HIGH COURT BULLETIN

[2025] HCAB 1 (21 February 2025)

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

1: SUMMARY OF NEW ENTRIES

2: Cases Handed Down

Case	Title
Naaman v Jaken Properties Australia Pty Limited ACN 123 423 432 & Ors	Equity
Birketu Pty Ltd ACN 003 831 392 & Anor v Atanaskovic & Ors	Costs
State of Queensland v Mr Stradford (a pseudonym) & Ors; *Commonwealth of Australia v Mr Stradford (a pseudonym) & Ors* *His Honour Judge Salvatore Paul Vasta v Mr Stradford (a pseudonym) & Ors*	Constitutional law
KMD v CEO (Department of Health NT) & Ors	Criminal law

3: Cases Reserved

Case	Title
Cherry v State of Queensland	Constitutional law
State of New South Wales v Wojciechowska & Ors	Constitutional law
Forestry Corporation of New South Wales v South East Forest Rescue Incorporated INC9894030	Civil procedure
DZY (a pseudonym) v Trustees of the Christian Brothers	Civil procedure
The King v Ryan Churchill (a pseudonym)	Criminal law

4: Original Jurisdiction

Case	Title
Government of the Russian Federation v Commonwealth of Australia	Constitutional law
Stott v The Commonwealth of Australia & Anor	Constitutional law

5: Section 40 Removal

Case	Title

6: Special Leave Granted

Case	Title

Hunt Leather Pty Ltd ACN 000745960 & Anor v Transport for NSW *Hunt Leather Pty Ltd ABN 46000745960 & Ors v Transport for NSW*	Torts

7: Cases Not Proceeding or Vacated

Case	**Title**

8: Special Leave Refused

2: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the February 2025 sittings.

Criminal law

KMD v CEO (Department of Health NT) & Ors
D2/2024: [2025] HCA 4

Date delivered: 27 February 2025

Coram: Gordon, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Criminal law – mental impairment – supervision orders – where appellant found not guilty by reason of mental impairment of eight offences and subject to custodial supervision order under s 43X(2) of *Criminal Code (NT)* – where such order required first respondent to submit to Court report on treatment or management of supervised person's impairment and Court may conduct review to determine whether person may be released from custodial supervision order – where on completion of review s 43ZH(2) *Criminal Code* required Court to vary order to non-custodial supervision order unless satisfied on the evidence that safety of supervised person or public will be seriously at risk if person released on non-custodial supervision order – where primary judge made non-custodial supervision order – where majority of Court of Criminal Appeal found not reasonably open to primary judge to find safety of public not seriously at risk if appellant placed on non-custodial supervision order – proper standard of appellate review to be applied – whether majority in finding correctness standard rather than *House v King* standard applied – whether majority erred in ordering custodial supervision order be confirmed without providing appellant with further hearing or opportunity to adduce evidence relevant to risk based on time she spent in community following primary judge's decision in circumstances where conduct of appeal gave rise to reasonable expectation that if CCA found error she would be afforded further hearing – whether majority erred in ordering custodial supervision order without any evidence relevant to risk arising from appellant's time in community – whether majority erred in holding primary judge's periodic review miscarried because appellant refused to engage with one of persons who prepared report under s 43ZN(2)(a) of *Criminal Code.*

Appeal allowed

Appealed from NTCCA: [2024] NTCCA 8

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Constitutional Law

State of Queensland v Mr Stradford (a pseudonym) & Ors
Commonwealth of Australia v Mr Stradford (a pseudonym) & Ors
His Honour Judge Salvatore Paul Vasta v Mr Stradford (a pseudonym) & Ors
S24/2024; C3/2024; C4/2024: [2025] HCA 3

Date delivered: 12 February 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – Chapter III Court – Judicial Immunity – Contempt order – Where Judge of Federal Circuit Court ("Judge"), incorrectly found Mr Stradford in contempt and sentenced him to 12 months' imprisonment – Where Mr Stradford detained for six days – Where Full Court allowed Mr Stradford's appeal and set aside contempt declaration and imprisonment order – Where Mr Stradford commenced proceeding in Federal Court alleging false imprisonment by Judge – Where Federal Court held Judge liable for false imprisonment – Where Federal Court found Commonwealth and State of Queensland ("Queensland") vicariously liable – Where Mr Stradford, Commonwealth and Queensland each appealed to Full Court of the Federal Court – Whether Judge liable to Mr Stradford for tort of false imprisonment – Whether Federal Circuit Court of Australia had power to punish for contempt despite its designation as inferior court – Whether order for contempt by inferior court affected by jurisdictional error *void ab initio* – Whether Judge had same immunity as superior court judge with respect to making of contempt orders – Whether s *249 of Criminal Code* (Qld) applied to warrant issued by Federal Circuit Court – Whether Federal Court erred in concluding Commonwealth and Queensland not afforded protection at common law from civil liability in circumstances where their respective officers executed imprisonment order and warrant issued by Circuit Court which appeared valid on their face – Whether Federal Court erred in concluding Circuit Court's constitutionally derived power to punish contempts and its power under s 17 of *Federal Circuit Court of Australia Act 1999* (Cth) ousted or limited by Pts XIIIA and XIIIB of *Family Law Act 1975* (Cth) – Whether Federal Court erred in finding errors Judge made "outside" or "in excess of" jurisdiction and he had pre-judged outcome of hearing in relation to contempt orders.

Appeals allowed.

Removed from Full Court of the Federal Court of Australia under s 40 of Judiciary Act 1903 (Cth)

Costs

Birketu Pty Ltd ACN 003 831 392 & Anor v Atanaskovic & Ors
S52/2024: [2025] HCA 2

Date delivered: 5 February 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Costs – General rule that self-represented litigants cannot recover costs for own time – Whether partners of unincorporated law firm entitled to recover costs for work done by employed solicitors of that firm in proceedings brought by or against partners of firm – Whether Court of Appeal erred finding first and second respondents able to recover costs of employed solicitors in proceedings in which they were self-represented solicitor litigants by their unincorporated law firm – Whether Court of Appeal erred finding s 98(1) of *Civil Procedure Act 2005* (NSW) ("CPA") and definition of costs in s 3(1) authorised recovery of costs – Whether Court of Appeal erred in finding employed solicitor rule operated to authorise recovery of costs – Whether Court of Appeal erred in declining to follow *United Petroleum v Herbert Smith Freehills* [2020] VSCA 15 in applying CPA to recovery of costs by employed solicitors of self-represented solicitor litigants.

Appeal dismissed with costs.

