



# HIGH COURT BULLETIN

Produced by the Legal Research Officer,  
High Court of Australia Library  
[2011] HCAB 03 (18 April 2011)

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

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## SUMMARY OF NEW ENTRIES

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

Case	Title
<i>Lacey v Attorney-General of Queensland</i>	Criminal Law
<i>Stubley v Western Australia</i>	Criminal Law
<i>In the matter of an application by Andrew Green for leave to issue a proceeding</i>	High Court and Federal Court
<i>In the matter of an application by Graham Freemantle for leave to issue a proceeding</i>	High Court and Federal Court
<i>Edwards v Santos Limited</i>	Practice and Procedure
<i>Miller v Miller</i>	Torts

### [2: Cases Reserved](#)

Case	Title
<i>Haskins v The Commonwealth of Australia</i>	Constitutional Law
<i>Nicholas v The Commonwealth of Australia &amp; Anor</i>	Constitutional Law

<i>Roy Morgan Research Pty Ltd v Commissioner of Taxation &amp; Anor</i>	Constitutional Law
<i>Boland v Dillon; Cush v Dillon</i>	Defamation
<i>Jemena Gas Networks (NSW) Limited v Mine Subsidence Board</i>	Energy and Resources
<i>Dasreef Pty Limited v Hawchar</i>	Evidence
<i>Insight Vacations Pty Ltd t/as Insight Vacations v Young</i>	Trade and Commerce

### 3: Original Jurisdiction

Case	Title
There are no new cases ready for hearing in the original jurisdiction of the High Court of Australia since [2011] HCAB 02.	

### 4: Special Leave Granted

Case	Title
<i>Queanbeyan City Council v ACTEW Corporation Ltd &amp; Anor</i>	Constitutional Law
<i>Moti v The Queen</i>	Criminal Law
<i>Green v The Queen; Quinn v The Queen</i>	Criminal Law
<i>AB v State of Western Australia; AH v State of Western Australia</i>	Statutes

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# 1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the March—April 2011 sittings.

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## Administrative Law

See **High Court and Federal Court**: *In the matter of an application by Andrew Green for leave to issue a proceeding*

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## Constitutional Law

See **High Court and Federal Court**: *In the matter of an application by Andrew Green for leave to issue a proceeding*

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## Criminal Law

*Lacey v Attorney-General of Queensland*  
B40/2010: [\[2011\] HCA 10](#).

**Judgment delivered:** 7 April 2011.

**Coram:** French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ.

### Catchwords:

Criminal law — Appeal — Appeal against sentence — Appeal by Crown — Where s 669A(1) of *Criminal Code* (Q) permitted appeal by Attorney-General against sentence and provided that appellate court "may in its unfettered discretion vary the sentence and impose such sentence as to the Court seems proper" — Where appellate court increased sentence without identifying any error by sentencing judge — Whether Crown must demonstrate error by sentencing judge before discretion to vary sentence enlivened.

Words and phrases — "appeal", "unfettered discretion".

**Appealed from Qld SC (CA):** (2009) 197 A Crim R 399; [2009] QCA 274.

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*Stubley v Western Australia*  
P29/2010: [\[2011\] HCA 7](#).

**Orders pronounced:** 20 October 2010 — *Reasons for judgment published 30 March 2011.*

**Coram:** Gummow, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Criminal law — Evidence — Admissibility and relevancy — Propensity evidence — Evidence of uncharged acts — Appellant former psychiatrist charged with offences relating to sexual misconduct with two former patients — Evidence of sexual misconduct with three further former patients adduced at trial — Whether trial judge erred in ruling evidence of uncharged acts had significant probative value — *Evidence Act 1906 (WA)*, ss 31A, 32.

Criminal law — Evidence — Admissions — Appellant conceded having sexual activity with both complainants — Whether concession constituted admission for the purposes of s 32 of *Evidence Act 1906 (WA)* — Whether concession rendered consent the only live issue at trial.

Words and phrases — "significant probative value".

**Appealed from WA SC (CA):** [2010] WASCA 36.

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## High Court and Federal Court

*In the matter of an application by Andrew Green for leave to issue a proceeding*

**S88/2011:** [\[2011\] HCA 5](#).

**Judgment delivered:** 25 March 2011.

**Coram:** Hayne J.

**Catchwords:**

High Court — Practice and procedure — Leave to issue proceeding — Application for order to show cause against Federal Court sitting as Court of Disputed Returns — Applicant's electoral petition dismissed by Court of Disputed Returns for failure to sufficiently set out facts relied upon to invalidate election as required by *Commonwealth Electoral Act 1918 (Cth)* ("Act"), ss 355(a) and 355(aa) — Whether application to show cause raises "real question to be determined" — *High Court Rules 2004*, r 6.07.

Administrative law — Electoral law — Electoral petitions — Applicant's electoral petition alleged contraventions of ss 184(1), 326(1)(c) and 327(1) of Act and error by Divisional Returning Officer invalidated election — Whether conclusion of Court of

Disputed Returns that electoral petition does not sufficiently set out facts relied upon to invalidate election as required by ss 355(a) and 355(aa) of Act attended by doubt.

