and 18 years – Where appellant prosecuted for alleged sexual offences committed against complainant between January 1982 and December 1987 – Where complainant turned 16 years old on 6 July 1987 – Where, on 29 November 2018, appellant arraigned on indictment containing 18 counts – Where date range for alleged offences extended across 8 June 1984, with indictment drafted so that one count alleged offence against s 81, and another count, pleaded in alternative, alleged offence against s 78K, with dates commensurate with dates provisions were in force – Where, on 1 December 2018, s 80AF of *Crimes Act* came into effect – Where s 80AF applied if: (a) uncertainty as to when during period conduct alleged to have occurred; (b) victim of alleged conduct child (under age of 16 years) for whole of period; (c) no time during that period that alleged conduct, if proven, would not have constituted sexual offence; and (d) because of change in law or change in age of child during that period, alleged conduct, if proven, would have constituted more than one sexual offence during that period – Where s 80AF provided that prosecution could rely on offence carrying lesser maximum penalty for entirety of charged period – Where indictment amended on 5 February 2019 to take benefit of s 80AF, with s 81 carrying lesser maximum penalty – Whether s 80AF of *Crimes Act*, which came into effect on 1 December 2018, had retrospective application to appellant's trial, which commenced no later than 29 November 2018 upon arraignment – Whether principles against retrospectivity infringed – Whether s 80AF procedural or substantive.

Appealed from NSWSC (CCA): [\[2021\] NSWCCA 152](#); (2021) 290 A Crim R 303

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Equity

Bosanac v Commissioner of Taxation & Anor

[P9/2022](#): [\[2022\] HCATrans 63](#)

Date heard: 12 April 2022 – *Special leave granted*

Catchwords:

Equity – Presumption of advancement – Beneficial ownership – Matrimonial home – Where Mr and Ms Bosanac ("Bosanacs") married in 1998 – Where Ms Bosanac offered to purchase matrimonial home for \$4.5 million ("Property") – Where Bosanacs applied for two joint loans to purchase Property – Where Property transferred into sole name of Ms Bosanac – Where Commissioner applied for declaration that Ms Bosanac held 50% of her interest in Property on trust for Mr Bosanac – Where primary judge held presumption of advancement not rebutted – Where Full Court relied on fact Mr Bosanac borrowed money with Ms Bosanac to purchase Property to found rebuttal of presumption of advancement – Where Full Court relied on statement in *The Trustees of the Property of Cummins (a bankrupt) v Cummins* (2006) 227 CLR 278 at [71] that where husband and wife purchase matrimonial home, each contributing to purchase price and title is taken by one spouse, it be inferred each spouse intended to have one-half interest, regardless of amounts contributed – Whether rebuttal of presumption of advancement, applying to purchase by spouses of matrimonial home, can be founded on same facts giving rise to presumption of advancement – Whether, in considering whether presumption of advancement rebutted, court should consider spouses' intentions or any joint intention – Proper approach to rebuttal of presumption of advancement.

Appealed from FCA (FC): [\[2021\] FCAFC 158](#)

Appealed from FCA (FC): [\[2022\] FCAFC 5](#)

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Evidence

TL v The Queen

[S61/2022](#): [\[2022\] HCATrans 69](#)

Date heard: 13 April 2021 – *Special leave granted*

Catchwords:

Evidence – Tendency evidence – Proof of identity – Where appellant convicted of murder of partner's child – Where blunt force trauma to abdomen cause of death – Where, 10 days prior, child had suffered burns after appellant placed child in hot water – Where evidence of burns was admitted as tendency evidence pursuant to s 97 of *Evidence Act 1995* (NSW) to prove appellant's tendency to "deliberately inflict physical harm on child" – Where appellant convicted and appealed against conviction on grounds including that tendency evidence should not have been admitted – Where appellant relied on statement in *Hughes v The Queen* (2017) 263 CLR 388 concerning requirement for "close similarity" between tendency alleged and offence charged – Where Court of Criminal Appeal held requirement for "close similarity" should arise when tendency evidence is only or predominant evidence that goes to identity – Whether, where tendency evidence is adduced to prove identity of offender for known offence, probative value of tendency evidence will depend upon close similarity between conduct evidencing tendency and offence – Proper approach to principle articulated in *Hughes*.