Appealed from NSWSC (CA): [2023] NSWCA 312; (2023) 113 NSWLR 305

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Equity

Naaman v Jaken Properties Australia Pty Limited ACN 123 423 432 & Ors
S26/2024: [2025] HCA 1

Date delivered: 5 February 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Equity – Fiduciary duty – Fiduciary duty between former and successor trustees – Duties of trustees – Where first respondent successor trustee – Where second respondent sole director and shareholder of former trustee – Where former trustee appointed in June 2005 – Where in November 2006, appellant commenced proceedings against former trustee seeking damages of $2 million – Where first respondent replaced former trustee by way of deed of appointment – Where former trustee promised indemnity from first respondent as successor trustee – Where former trustee wound up because of claim for $2,500, with effect appellant's pending proceedings stayed – Where legal title to trust assets transferred to first respondent as trustee – Where on March 2014, default judgment entered in favour of appellant against former trustee – Where judgment set aside by consent, and proceedings reheard in December 2014 – Where on 25 February 2016, primary judge made orders entering judgment for appellant against former trustee in amount of $3.4 million and declared former trustee entitled to be indemnified out of trust assets – Where in meantime, trust assets dissipated by first respondent at discretion of third respondent – Where other respondents either knowingly involved in conduct or received trust property – Where primary judge found first respondent breached fiduciary duties, and other respondents either knowingly involved in the conduct or received trust property – Where Court of Appeal majority held first respondent did not owe fiduciary obligation at any time – Whether Court of Appeal majority erred in concluding first respondent as successor trustee did not owe fiduciary duty to former trustee not to deal with trust assets so as to destroy, diminish or jeopardise former trustee's right of indemnity or exoneration from those assets.

Appeal dismissed with costs.

Appealed from NSWSC (CA): [2023] NSWCA 214; (2023) 112 NSWLR 318; (2023) 21 BPR 44,317

Appealed from NSWSC (CA): [2023] NSWCA 254

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3: CASES RESERVED

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

Civil Procedure

DZY (a pseudonym) v Trustees of the Christian Brothers
M81/2024: [2024] HCATrans 9

Date heard: 13 February 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson JJ

Catchwords:

Civil procedure – limitation of actions – application to set aside deeds of settlement under s 27QE of *Limitation of Actions Act 1958* (Vic) – where appellant entered into two deeds of settlement relating to sexual abuse alleged against Christian Brothers in school run by respondent – where appellant later commenced proceedings seeking damages from respondent for economic loss caused by abuse – where respondent claimed settlements should not be set aside because it would have pleaded limitation defence and *"Ellis"* defence that unincorporated association not solvent legal entity capable of being sued (*Trustees of the Roman Catholic Church v Ellis* (2007) 70 NSWLR 565) – where primary judge allowed claim to proceed – where Court of Appeal set aside primary judge's decision – whether majority of Court of Appeal erred in finding power in s 27QE *Limitation of Actions Act* not enlivened unless claimant establishes that limitation or *Ellis* defence had material impact on or was leading factor in decision to settle – whether Court of Appeal misapplied correctness standard of appellate review in *Warren v Coombs* (1979) 142 CLR 531.

Appealed from VSCA: [2024] VSCA 73

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Forestry Corporation of New South Wales v South East Forest Rescue Incorporated INC9894030
S120/2024: [2025] HCATrans 8

Date heard: 12 February 2025

Coram: Gageler CJ, Edelman, Steward, Jagot, and Beech-Jones JJ

Catchwords:

Civil procedure – standing – where respondent environmental organisation brought civil enforcement proceedings seeking injunctive and declaratory relief against respondent in relation to certain forestry operations on basis of impact on three species of glider – where primary judge found respondent lacked standing because of no "special interest" in subject matter – where Court of Appeal set aside decision on basis that clear language required to abrogate or curtail fundamental rights – whether Court of Appeal erred in concluding that on proper construction of *Forestry Act 2012* (NSW), ss 69SB and 69ZA and *Biodiversity Conservation Act 2016* (NSW), ss 13, 14 and 13.14A private entities have standing to bring civil enforcement proceedings for alleged breach of integrated forestry operations agreement – whether there is presumption of standing to bring proceedings for alleged breach by third party where private person or entity has "special interest" unless abrogated by statute.

Appealed from NSWCA: [2024] NSWCA 113

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Lendlease Corporation Limited ACN 000 226 228 & Anor v David William Pallas and Julie Ann Pallas as trustees for the Pallas Family Superannuation Fund & Anor

S108/2024: [2024] HCATrans 76

Date heard: 5 November 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Civil procedure – representative proceedings – notices to group members - where appellant is defendant in shareholder class action brought by respondent plaintiffs alleging misleading and deceptive conduct and breach of continuous disclosure obligations – where separate question stated for determination in New South Wales Court of Appeal – whether Court of Appeal erred in holding that Supreme Court of New South Wales does not have power in representative proceeding to approve notice to group members containing notation to effect that upon any settlement, parties or defendant will seek order that group members neither registering nor opting-out shall not be permitted without leave to seek any benefit under settlement – where Court of Appeal authority conflict with Full Federal Court authority on the question.

Appealed from NSWCA: [2024] NSWCA 83; (2024) 114 NSWLR 81

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Competition Law

Australian Competition and Consumer Commission v J Hutchinson Pty Ltd (ACN 009 778 330) & Anor
Australian Competition and Consumer Commission v Construction, Forestry and Maritime Employees Union & Anor
B41/2024; B42/2024: [2024] HCATrans 86

Date heard: 5 December 2024

Coram: Gageler CJ, Edelman, Steward, Gleeson, and Beech-Jones JJ

Catchwords:

Competition law – giving effect to arrangement or arriving at understanding containing provision preventing or hindering acquisition of services from a subcontractor – *Competition and Consumer Act 2010* (Cth) s 45E(3) – where Hutchinson construction company and head contractor on large construction project – where CFMEU a trade union for purposes of *Fair Work (Registered Organisations) Act 2009* (Cth) – where appellant alleged contravention of s 45E(3) and 45E of *Competition and Consumer Act* by first respondent making and giving effect to understanding with second respondent that it would terminate its sub-contract or cease acquiring services from third party on project – where second respondent alleged to have been knowingly concerned in or party to contravention by threatening industrial action if first respondent did not cease using third party – where primary judge found evidence established respondents entered into arrangement of understanding – where Full Federal Court allowed appeal – whether Full Court found that merely succumbing to threat of industrial action insufficient to give rise to arrangement or understanding – whether making or arriving at arrangement or understanding within meaning of s 45E(3) requires communication of assent that precedes and is distinct from conduct that gives effect or arrangement or understanding.

Appealed from FCAFC: [2024] FCAFC 18; (2024) 302 FCR 79

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Constitutional Law

Babet & Anor v Commonwealth of Australia
Palmer v Commonwealth of Australia
B73/2024; B74/2024: [2025 HCATrans 5]; [2025] HCATrans 7

Date heard: 7 February 2025

Orders pronounced: 12 February 2025

Questions answered

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – Elections – *Commonwealth Electoral Act 1918* (Cth) – Part XI – Registration of political parties – Where United Australia Party was registered as a political party in 2018 – Where United Australia party was voluntarily deregistered by the Australian Electoral Commission under s 135(1) of the Act in 2022 – Where s 135(3) of the Act provides that a party is ineligible for registration until after the general election next following the voluntary deregistration of that party – Validity of s 135(3) – Whether invalid on the ground that it impairs the direct choice by the people of Senators or Members of the House of Representatives, contrary to ss 7 and 24 of the *Constitution* – Whether invalid on the ground that it impermissibly discriminates against candidates of a political party that has deregistered voluntarily or a Parliamentary party that has deregistered voluntarily – Whether invalid on the ground that it infringes the implied freedom of political communication.