Constitutional law — Section 368 of Act provides that decisions of Court of Disputed Returns shall not be questioned in any way — Applicant contends s 368 of Act invalid — Whether question of validity arises — Commonwealth Constitution, s 75(v).

Words and phrases — "real question to be determined".

This application to issue a proceeding was filed in the original jurisdiction of the High Court.

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*In the matter of an application by Graham Freemantle for leave to issue a proceeding*

**S89/2011:** [\[2011\] HCA 6](#).

**Judgment delivered:** 25 March 2011.

**Coram:** Hayne J.

**Catchwords:**

High Court — Practice and procedure — Leave to issue proceeding — No question arises differing in any material respect from questions arising in another application — Applicant adopts submissions made in that other application — Leave refused in that other application — *High Court Rules 2004*, r 6.07.

This application to issue a proceeding was filed in the original jurisdiction of the High Court.

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## Practice and Procedure

*Edwards v Santos Limited*

**S153/2010:** [\[2011\] HCA 8](#).

**Judgment delivered:** 30 March 2011.

**Coram:** French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Practice and procedure — Federal Court of Australia — Summary judgment — Applications by defendants to dismiss proceedings summarily under s 31A(2) of *Federal Court of Australia Act 1976* (Cth) — Plaintiffs "registered native title claimant" under s 253 of *Native Title Act 1993* (Cth) ("NTA") in respect of certain land —

Plaintiffs and first and third defendants negotiating Indigenous Land Use Agreement ("ILUA") under NTA that included land first and third defendants claimed was encumbered by "Authority to Prospect" ("ATP") granted by second defendant under *Petroleum Act 1923* (Q) — ATP entitled first and third defendants to apply to Minister for grant of lease of encumbered land for purpose of petroleum exploration — Plaintiffs sought declarations that grant of lease to first and third defendants would not be valid and any lease granted would not be a "pre-existing right-based act" within meaning of s 241B of NTA — Whether plaintiffs have sufficient interest for grant of declaratory and injunctive relief — Whether questions raised by plaintiffs hypothetical — Whether plaintiffs seeking advisory opinion.

Practice and procedure — Federal Court of Australia — Jurisdiction — Section 213(2) of NTA conferred jurisdiction on Federal Court with respect to "matters arising under" NTA — Where determination of whether lease would be valid and whether lease would be a pre-existing right-based act may affect ILUA negotiations — Whether negotiation of ILUA a matter arising under NTA.

Practice and procedure — High Court — Original jurisdiction — Costs — Application pursuant to s 75(v) of Constitution for writs directed to Federal Court to quash orders of that Court — Section 26 of *Judiciary Act 1903* (Cth) empowers High Court to award costs in "all matters brought before the Court" — Section 32 empowers High Court in exercise of original jurisdiction to grant all such remedies as parties are entitled to "so that as far as possible all matters in controversy between the parties" may be "completely and finally determined" — Where High Court quashes orders of Federal Court — Whether High Court may make costs order in place of orders quashed.

Words and phrases — "advisory opinion", "certiorari", "completely and finally", "hypothetical", "matter", "reasonable prospects of success", "standing", "sufficient interest".

This application to show cause was filed in the original jurisdiction of the High Court.

## Torts

*Miller v Miller*

P25/2010: [\[2011\] HCA 9](#).

**Judgment delivered:** 7 April 2011.

**Coram:** French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Negligence — Duty of care — Illegality — Plaintiff and defendant illegally using stolen motor vehicle in contravention of s 371A of *The Criminal Code* (WA) ("Code") — Plaintiff twice asked defendant to be let out of vehicle — Requests not complied with — Whether plaintiff can recover damages for injuries sustained as result of defendant's negligent driving of vehicle — Whether defendant owed duty of care to plaintiff — Whether statutory purpose of s 371A of Code incongruous with duty of care between joint illegal users of vehicle — Whether plaintiff's requests sufficient to effect withdrawal from joint illegal enterprise — Whether reasonable steps available to plaintiff to prevent commission of offence.

Words and phrases — "duty of care", "illegal use", "joint illegal enterprise", "statutory purpose".

**Appealed from WA SC (CA):** [2009] Aust Torts Reports 82-040; [2009] WASCA 199; (2009) 54 MVR 367.

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## 2: CASES RESERVED

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

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### Administrative Law

*Australian Crime Commission v Stoddart & Anor*  
B71/2010: [\[2011\] HCATrans 44](#).

**Date heard:** 1 March 2011 — *Judgment reserved*.

**Coram:** French CJ, Gummow, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Administrative law — First respondent summoned under s 28 of *Australian Crime Commission Act 2002* (Cth) (“Act”) — First respondent declined to answer questions in relation to husband’s activities on basis of common law privilege against spousal incrimination — Whether distinct common law privilege against spousal incrimination exists — Whether privilege abrogated by s 30 of Act.

**Appealed from FCA FC:** (2010) 185 FCR 409; (2010) 271 ALR 53; [2010] FCAFC 89; [2010] ALMD 6989.

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### Arbitration

See **Insurance:** *Westport Insurance Corporation & Ors v Gordian Runoff Limited*

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### Constitutional Law

*Roy Morgan Research Pty Ltd v Commissioner of Taxation*  
M177/2010: [\[2011\] HCATrans 78](#).