Appealed from NSW (CCA): [\[2020\] NSWCCA 265](#)

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Insurance

Allianz Australia Insurance Limited v Delor Vue Apartments CTS 39788

S42/2022: [\[2022\] HCATrans 35](#)

Date heard: 17 March 2022 – *Special leave granted*

Catchwords:

Insurance – Insurance contracts – Indemnity – Election – Estoppel – Waiver – Duty of utmost good faith – Where s 28(3) of *Insurance Contracts Act 1984* (Cth) enables insurer to reduce liability in respect of claim where, relevantly, insured breached duty of disclosure – Where insured notified claim under insurance policy following cyclone damage – Where insurer agreed to indemnify despite non-disclosure of prior defects – Where insurer took steps consistent with providing indemnity – Where insurer emailed insured stating, despite non-disclosure, claim would be honoured – Where insurer subsequently sought to disclaim liability on basis of non-disclosure – Where majority of Full Court of Federal Court of Australia dismissed appeal, holding insurer had elected not to raise defence under s 28(3) – Whether insurer elected not to raise defence under s 28(3) – Whether, if doctrine of election did not apply, insurer waived entitlement to raise defence under s 28(3) – Whether insurer estopped from raising defence under s 28(3) – Whether insured

suffered detriment – Whether insurer breached duty of utmost good faith and, if so, whether insured suffered loss justifying relief.

Appealed from FCA (FC): [\[2021\] FCAFC 121](#); (2021) 396 ALR 27; (2021) 153 ACSR 522

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Intellectual Property

Aristocrat Technologies Australia Pty Ltd v Commissioner of Patents

S40/2022: [\[2022\] HCATrans 25](#)

Date determined: 10 March 2022 – *Special leave granted*

Catchwords:

Intellectual property – Patents – Manner of manufacture – Electronic gaming machine ("EGM") – Where ss 18(1)(a) and 18(1A)(a) of *Patents Act 1990* (Cth) provide invention will be patentable if "manner of manufacture" within meaning of s 6 of *Statute of Monopolies* (21 Jac 1 c 3) – Where question before Federal Court whether invention disclosed by Claim 1 to Patent 967 constituted patentable subject matter – Where Claim 1 described EGM with particular feature game – Where primary judge approached question of patentability by asking: first, whether Claim 1 for mere business scheme; and secondly, if for mere business scheme, one implemented in computer, did invention lie in manner of implementation into computer – Where majority of Full Court adopted alternative approach whereby computer-implemented inventions would be patentable where invention claimed could broadly be described as "advance in computer technology" – Where majority concluded invention disclosed in Claim 1 computer-implemented invention and did not advance computer technology – Whether general principles of patentability apply to computer-implemented inventions – Whether computer-implemented inventions must be advance in computer technology to be patentable – Proper test of patentability for computer-implemented inventions.

Appealed from FCA (FC): [\[2021\] FCAFC 202](#); (2021) 396 ALR 380; (2021) 163 IPR 231

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Self Care IP Holdings Pty Ltd & Anor v Allergan Australia Pty Ltd & Anor; Self Care IP Holdings Pty Ltd & Anor v Allergan Australia Pty Ltd & Anor

S161/2021; S162/2021: [\[2022\] HCATrans 94](#)

Date heard: 13 May 2022 – *Special leave granted*

Catchwords:

Intellectual property – Trade marks – Infringement claim – Section 120 of *Trade Marks Act 1995* (Cth) – Where respondents authorised user and owner of registered trade mark for word "BOTOX" – Where respondents claimed appellants used brand name "PROTOX" as trade mark and "PROTOX" deceptively similar to BOTOX trade mark, constituting infringement under s 120(1) of *Trade Marks Act* – Where respondents claimed appellants used phrase "instant Botox® alternative" as trade mark, which constituted infringement of BOTOX trade mark – Whether appellant infringed BOTOX trade mark by using "instant Botox® alternative" or "PROTOX" – Whether phrase "instant Botox® alternative" deceptively similar to "BOTOX" within meaning of s 120(1) of *Trade Marks Act* – Whether appellants' use of phrase "instant Botox® alternative" attracts defences under s 122(1)(b)(i) and (d) of *Trade Marks Act* regarding use in good faith and use not infringing exclusive right of registered owner.