Cherry v State of Queensland
B11/2024: [2025] HCATrans 2

Date heard: 4 February 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – separation of powers – judicial power – where plaintiff convicted of two counts of murder in 2002 and sentenced to life imprisonment with mandatory minimum non-parole period of 20 years – where body of second victim never located – where in 2021 new provisions inserted into *Corrective Services Act 2006* (Qld) ("CSA") to amend "no body-no parole" scheme and introducing new "restricted prisoners" regime – where President of Parole

Board of Queensland may make "no co-operation" declaration under s 175L of CSA in respect of a "no body – no parole" prisoner where remains of victim not found and where Board not satisfied prisoner has given "satisfactory co-operation" – where effect of declaration is that prisoner may not apply for parole notwithstanding parole eligibility date set by sentencing judge – where under s 175E of CSA President of Parole Board can make declaration about restricted prisoner (relevantly defined as prisoner sentenced to life imprisonment for more than one conviction of murder) – where effect of declaration is that prisoner may not apply for parole other than in "exceptional circumstances parole" under s 1767 – where plaintiff subject to "no co-operation" declaration and liable for "restricted prisoner" declaration if former lapses – validity of provisions under Ch 5, Divs 1 and 2 CSA – whether ss 175L and 175E CSA invalid as enabling Queensland executive to impermissibly interfere with exercise of judicial power by State Courts contrary to principle established in *Kable v Director of Public Prosecutions* (1996) 189 CLR 51.

Special case referred to Full Court on 27 September 2024

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Commonwealth of Australia v Yunupingu (on behalf of the Gumatj Clan or Estate Group) & Ors

D5/2023: [2024] HCATrans 48; [2024] HCATrans 49; [2024] HCATrans 50

Date heard: 7, 8 and 9 August 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – *Constitution,* s 51(xxxi) – Acquisition of property on just terms – Extinguishment of native title – Where principal proceeding is application for compensation under *Native Title Act 1993* (Cth) for alleged effects of grants or legislative acts on native title in period after Northern Territory became territory of Commonwealth in 1911 and before enactment of *Northern Territory Self-Government Act 1978* (Cth) – Whether Full Court erred by failing to find that just terms requirement contained in s 51(xxxi) of *Constitution* does not apply to laws enacted pursuant to s 122 of *Constitution*, including *Northern Territory (Administration) Act 1910* (Cth) and Ordinances made thereunder – Whether *Wurridjal v Commonwealth* (2009) 237 CLR 309 should be re-opened – Whether Full Court erred in failing to find that, on facts set out in appellant's statement of claim, neither vesting of property in all minerals on or below surface of land in claim area in Crown, nor grants of special mineral leases capable of amounting to acquisitions of property under s 51(xxxi) of *Constitution* because native title inherently susceptible to valid exercise of Crown's sovereign power to grant interests in land and to appropriate to itself unalienated land for Crown purposes.

Native title – Extinguishment – Reservations of minerals – Whether Full Court erred in failing to find that reservation of "all minerals" from grant of pastoral lease "had the consequence of creating rights of ownership" in respect of minerals in Crown, such that Crown henceforth had right of exclusive possession of minerals and could bring an action for intrusion.

Appealed from FCA (FC): [2023] FCAFC 75; (2023) 298 FCR 160; (2023) 410 ALR 231

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CZA19 v Commonwealth of Australia & Anor

M66/2024: [2024] HCATrans 81

Date heard: 14 November 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Constitutional law – immigration detention – whether limit on constitutionally permissible duration of immigration detention identified in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37 applies to non-citizen detained under ss 189(1) and 196(1) of *Migration Act 1958* (Cth) for purpose of considering whether to grant the person a visa where no real prospect of removal if person not granted a visa – where first respondent taken into immigration detention in December 2018 – where first respondent applied for protection visa and was refused by delegate – where AAT set aside delegate's decision and remitted to delegate with direction that substantial grounds for believing first respondent would suffer significant harm if removed to Poland – where following decision in *NZYQ* first respondent sought habeas corpus and mandamus in Federal Court seeking consideration of visa and declaratory relief regarding lawfulness of detention – where separate question referred for determination in Federal Court – where visa refused by applicant released on bridging visa – whether detention unlawful between November 2022 and release.

Removed into the High Court from Federal Court of Australia under s 40 of the Judiciary Act 1903 (Cth).

DBD24 v Minister for Immigration and Multicultural Affairs & Anor

P34/2024: [2024] HCATrans 81

Date heard: 14 November 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Constitutional law – immigration detention – limit on constitutionally permissible duration of immigration detention identified in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37 – where plaintiff arrived in Australia without valid visa and detained in immigration detention between 23 June 2023 and 1 October 2024 – where plaintiff applied for safe haven enterprise visa and was refused by delegate of first respondent – where on 18 December 2023 Administrative Appeals Tribunal remitted refusal and directed that substantial grounds for believing applicant at risk of significant harm if returned to Vietnam – where Tribunal 's decision a "protection finding" under s 197C(3)(b) of *Migration Act* 1958 (Cth) - where plaintiff granted protection visa and released from immigration detention on 1 October 2024 – whether constitutional limitation exceeded where alien has applied for visa and visa being considered in circumstance that visa applicant could not be removed in any event because of extant 'protection finding' under s 197C(3)(b) of *Migration Act* or where consideration of visa application takes unreasonably long time.

Special case referred to Full Court on 5 November 2024.

MJZP v Director-General of Security & Anor

S142/2023: [2024] HCATrans 92; [2024] HCATrans 93

Date heard: 12 and 13 December 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ

Catchwords:

Constitutional law – Judicial power of Commonwealth – Procedural fairness – Where plaintiff company is carriage service provider within meaning of *Telecommunications Act 1997* (Cth) – Where in June 2021 Australian Security Intelligence Organisation ("ASIO") furnished to Minister for Home Affairs adverse security assessment in respect of plaintiff in connection with s 315A of *Telecommunications Act* – Where plaintiff applied to Administrative Appeals Tribunal ("Tribunal") for review of adverse security assessment – Where Minister made various certifications under *Administrative Appeals Tribunal Act 1975* (Cth) ("AAT Act") that disclosure of certain documents and evidence contrary to public interest – Where Tribunal provided open reasons to plaintiff and first defendant, and closed reasons only to first defendant – Where plaintiff appealed to Federal Court of Australia – Where s 46(1) of AAT Act requires Tribunal to send to Federal Court all documents before Tribunal in connexion with proceeding, including documents subject to certificates issued by Minister – Where s 46(2) of AAT Act requires Federal Court to ensure matter subject to certificates not disclosed to any person other than member of Federal Court for

purposes of appeal – Whether s 46(2) substantially impairs institutional integrity of Federal Court – Whether s 46(2) requires Federal Court to exercise Commonwealth judicial power in manner inconsistent with nature of that power – Whether s 46(2) invalid on basis it infringes Ch III of *Constitution*.

Special case referred to the Full Court on 4 June 2024.

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Ravbar & Anor v Commonwealth of Australia & Ors

S113/2024: [2024] HCATrans 90; [2024] HCATrans 91

Date heard: 10 and 11 December 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Constitutional law – invalidity – implied freedom of political communication – acquisition of property on just terms – where first and second plaintiffs office bearers of Construction and General Division ("C&G Division) of the Construction, Forestry, Mining and Energy Union – where s 333A(1) of *Fair Work (Registered Organisations) Act 2009* (Cth) ("FWRO Act") provides C&G Division and each of its branches placed into administration from earliest time that both a legislative instrument made under s 333B(1) and appointment of administrator under s 323C in force – where s 323B(1) empowers Minister to determine scheme for administration of C&G Division and branches if satisfied in public interest – whether *Fair Work (Registered Organisations) Amendment (Administration) Act 2024* (Cth) ("Administration Act") and provisions it inserted into *Fair Work (Registered Organisations) Act 2009* and *Fair Work Act 2009* (Cth) sufficiently connected to head of power in s 51 Constitution – whether impugned provisions infringe implied freedom of political communication – whether *Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination 2024* invalid as unsupported by s 323B FWRO Act as partially disapplied or otherwise read down as to not infringe implied freedom of political communication – whether s 323B FWRO Act and Administration Act purport to confer judicial power of Commonwealth on Minister and thereby inconsistent with Ch III of Constitution – whether ss 323K(1) and 323M FWRO Act effect acquisition of property otherwise than on just terms contrary to s 51(xxxi) of Constitution.

Special case referred to Full Court on 18 October 2024

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State of New South Wales v Wojciechowska & Ors

S39/2024: [2025] HCATrans 3; [2025] HCATrans 4

Date heard: 5 and 6 February 2025

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Constitutional law – Judicial Power of Commonwealth – Where first respondent resided in Tasmania – Where first respondent commenced various proceedings in New South Wales Civil and Administrative Tribunal ("Tribunal") against third and fourth respondents, emanations of State of New South Wales – Where first respondent sought review of various decisions and conduct under *Government Information (Public Access) Act 2009* (NSW) ("GIPA Act") and *Privacy and Personal Information Protection Act 1998* (NSW) ("PPIP Act") – Where claim included claim for damages under s 52(2)(a) PPIP Act – Where first respondent challenged jurisdiction of Tribunal on basis functions performed by Tribunal when determining administrative review applications under GIPA Act and PPIP Act involved exercise of judicial power – Where Court of Appeal held determining administrative review under GIPA Act did not involve exercise of judicial power – Where Court of Appeal held determination of application for damages under s 55(2)(a) of PPIP Act brought by out-of-state resident would involve Tribunal exercising judicial power of Commonwealth – Whether *Burns v Corbett* (2018) 265 CLR 304 applies to exercise of non-judicial power – Whether Court of Appeal erred in holding Tribunal, when performing at instance of out-of-State resident claiming damages review of public sector agency conduct under Pt 5 of PPIP Act and *Administrative Decisions Review Act 1997* (NSW) exercises Commonwealth judicial power.

Courts – State tribunals – Jurisdiction.

Appealed from NSWSC (CA): [2023] NSWCA 191; (2023) 379 FLR 256

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Criminal law

The King v Ryan Churchill (a pseudonym)
M94/2024: [2025] HCATrans 10

Date heard: 14 February 2025

Coram: Gageler CJ, Gordon, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Criminal law – evidence – hearsay – *Evidence Act 1996* (Vic) – where appellant convicted of two counts of incest – evidence given of complainant's

representation to another person of having been sexually assaulted – where evidence led that complainant distressed when making representation – where Court of Appeal allowed appeal and held trial judge should have warned jury that evidence of such distress "generally carried little weight" – whether Court of Appeal erred in holding such direction should have been given – whether Court of Appeal erred in finding substantial miscarriage of justice because trial judge did not specifically direct jury they could not use evidence of distress unless first finding link between distress and alleged offending.

Appealed from VSCA: [2024] VSCA 151

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The King v ZT
S38/2024: [2024] HCATrans 82

Date heard: 15 November 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Criminal law – Appeal against conviction – Unreasonable verdict – Joint criminal enterprise – Where respondent found guilty at trial of party to murder – Where case against him founded upon series of admissions made as to involvement in killing – Where respondent's accounts numerous and inconsistent – Where respondent successfully appealed conviction to Court of Criminal Appeal on ground jury's verdict unreasonable – Where Court of Criminal Appeal majority found admissions not sufficiently reliable to establish guilt beyond reasonable doubt – Whether Court of Criminal Appeal majority erred in concluding jury enjoyed no relevant or significant advantage over appellate court – Whether Court of Criminal Appeal majority erred in its application of test in *M v The Queen* (1994) 181 CLR 487.

Appealed from NSWSC (CCA): [2023] NSWCCA 241

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Criminal Practice

Brawn v The King
A20/2024: [2024] HCATrans 85

Date heard: 4 December 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Criminal practice – appeal – miscarriage of justice – prosecution duty of disclosure – where appellant found guilty of one count of maintaining sexual relationship with child – where defence case was that complainant lied about identity of abuser – where, after trial, prosecution disclosed that appellant's father had been charged with six counts of unlawful sexual intercourse with different child – whether Court or Appeal erred in finding that breach of duty of disclosure did not lead to miscarriage of justice for purpose of s 158(1)(c) *Criminal Procedure Act 1921* (SA) because appellant would not have conducted trial differently – whether Court of Appeal erred in finding appellant conceded that non-disclosure did deprive him of opportunity to adduce evidence relating to father – proper approach to 'miscarriage of justice' for purposes of s 158(1)(c) *Criminal Procedure Act*.

Appealed from SASCA: [2022] SASCA 96; (2022) 141 SASR 465

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Evidence

MDP v The King
B72/2023: [2024] HCATrans 84

Date heard: 3 December 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Evidence – Propensity evidence – Miscarriage of justice – Where appellant convicted of various child sexual assault and domestic violence offences against former partner's daughter – Where evidence included evidence from complainant's sister that appellant smacked complainant on bottom – Where trial judge directed jury if they accepted bottom slapping evidence was true, and that it displayed sexual interest of appellant in complainant beyond reasonable doubt, they could use it to reason that it was more likely that offences occurred – Where Court of Appeal found bottom slapping evidence did not meet test for admissibility of propensity evidence – Where Court of appeal found evidence admissible under s 132B of *Evidence Act 1977* (Qld) ("evidence of domestic violence") – Whether Court of Appeal erred holding that no miscarriage of justice occurred when evidence inadmissible as propensity evidence was nonetheless left to jury to be used as propensity evidence.

Appealed from QLDSC (CA): [2023] QCA 134

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Immigration

FEL17 v Minister for Immigration, Citizenship and Multicultural Affairs
S107/2024: [2024] HCATrans 87

Date heard: 6 December 2024

Coram: Gageler CJ, Gordon, Steward, Gleeson, and Jagot JJ

Catchwords:

Immigration – protection visas – invalid application – where appellant applied for protection visa and was refused by delegate – where AAT affirmed delegate's decision – where Assistant Minister for Immigration and Border Protection exercised power under s 417(1) *Migration Act 1958* (Cth) to substitute "another decision" for Tribunal's decision and granted appellate a three month visitor visa with no further stay condition – where appellate subsequently made second application for protection visa – where delegate found application invalid under s 48A – whether majority of Full Federal Court erred in finding application invalid and barred by s 48A.