Consumer law – Misleading or deceptive conduct – Where respondent claimed appellants' statement "instant Botox® alternative" constituted representation appellants' Inhibox product would give same results as BOTOX products in contravention of s 18 or s 29(1)(a) of *Australian Consumer Law* ("ACL"), being Schedule 2 to *Competition and Consumer Act 2010* (Cth), or Inhibox would achieve or had same performance characteristics, uses and/or benefits as Botox in contravention of s 18 or 29(1)(g) of ACL – Whether appellants' made misleading or false representations contrary to ss 18, 29(1)(a) and 29(1)(g) of ACL.

Appealed from FCA (FC): [\[2021\] FCAFC 163](#); (2021) 286 FCR 259; (2021) 393 ALR 595 (2021) 162 IPR 52

Appealed from FCA (FC): [\[2021\] FCAFC 180](#)

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Private International Law

Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l. & Anor

S43/2022: [\[2022\] HCATrans 39](#)

Date heard: 18 March 2022 – *Special leave granted*

Catchwords:

Private international law – Foreign state immunity – Interaction between s 9 of *Foreign States Immunities Act 1985* (Cth) ("Immunities Act") and *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* ("ICSID Convention") – Where proceedings commenced in Federal Court for recognition of award of International Centre for Settlement of Investment Disputes ("ICSID") under s 35(4) of *International Arbitration Act 1974* (Cth) ("Arbitration Act") – Where Kingdom of Spain asserted sovereign immunity – Where s 9 of Immunities Act provided that foreign state immune from jurisdiction of courts of Australia in proceeding – Where s 10 of Immunities Act provided foreign state not immune in proceeding in which it submitted to jurisdiction whether by agreement or otherwise – Where Art 54(1) provided each Contracting State shall recognize award rendered pursuant to ICSID Convention as binding – Where Art 54(2) of ICSID Convention referred to recognition or enforcement of award – Whether, by Art 54 of ICSID Convention, Kingdom of Spain agreed to submit itself to jurisdiction within meaning of s 10 of Immunities Act – Whether ICSID Convention excludes claims for foreign state immunity in proceedings for recognition and enforcement of an award – Proper meaning of "recognition" and "enforcement" in Art 54.

Appealed from FCA (FC): [\[2021\] FCAFC 112](#); (2021) 392 ALR 443; (2021) 153 ACSR 59

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Representative Proceedings

BHP Group Limited v Impiombato & Anor

M12/2022: [\[2022\] HCATrans 13](#)

Date heard: 18 February 2022 – *Special leave granted*

Catchwords:

Representative proceedings – Shareholder class action – Non-resident shareholders – Pt IVA of *Federal Court of Australia Act 1976* (Cth) ("FCA Act") – Presumption against extraterritoriality – Dual listed company structure – Where claims brought on behalf of non-resident shareholders of BHP Group Limited (Australian company) and BHP Group Plc (United Kingdom company) – Where claims brought in Federal Court of Australia under Pt IVA concerning

representative proceedings – Whether Pt IVA of FCA Act applies to claims brought on behalf of non-resident group members – Whether presumption against extraterritorial operation of legislation applies to Pt IVA of FCA Act – Whether Part IVA of FCA Act confers on Federal Court jurisdiction or power to determine claims of group members outside territory.

Appealed from FCA (FC): [\[2021\] FCAFC 93](#); (2021) 151 ACSR 634

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Statutory Interpretation

Page v Sydney Seaplanes Pty Ltd trading as Sydney Seaplanes
S60/2022: [\[2022\] HCATrans 70](#)

Date heard: 13 April 2022 – *Special leave granted*

Catchwords:

Statutory interpretation – Jurisdiction – Limitation of actions – Inconsistency – Where s 11(2) of *Federal Courts (State Jurisdiction) Act 1999* (NSW) ("NSW Jurisdiction Act") enabled party to proceeding in which "relevant order" was made to apply to NSW Supreme Court for order that proceeding be treated as one in Supreme Court – Where appellant commenced proceedings in Federal Court of Australia seeking damages from respondent in connection with seaplane accident pursuant to provisions of *Civil Aviation (Carriers' Liability) Act 1959* (Cth) ("Commonwealth Act"), incorporated by s 5 of *Civil Aviation (Carriers' Liability) Act 1967* (NSW) – Where Federal Court dismissed application for want of jurisdiction because accident occurred solely in New South Wales – Where action subject to two-year limitation and extinguishment of right to damages – Where two years had passed before Federal Court decision – Where appellant sought orders in NSW Supreme Court under s 11 that Federal Court proceedings be treated as Supreme Court proceedings such that proceedings commenced within limitation period – Where Court of Appeal held "relevant order" in s 11 of NSW Jurisdiction Act refers to not to general want of jurisdiction but to general want of jurisdiction by reason of constitutionally invalid conferral of jurisdiction as considered in *Re Wakim; Ex parte McNally* (1999) 198 CLR 511 – Whether order of Federal Court dismissing Federal Court proceeding for want of jurisdiction was "relevant order" within meaning of s 11 of NSW Jurisdiction Act.