Appealed from FCA (FC): [2023] FCAFC 153

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Minister for Immigration and Multicultural Affairs & Ors v MZAPC
P21/2024: [2024] HCATrans 51; [2024] HCATrans 80

Date heard: 13 August and 13 November 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Immigration – Duty to remove unlawful citizen as soon as reasonably practicable – Personal and non-compellable powers of Minister – Where respondent's visa cancelled in November 2015 – Where respondent in immigration detention and exhausted all rights of review and appeal in relation to his immigration status – Where primary judge made orders restraining appellants from performing duty imposed by s 198(6) of *Migration Act 1958*

(Cth) to remove respondent from Australia as soon as reasonably practicable – Where primary judge concluded following this Court's decision in *Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] HCA 10, serious question to be tried as to whether officers of Department had, acting beyond power, made assessments of respondent's circumstances against ministerial guidelines concerning referral of cases to Minister for personal consideration under ss 195A and 417 of Act – Where Full Court majority upheld primary judge's decision – Whether Full Court erred concluding primary judge had power to grant interlocutory injunction restraining respondent's removal from Australia.

Practice and procedure – Interlocutory injunction restraining removal from Australia – Serious question to be tried.

Appealed from FCA (FC): [2024] FCAFC 34; (2024) 302 FCR 159

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Native Title

Stuart & Ors v State of South Australia & Ors
A1/2024: [2024] HCATrans 77; [2024] HCATrans 78

Date heard: 6 and 7 November 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Native title – Extinguishment – Proper construction of "native title" in s 223(1) *Native Title Act 1993* (Cth) ("NTA") – Overlapping claims – Where appellants together comprise applicant in native title determination under s 61 of NTA made on behalf of Arabana people in March 2013 over area in vicinity of township of Oodnadatta in South Australia – Where over subsequent five years different claim group, Walka Wani people, made two claims concerning same area ("overlap area") – Where in January 1998 Arabana made claim over area abutting overlap area, resulting in consent determination in 2012 in favour of Arabana in *Dodd v State of South Australia* [2012] FCA 519 ("*Dodd*") – Where overlap area omitted from 1998 claim area because Arabana believed different accommodation of their rights in overlap area would be made by state government – Where primary judge dismissed Arabana claim and made determination of native title in favour of Walka Wani – Where appellants unsuccessfully appealed orders dismissing Arabana Claim to Full Court – Whether Full Court majority erred by not finding trial judge failed to correctly construe and apply definition of "native title" in s 223(1) when dismissing

Arabana's native title determination application – Whether Full Court erred by treating all aspects of determination in *Dodd* as being geographically specific.

Appealed from FCA (FC): [2023] FCAFC 131; (2023) 299 FCR 507; (2023) 412 ALR 407

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Practice and Procedure

Bogan & Anor v The Estate of Peter John Smedley (Deceased) & Ors
M21/2024: [2024] HCATrans 79

Date heard: 12 November 2024

Coram: Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, and Beech-Jones JJ

Catchwords:

Practice and Procedure – Transfer of proceedings – Group costs order – Where Victoria legislated to permit costs orders calculated as percentage of judgment or settlement in representative proceedings – Where provision unique to Victoria – Where appellants commenced representative proceedings in Supreme Court of Victoria against respondents – Where fifth respondent applied to transfer proceedings to Supreme Court of NSW under s 1337H of *Corporations Act 2001* (Cth) – Where appellants applied for group costs order ("GCO") under s 33ZDA of *Supreme Court Act 1986* (Vic) – Where Supreme Court directed GCO application be determined before transfer application, and later made GCO – Where fifth respondent's first removal application to High Court dismissed – Where fifth respondent referred transfer application to Victorian Court of Appeal for provision of reasons without final orders – Where Court of Appeal held proceedings should not be transferred to Supreme Court of NSW – Where fifth respondent successfully made second removal application to High Court – Whether GCO made under s 33ZDA of *Supreme Court Act* relevant in deciding whether to transfer proceedings to another court under s 1337H(2) of *Corporations Act* – Whether GCO will remain in force if proceedings are transferred to Supreme Court of NSW – Whether Supreme Court of NSW would have power to vary or revoke GCO if proceedings transferred – Whether proceedings should be transferred to Supreme Court of NSW.

Removed into the High Court from Court of Appeal of the Supreme Court of Victoria under s 40 of the Judiciary Act 1903 (Cth) on 7 March 2024.

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4: ORIGINAL JURISDICTION

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

Constitutional Law

Government of the Russian Federation v Commonwealth of Australia
C9/2023

Catchwords:

Constitutional law – heads of power – acquisition of property – where plaintiff held lease granted by defendant in 2008 over parcel of land ("land") in Australian Capital Territory – where in 1990 National Capital Plan took effect under s 21(2) of *Australian Capital Territory (Planning and Land Management) Act 1908* (Cth) ("PLM Act") - where land fell in designated area under s 10(1) of PLM Act – where land is 'national land' under s 27(1) PLM Act – where lease limited use to diplomatic consular or official purpose of Government of Russian Federation – where limited work undertaken on land – where in 2023 *Home Affairs Act 2023* (Cth) ("HAA") came into effect – where plaintiff's lease terminated under s 5 of HAA – where defendant maintains lease terminated on basis of national security – whether HAA invalid on ground that not supported by head of Commonwealth power – whether if HAA otherwise valid operation of HAA results of acquisition of property from plaintiff under s 51(xxxi) *Constitution* requirement payment of reasonable compensation under s 6(1) HAA.

Special case referred to Full Court on 18 December 2024

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Stott v The Commonwealth of Australia & Anor
M60/2024

Catchwords:

Constitutional law – inconsistency – acquisition of property on just terms – taxation – international taxation agreements – where *Land Tax Act 2005* (Vic) imposes land tax on taxable land payable by owner – where second defendant assessed taxable land under *Taxation Administration Act 1997* (Vic) – where *State Taxation Acts Amendment Act 2015* (Vic) created higher rate of land tax for "absentee owner" – where plaintiff ordinarily resident in New Zealand and "absentee owner" – where Australia and New Zealand signed Convention for the Avoidance of Double Taxation with respect to Taxes on Income and Fringe

Benefits and the Prevention of Fiscal Evasion ("Convention") – where Convention given legislative force in *International Tax Agreements Act 1953* (Cth) – where art 24(1) of Convention provides nationals of contracting State shall not be subjected to "any taxation … which is more burdensome than the taxation… to which national of the other State in the same circumstances, in particular with respect to residence, are or may be subjected" – where plaintiff commenced representative proceedings in Federal Court seeking restitution of difference between absentee owner rate and ordinary rate – where proceedings remain on foot – where on 8 April 2024 *Treasury Laws (Amendment Foreign Investment) Act 2024* (Cth) commenced – where on 4 December 2024 ss 42 and 54 of *State* Taxation *Further Amendment Act 2024* (Vic) commenced – whether prior to commencement of *Treasury Laws (Amendment Foreign Investment) Act* s109 of Constitution invalidates ss 7, 8, 25, 104B and cll 4.1-4.5 of Sch 1 to the *Land Tax Act 2005* to extent of inconsistency of art 24(1) of Convention – if so, whether s 5(3) of *International Taxation Agreements Act 1953* valid or effective to remove inconsistency – whether s 5(3) invalid on ground law is with respect of acquisition of property from a person otherwise than on just terms within meaning of s 51(xxxi) Constitution – whether s 106A *Land Tax Act 2005* invalid or inoperative on plaintiff by force of art 24(1) and s 109 Constitution.

Special case referred to Full Court on 18 December 2024.

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5: SECTION 40 REMOVAL

The following cases have been removed into the High Court of Australia under s 40 of the *Judiciary Act 1903* (Cth).

Constitutional Law

G Global 120E T2 Pty Ltd as trustee for the G Global 120E AUT v Commissioner of State Revenue
G Global 180Q Pty Ltd as trustee for the G Global 180Q AUT v Commissioner of State Revenue
B48/2024; B49/2024; B50/2024

Catchwords:

Constitutional law – inconsistency – acquisition of property on just terms – taxation – international taxation agreements – where Agreement between Australia and the Federal Republic of Germany for the Elimination of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Fiscal Evasion and Avoidance ("German Agreement") given legislative force under s 5(1) *International Tax Agreements Act 1953* (Cth) ("ITAA") – where first respondent imposed foreign land tax surcharge under s 32(1)(b)(ii) of *Land Tax Act 2010* (Qld) ("LTA") on basis that first respondent a foreign company or trustee of foreign trust – where first respondent contended this had effect of imposing more burdensome taxation on enterprise carried on by resident of Australia the capital of which partly owned by resident(s) of Germany than on other similar enterprises carried on by Australian resident contrary to art 24(4) of German Agreement - validity of *Treasury Laws Amendment (Foreign Investment) Act 2024* (Cth) which inserted s 5(3) into ITAA which provides that operation of a provision of a bilateral tax agreement provided for in s 5(1) "is subject to anything inconsistent with the provision contained in a law of the Commonwealth, or of a State or Territory, that imposed a tax other than an Australian tax, unless expressly provided otherwise in that law" – where s 5(3) expressed to operate with retrospective effect – whether prior to commencement of the *Treasury Laws Amendment (Foreign Investment) Act 2024,* s 32(1)(b)(ii) of LTA invalid in application to appellants, by force of s 109 of the Constitution by reason of its inconsistency with s 5(1) of ITAA – if so, whether 5(3) of the International Tax Agreements Act 1953 (alternatively, cl 1 of Sch 1 to *Treasury Laws Amendment(Foreign Investment) Act*), in so far as it operates by reference to provision contained in a law of a State, supported by head of Commonwealth legislative power – if so whether s 5(3) of ITAA (alternatively, cl 1 of Sch 1 to *Treasury Laws Amendment (Foreign Investment) Act 2024*), when read with cl 2 of Sch 1 to *Treasury Laws Amendment (Foreign Investment) Act 2024*, effective to remove inconsistency between s 32(1)(b)(ii) of the LTA and s 5(1) of ITAA and any consequent invalidity – if so, whether s 5(3) of ITAA (alternatively, cl 1 of Sch 1 to *Treasury Laws Amendment (Foreign Investment) Act 2024)* when read with cl 2 of Sch 1 to *Treasury Laws*

Amendment (Foreign Investment) Act 2024 invalid (in whole or in part) because it effected an acquisition of the property of appellants otherwise than on just terms within meaning of s 51(xxxi) of the Constitution.

Proceedings removed into the High Court from Supreme Court of Queensland under s 40 of the Judiciary Act 1903 (Cth); special case referred to Full Court on 19 December 2024.

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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

Plaintiff M19A/2024 & Ors v Minister for Immigration, Citizenship & Multicultural Affairs
M92/2024

Catchwords:

Administrative law – visa cancellation – unreasonableness – where first three appellants granted permanent protection visas in 2011 – where delegate of respondent sent notice to first appellant under s 116 of *Migration Act 1958* (Cth) of intention to consider cancellation of visa – where first appellant did not receive notification because of change of address – where respondent proceeded to cancellation of visa in 2019 – where first appellant did not receive notification and only discovered cancellation in June 2021 – where no review available in Administrative Appeals Tribunal – where appellants sought constitutional or other writ in original jurisdiction of High Court – where application dismissed by primary judge (Gordon J) – whether appeal lies of right from judgment of primary judge or whether leave to appeal required – whether primary judge erred in failing to find cancellation decision legally unreasonable and/or in breach of s 120 *Migration Act* where delegate found failure to respond to notice of intention to consider cancellation was "behaviour towards the Department" that weighed in favour of cancellation – whether primary judge erred in failing to find cancellation legally unreasonable because of failure by delegate to consider best interests of children – whether primary judge erred in failing to find delegate failed to consider legal consequences of cancellation decision on second and third appellants.

Appealed from single Justice High Court: [2024] HCASJ 39

Aviation Law

Evans & Anor v Air Canada ABN 29094769561
S138/2024: [2024] HCASL 270

Date determined: 10 October 2024 – *Special leave granted*

Catchwords:

Aviation law – international carriage of passengers by air – *Unification of Certain Rules of International Carriage by Air 1999 ("Montreal Convention")* – where appellants sought damages in Supreme Court of New South Wales for injuries allegedly suffered from turbulence on Air Canada flight from Vancouver to Australia under art 17 of Montreal Convention (incorporated into Australian law under s 9B *Civil Aviation (Carriers' Liability) Act 1959* (Cth) – where respondent pleaded it was not liable for damages exceeding "113,100 Special Drawing Rights" in accordance with art 21 of Montreal Convention – where appellants relied on rule 105(C)(1)(a) of Air Canada's International Tariff General Rules which stipulated there were no financial limits on compensatory damages recoverable in respect of bodily injuries – where Court of Appeal found rule 105(C)(1)(a) did not have effect of waiving defence created by art 21 – whether Court of Appeal erred in construing arts 17, 21 and 25 of Montreal Convent ion by treating rule 105(C)(1)(a) as form of consumer notification rather than term of contract of carriage – whether Court of Appeal erred in holding stipulation in rule 105(C)(1)(a) did not preclude financial limit under art 21(2) in cases where damages would exceed a monetary or financial amount and carrier proves no fault – whether Court of Appeal erred in not holding operation of rule 105(C)(1)(a) constitutes a stipulation for purposes of art 25 and displaced application of art 21(2) of Montreal Convention.

Appealed from NSWCA: [2024] NSWCA 153

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Criminal Law

The King v Batak
S148/2024: [2024] HCASL 304

Date determined: 7 November 2024 – *Special leave granted*

Catchwords:

Criminal law – complicity – accessorial liability – whether common law principles of complicity apply to offence of murder under s 18(1)(a) *Crimes Act 1900* (NSW) – whether Court of Criminal Appeal erred in concluding it was error of law to permit constructive law to be left to jury on basis of accessorial liability – whether accessory before the fact to constructive murder an offence known to law in New South Wales – if so, whether mental element differs depending on whether act causing death coincides with physical elements of foundational offence of whether a distinct act.