Appealed from NSW (CA): [\[2021\] NSWCA 204](#); (2021) 362 FLR 1; (2021) 393 ALR 485

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Torts

Electricity Networks Corporation Trading as Western Power v Herridge Parties & Ors

P5/2022: [\[2022\] HCATrans 37](#)

Date heard: 17 March 2022– *Special leave granted*

Catchwords:

Torts – Negligence – Duty of care – Breach of duty – Statutory authority – Where Western Power ("WP") statutory authority established under *Electricity Corporations Act 2005* (WA) with functions including management, provision and improvement of electricity transmission and distribution services in South West Interconnected System ("SWIS") – Where service cable owned by WP ran from WP's termination pole into mains connection box secured adjacent to top of point of attachment pole ("PA pole") on Mrs Campbell's property – Where PA pole owned by Mrs Campbell – Where electricity passed from wires of WP's service cable to wires of Mrs Campbell's consumer mains cable – Where WP had systems for regular inspection of WP's network assets, but did not regularly inspect or maintain consumer-owned PA poles – Where WP engaged Thiess to replace WP's network poles in Parkerville area, including termination pole, but inspection did not comply with industry standards or Thiess' contractual obligations – Where PA pole fell causing electrical arcing, igniting dry vegetation around base of pole – Where resulting fire spread, becoming Parkerville bushfire, and causing property damage – Where primary judge found WP owed duty to take reasonable care to inspect PA pole to ascertain whether safe and fit condition for supply of electricity before and when undertaking works on pole, but duty discharged by engaging Thiess – Where trial judge apportioned liability for losses 70% as to Thiess and 30% as to Mrs Campbell, and dismissed claims against WP – Where Court of Appeal formulated duty as one owed to persons in vicinity of SWIS to take reasonable care to avoid or minimise risk of injury, and loss to property, from ignition and spread of fire in connection with delivery of electricity through distribution system – Where Court of Appeal held WP had breached duty by failing to have system in place to respond to risk of harm and apportioned liability for losses 50% as to WP, 35% as to Thiess and 15% as to Mrs Campbell – Whether WP, as statutory authority with defined duties, owes common law duty to take reasonable care to avoid fire, discharge of which would oblige WP to exercise discretionary statutory powers in relation to property not owned or controlled by WP – Whether duty of care asserted inconsistent with statute – Proper test for inconsistency between common law duty and statutory scheme which regulates statutory authority.

Appealed from WASC (CA): [\[2021\] WASCA 111](#)

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7: CASES NOT PROCEEDING OR VACATED

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8: SPECIAL LEAVE REFUSED

Publication of Reasons: 5 May 2022 (Canberra)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Yenuga	Director of Public Prosecutions & Anor (S16/2022)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 293	Application dismissed [2022] HCASL 87
2.	Pratten	The Queen (S19/2022)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 251	Application dismissed [2022] HCASL 88
3.	Choi	Commissioner of Police, New South Wales Police Force (S21/2022)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 290	Application dismissed [2022] HCASL 89
4.	The Sydney Cosmetic Specialist Clinic Pty Ltd & Anor	Hu & Anor (S23/2021)	Supreme Court of New South Wales (Court of Appeal) [2022] NSWCA 1	Application dismissed [2022] HCASL 90
5.	The Sydney Cosmetic Specialist Clinic Pty Ltd & Anor	Hu & Anor (S24/2021)	Supreme Court of New South Wales (Court of Appeal) [2022] NSWCA 1	Application dismissed [2022] HCASL 90
6.	Compass Marinas Australia Pty Ltd & Anor	State of Queensland (B7/2022)	Supreme Court of Queensland [2021] QCA 293	Application dismissed with costs [2022] HCASL 91
7.	Greenaway	The Queen (S193/2021)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 253	Application dismissed [2022] HCASL 92
8.	Acting Minister for Immigration, Citizenship, Migrant Services, and Multicultural Affairs	CWY20 (S195/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 195	Application dismissed with costs [2022] HCASL 93
9.	Minister for Home Affairs	ENT19 (S209/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 195	Application dismissed with costs [2022] HCASL 94