Appealed from NSWCCA: [2024] NSWCCA 66

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Elections

Laming v Electoral Commissioner of the Australian Electoral Commission
B75/2024: [2024] HCASL 330

Date determined: 5 December 2024 – *Special leave granted on limited grounds*

Catchwords:

Elections – electoral matter – *Commonwealth Electoral Act 1918* (Cth), s 321D(5) – where appellate contravened s 321D(5) by communicating electoral matter without disclosing prescribed details by posting on particular Facebook page – where primary judge found single act of publication of publication of post constituted single breach of s 321D(5) irrespective of how many times post viewed – where Full Federal Court allowed appeal – whether Full Court erred in finding s 321D(5) breached on each occasion p0erson viewed post rather than finding contravention when appellant caused post to be published – meaning of "communicated to a person" in s 321D(1).

Appealed from FCAFC: [2024] FCAFC 109; (2024) 304 FCR 561

Industrial Law

Helensburgh Coal Pty Ltd v Bartley & Ors
S119/2024: [2024] HCASL 221

Date determined: 5 September 2024 – *Special leave granted*

Catchwords:

Industrial law – unfair dismissal – genuine redundancy – redeployment – *Fair Work Act 2009* (Cth), ss 385(b), 389(2) – where s 385(d) provides applicant for unfair dismissal remedy must demonstrate dismissal not case of genuine redundancy – where s 389(2) provides no genuine redundancy if reasonable in all the circumstances to redeploy employee within employer's enterprise – where respondent scaled back mining operations and terminated respondents' employment – whether Full Federal Court erred in construing s389(2) as authorising Fair Work Commission to inquire into whether employer could have made alternative changes to enterprise (including by terminating other operational or staffing arrangements) so as to make position available to otherwise redundant employee – whether determination of genuine redundancy discretionary decision reviewable only for *House v King* error.

Appealed from FCAFC: [2024] FCAFC 45; (2024) 302 FCR 589

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Immigration

Khalil v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor
M112/2024: [2024] HCASL 326

Date determined: 5 December 2024 – *Special leave granted*

Catchwords:

Immigration – Ministerial Directions under s 499 of *Migration Act 1958* (Cth) – visa cancellation – point in time of application of Direction - where Ministerial Direction 65 applied at time of delegate's decision refusing to revoke cancellation of appellant's visa – whether Full Court erred in failing to find Administrative Appeals Tribunal erred in applying later Ministerial Direction 90 in conducting review – whether appellant had accrued right for Direction 65 to be applied for purposes of s 7(2)(c) *Acts Interpretation Act 1901* (Cth).

Appealed from FCAFC: [2024] FCAFC 119; (2024) 305 FCR 26

Land Law

La Perouse Local Aboriginal Council ABN 89136607167 & Anor v Quarry Street Pty Ltd ACN 616184117 & Anor
S121/2024: [2024] HCASL 228

Date determined: 5 September 2024 – *Special leave granted*

Catchwords:

Land law – indigenous land rights – *Aboriginal Land Rights Act 1983* (NSW), s 36 – claimable Crown land – where second respondent Minister proved in part an Aboriginal land claim in relation to Crown Land in Paddington – where first respondent lessee of site described as "Paddington Bowling Club" but site fallen into disuse other than "oral sublease" over small portion of land – where land subject to reservation of Crown land under s 87 *Crown Lands Act* 1989 (NSW) for use as community and sporting club facilities and tourist facilities and services – where first respondent unsuccessfully sought judicial review of Minister's decision to approve claim – where Court of Appeal allowed appeal – where Court of Appeal found land being "used" for purposes of s 36(1) of *Aboriginal Land Rights Act* such that land was not "claimable Crown land" – whether Court of Appeal erred in finding Minister required to find land was "claimable Crown land" – whether concept of "use" in s 36(1)(b) requires

examination of activities on claimed land as opposed to away from or in relation to claimed land – whether definition of "land" in s 4(1) has result that "use" of "any estate or interest" in respect of land either individually or cumulatively will satisfy s 36(1)(b) – whether leasing of land by Crown a "use" within s 36()(b).

Appealed from NSWCA: [2024] NSWCA 107

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Land valuation

Valuer-General Victoria v WSTI Properties 490 SKR Pty Ltd
M96/2024: [2024] HCASL 284

Date determined: 7 November 2024 – *Special leave granted on conditions*

Catchwords:

Land valuation – assessment of land value under *Valuation of Land Act 1960* (Vic) – where respondent owner of land subject to heritage-related planning restrictions – where house built in 1897 on land – where respondent successfully objected to valuations in Victorian Civil and Administrative Tribunal – where valuation required assumption that improvements had not been made – where improvements defined in s 2(1) of *Valuation of Land Act* as "all work actually done or material used on and for the benefit of the land, but only in so far as the effect of the work done or material used increases the value of the land" – proper time for assessment of improvements – whether Court of Appeal erred in construing defining of "improvement" as requiring that effect of work done or material used increased value of land at time that work actually done or material used.

Appealed from VSCA: [2024] VSCA 157

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Representative proceedings

Kain v R&B Investments Pty Ltd as trustee for the R&B Pension Fund & Ors
Ernst & Young (a Firm) ABN 75 288 172 749 v R&B Investments Pty Ltd as trustee for the R&B Pension Fund & Ors
Shand v R&B Investments Pty Ltd as trustee for the R&B Penson Fund & Ors
S146/2024; S144/2024; S143/2024: [2024] HCASL 286

Date determined: 7 November 2024 – *Special leave granted*

Catchwords:

Representative proceedings – common fund orders – open class securities action – application for approval of notice to group members prior to opt-out – where question reserved for Full Federal Court under s 25(6) of *Federal Court of Australia Act 1976* (Cth) whether under Pt IVA of Act Court has power upon settlement or judgment of representative proceeding to make common fund order for distribution of funds to solicitor otherwise than as payment for costs and disbursements incurred in conduct of proceeding – whether Full Court erred in answer question in affirmative.

Appealed from FCAFC: [2024] FCAFC 89; (2024) 304 FCR 395

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Statutes

CD & Anor v Director of Public Prosecutions (SA) & Anor
A24/2024: [2024] HCASL 297

Date determined: 7 November 2024 – *Special leave granted*

Catchwords:

Statutes – construction – *Telecommunications (Interception and Access) Act 1979* (Cth) ("the Act"0 – admissibility of evidence obtained communications obtained through encrypted application "AN0M" installed on mobile devices – where appellants charged with participating in criminal organisation and firearms offences – where prosecution seeks to lead evidence of communications obtained through "AN0M" application – where "AN0M" operated such that when mobile device user pressed 'send' on text message separate second message created in AN0M application with copy of message and additional data and sent via XMPP server to an "iBot" server which then re-transmitted to servers accessible by Australian Federal Police – whether AFP's conduct in obtaining evidence of AN0M communications involved interception of communication passing over telecommunications system contrary to s7(1) of Act and thereby inadmissible – where Court of Appeal found use of AN0M application and platform did not involve interception of communication – where s 5F of Act provides communication taken to start passing over telecommunications system when sent or transmitted by person send communication and taken to continue to pass over system until accessible to intended recipient – whether Court of Appeal erred in failing to find under s 5F(a) of Act that having composed text message and pressing 'send' on mobile device connected to telecommunications system start of process for sending

message over that system – whether Court of Appeal erred in failing to find covert copying of text message and covert transmission of message upon pressing 'send' unlawful interception – whether Court of Appeal erred in construction of term "intended recipient" by finding "iBot" server intended recipient under ss 5F(b) and 5GH of Act.

Appealed from SASCA: [2024] SASCA 82

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Palmanova Pty Ltd v Commonwealth of Australia
S47/2024: [2024] HCASL 294

Date determined: 7 November 2024 – *Special leave granted*

Catchwords:

Statutes – construction – *Protection of Movable Cultural Heritage Act 1986* (Cth) ("the Act") – where Bolivian artefact purchased by applicant from US gallery in 2020 seized upon entry into Australia under Act – whether artefact exported from Bolivia to US prior to 1960 – where artefact seized upon entry into Australia under s 14 of Act – whether artefact liable for forfeiture – temporal operation of Act - whether majority of Full Federal Court erred in interpretation of s 14(1) of Act by concluding Act not limited in application to protected object of foreign country exported from that country after date of commencement of Act (1 July 1987) – whether majority erred in concluding unnecessary to consider extrinsic material in construction of s 14.

Appealed from FCAFC: [2024] FCAFC 90; (2024) FCR 163

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Taxation

Commissioner of Taxation v PepsiCo, Inc
Commissioner of Taxation v Stokely-Van Camp, Inc
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M98/2024: [2024] HCASL 298; **M99/2024:** [2024] HCASL 299; **M100/2024:** [2024] HCASL 300; **M101/2024:** [2024] HCASL 301; **M102/2024:** [2024] HCASL 302; **M103/2024:** [2024] HCASL 303

Date determined: 7 November 2024 – *Special leave granted*

Taxation – royalty withholding tax – diverted profits tax – where non-resident taxpayer entered into exclusive bottling agreements ("EBAs") with Australian company (SAPL) for bottling and sale of PepsiCo branded beverages – where EBAs included licence of taxpayers' trademarks and other intellectual property but did not provide for royalty – whether Full Federal Court ought to have found payments made under EBAs included "royalty" paid "as consideration for" use of or right to use intellectual property licensed to SAPL within meaning of s 6(1) *Income Tax Assessment Act 1936* (Cth) ("ITAA") – whether Full Court ought to have found royalty component of EBA was income "derived" by and "paid to" PepsiCo under s 128(2B) ITAA and thereby withholding tax payable under s 128B(5A) – whether if no royalty withholding tax payable Full Court ought to have found liability for diverted profits tax for purposes of ss 177J and 177P ITAA.

Appealed from FCAFC: [2024] FCAFC 86; (2024) 303 FCR 1

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Torts

Hunt Leather Pty Ltd ACN 000745960 & Anor v Transport for NSW
Hunt Leather Pty Ltd ABN 46000745960 & Ors v Transport for NSW

S135/2024; S136/2024: [2025] HCADisp 12

Date determined: 6 February 2025 – *Special leave granted*

Catchwords:

TORTS – nuisance – private nuisance – appellants claimed their properties were affected by construction of Sydney Light Rail – whether interference with enjoyment of appellants' property substantial and unreasonable – whether failure by appellants to establish a failure to take reasonable care determinative – whether respondent bore onus of establishing that it took reasonable care – whether respondent failed to take reasonable care – significance to cause of action in nuisance of taking reasonable care – whether use of road for construction purposes exceptional – whether interference with reasonable enjoyment inevitable – whether delay in construction attributable to discovery of unknown utilities – whether damages should include a "recovery period" – whether s 43A of *Civil Liability Act 2002* (NSW) applicable – damages – pure economic loss – funded litigation – funding agreement included commission to funder – whether commission recoverable as component of damages

Appealed from NSWCA: [2024] NSWCA 227

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7: CASES NOT PROCEEDING OR VACATED

8: SPECIAL LEAVE REFUSED

Publication of Reasons: 6 February 2025

No.	*Applicant*	*Respondent*	*Court appealed from*	*Result*
1.	Newton	The State of Western Australia (P37/2024)	Supreme Court of Western Australia (Court of Appeal) [2023] WASCA 7	Special leave refused [2025] HCADisp 1
2.	Exner	Howe & Anor (M87/2024)	Supreme Court of Victoria (Court of Appeal) [2024] VSCA 101	Special leave refused [2025] HCADisp 2
3.	Mr Cosio	Ms Cosio (S129/2024)	Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction	Special leave refused [2025] HCADisp 3
4.	McGettigan	Estate of the Late Beverley Teresa McGettigan & Ors (S137/2024)	Supreme Court of New South Wales (Court of Appeal) [2022] NSWCA 166	Special leave refused [2025] HCADisp 4
5.	Manikantan	Secretary, Department of Employment and Workplace Relations & Anor (S142/2024)	Full Court of the Federal Court of Australia [2024] FCAFC 116	Special leave refused [2025] HCADisp 5
6.	NAH	The King (B57/2024)	Supreme Court of Queensland (Court of Appeal) [2024] QCA 170	Special leave refused [2025] HCADisp 6
7.	NAH	The King (B59/2024)	Supreme Court of Queensland (Court of Appeal) [2024] QCA 170	Special leave refused [2025] HCADisp 6
8.	Aristocrat Technologies Australia Pty Limited ACN 001 660 715	Commissioner of Patents (S131/2024)	Application for removal of cause pending in the Full Court of the Federal Court of Australia	Application refused with costs [2025] HCADisp 7
9.	Kisun	New Zealand & Anor (S132/2024)	Full Court of the Federal Court of Australia [2024] FCAFC 118	Special leave refused with costs [2025] HCADisp 8
10.	Townsville City Council	Vatsonic Communications Pty Ltd & Ors (B58/2024)	Supreme Court of Queensland (Court of Appeal) [2024] QCA 171	Special leave refused with costs [2025] HCADisp 9
11.	Mensink	Registrar of the Federal Court of Australia (B60/2024)	Full Court of the Federal Court of Australia [2024] FCAFC 124	Special leave refused with costs [2025] HCADisp 10

No.	*Applicant*	*Respondent*	*Court appealed from*	*Result*
12.	Holman	Nicholas Adrian Campbell as Trustee for the Campbell Child Care Trust trading as Free Range Kids ABN 73 752 292 745 (B61/2024)	Supreme Court of Queensland (Court of Appeal) [2024] QCA 176	Special leave refused with costs [2025] HCADisp 11
13.	Osman Alan (a pseudonym)	The Director of Public Prosecutions (M88/2024)	Supreme Court of Victoria (Court of Appeal) [2024] VSCA 210	Special leave refused [2025] HCADisp 13
14.	Chubb Insurance Australia Limited & Anor	WSP Structures Pty Ltd & Anor (S134/2024)	Full Court of the Federal Court of Australia [2024] FCAFC 123	Special leave refused with costs [2025] HCADisp 14
15.	Batak	The King (S141/2024)	Supreme Court of New South Wales (Court of Criminal Appeal) [2024] NSWCCA 66	Special leave refused [2025] HCADisp 15