5 May 2022: Canberra and by video link

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Jacques	The Director of Public Prosecutions (A41/2021)	Supreme Court of South Australia (Court of Appeal) [2021] SASCA 94	Application dismissed [2022] HCATrans 83
2.	GJL	The Queen (B51/2021)	Supreme Court of Queensland (Court of Appeal) [2021] QCA 175	Application dismissed [2022] HCATrans 81
3.	Armitage	The Queen (B68/2021)	Supreme Court of Queensland (Court of Appeal) [2021] QCA 185	Application dismissed [2022] HCATrans 82
4.	Repipe Pty Ltd	Commissioner of Patents (P1/2022)	Full Court of the Federal Court of Australia [2021] FCAFC 223	Application dismissed with costs [2022] HCATrans 84
5.	Fury	Nasso (P43/2021)	Supreme Court of Western Australia (Court of Appeal) [2021] WASCA 171	Application dismissed with costs [2022] HCATrans 85
6.	Kinghorn	The Queen & Ors (S11/2022)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 313	Application dismissed [2022] HCATrans 80

Publication of Reasons: 12 May 2022 (Canberra)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Lauro	Minter Ellison (a firm) (A2/2022)	Supreme Court of South Australia (Court of Appeal) [2021] SASCA 150	Application dismissed [2022] HCASL 95
2.	Collins	State of Queensland (B9/2022)	Supreme Court of Queensland [2021] QCA 36	Application dismissed [2022] HCASL 96
3.	Salum	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (M5/2022)	High Court of Australia (Unreported)	Application dismissed [2022] HCASL 97
4.	EAN19	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (S31/2022)	Federal Court of Australia [2021] FCA 1231	Application dismissed [2022] HCASL 98
5.	Clarkson	Ray White Gladstone in their capacity as agents for Pateliz Pty Ltd (ACN 140 473 936) the Trustee for the Dougal Trust (B4/2022)	Application for removal	Application dismissed with costs [2022] HCASL 99
6.	Mao	BT Funds Management Limited & Ors (S20/2022)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 295	Application dismissed [2022] HCASL 100
7.	Makowska	St George Community Housing Ltd & Anor (S25/2022)	Supreme Court of New South Wales (Court of Appeal) [2022] NSWCA 5	Application dismissed [2022] HCASL 101
8.	Harper	The Queen (B62/2021)	Supreme Court of Queensland (Court of Appeal) [2015] QCA 273	Application dismissed [2022] HCASL 102
9.	Cotterill	Romanes & Anor (M80/2021)	Application for removal	Application dismissed with costs [2022] HCASL 103

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
10.	Halford & Anor	Halford & Anor (P3/2022)	Supreme Court of Western Australia (Court of Appeal) [2022] WASCA 1	Application dismissed with costs [2022] HCASL 104

13 May 2022: Sydney and by video link

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Almona Pty Ltd	Parklea Corporation Pty Limited & Ors (S128/2021)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 171	Application refused with costs [2022] HCATrans 92
2.	Crown Melbourne Limited	Commissioner of Taxation (S136/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 151	Application refused with costs [2022] HCATrans 93
3.	Burswood Nominees Limited As Trustee For The Burswood Property Trust	Commissioner of Taxation (S137/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 151	Application refused with costs [2022] HCATrans 93
4.	Crown Melbourne Limited	Commissioner of Taxation (S138/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 151	Application refused with costs [2022] HCATrans 93
5.	Burswood Nominees Limited As Trustee For The Burswood Property Trust	Commissioner of Taxation (S139/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 151	Application refused with costs [2022] HCATrans 93
6.	CZC19	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (S177/2021)	Federal Court of Australia [2021] FCA 1083	Application refused with costs [2022] HCATrans 97
7.	Trentelman	The Owners – Strata Plan No. 76700 (S187/2021)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 242	Application refused with costs [2022] HCATrans 98