**Date heard:** 30 March 2011 — *Judgment reserved*.

**Coram:** French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Constitutional law — Powers of Commonwealth Parliament — Taxation — Legislative scheme imposing obligation upon employers to pay superannuation guarantee charge — Whether charge a tax — Whether charge imposed for public purposes — *Luton v Lessels* (2002) 210 CLR 333; *Australian Tape Manufacturers Association Ltd v Commonwealth* (1993) 176 CLR 480 — Commonwealth Constitution, s 51 (ii) — *Superannuation Guarantee Charge Act 1992* (Cth); *Superannuation Guarantee (Administration) Act 1992* (Cth).

**Appealed from FCA FC:** (2010) 184 FCR 448; (2010) 268 ALR 232; [2010] FCAFC 52; (2010) 76 ATR 264; (2010) ATC 20-184.

*Nicholas v The Commonwealth & Anor*  
**S183/2010:** [\[2011\] HCATrans 77](#).

**Date heard:** 29 March 2011 — *Judgment reserved*.

**Coram:** French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Constitutional law — Operation and effect of Commonwealth Constitution — Chapter III — Plaintiff convicted by Australian Military Court ("AMC") of offences under *Defence Force Discipline Act 1982* (Cth) ("Act") on 25 August 2008 and sentenced accordingly — High Court of Australia declared provisions of the Act establishing AMC invalid on 26 August 2009: *Lane v Morrison* (2009) 239 CLR 230 — On 22 September 2009, *Military Justice (Interim Measures) Act (No 2) 2009* (Cth) ("Interim Measures Act") came into force — Part 2 of Sch 1 to Interim Measures Act applies to punishments purportedly imposed by AMC prior to *Lane v Morrison* — Item 5 of Sch 1 to Interim Measures Act declares rights and liabilities of plaintiff to be, and always to have been, same as if punishments purportedly imposed by AMC had been properly imposed by general court martial and certain other conditions satisfied — Rights and liabilities declared to be subject to any review provided for by Sch 1, Pt 7 — No review sought by plaintiff — Whether item 5 of Sch 1 to Interim Measures Act valid law of Commonwealth or operates to usurp judicial power — Whether Interim Measures Act a Bill of Pains and Penalties — Whether Interim Measures Act consistent with *R v Humby; Ex parte Rooney* (1973) 129 CLR 231 factum and consequence model of legislating and therefore valid — *Military Justice (Interim Measures) Act (No 2) 2009* (Cth), Sch 1, item 5.

This matter was filed in the original jurisdiction of the High Court.

*Haskins v The Commonwealth*  
**S8/2011:** [\[2011\] HCATrans 77](#).

**Date heard:** 29 March 2011 — *Judgment reserved.*

**Coram:** French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Constitutional law — Operation and effect of Commonwealth Constitution — Chapter III — Plaintiff convicted by Australian Military Court ("AMC") of offences under *Defence Force Discipline Act* 1982 (Cth) ("Act") on 11 December 2008 and sentenced accordingly — High Court of Australia declared provisions of Act establishing AMC invalid on 26 August 2009: *Lane v Morrison* (2009) 239 CLR 230 — On 22 September 2009, *Military Justice (Interim Measures) Act (No 2)* 2009 (Cth) ("Interim Measures Act") came into force — Part 2 of Sch 1 to Interim Measures Act applies to punishments purportedly imposed by AMC prior to *Lane v Morrison* — Item 5 of Sch 1 to Interim Measures Act declares rights and liabilities of plaintiff to be, and always to have been, same as if punishments purportedly imposed by AMC had been properly imposed by general court martial and certain other conditions satisfied — Rights and liabilities declared to be subject to any review provided for by Sch 1, Pt 7 — No review sought by plaintiff — Whether Interim Measures Act provides lawful authority justifying detention of plaintiff — If so, whether items 3, 4, and 5 of Sch 1 to Interim Measures Act valid laws of Commonwealth or operate to usurp judicial power — Whether Interim Measures Act a Bill of Pains and Penalties — Whether Interim Measures Act consistent with *R v Humby; Ex parte Rooney* (1973) 129 CLR 231 factum and consequence model of legislating and therefore valid — *Military Justice (Interim Measures) Act (No 2)* 2009 (Cth), Sch 1, items 3, 4 and 5.

Constitutional law — Acquisition of property on just terms — Whether Interim Measures Act effects an acquisition of the plaintiff's asserted common law cause of action, arising out of the plaintiff's wrongful imprisonment, without providing just terms — Whether Interim Measures Act a law with respect to the acquisition of property — Whether action for wrongful imprisonment is maintainable by the plaintiff against the Commonwealth — Commonwealth Constitution, s 51(xxxi).

This matter was filed in the original jurisdiction of the High Court.

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***Jemena Asset Management (3) Pty Ltd & Ors v Coinvest Limited***  
**M127/2010:** [\[2011\] HCATrans 45](#).

**Date heard:** 2 March 2011 — *Judgment reserved.*

**Coram:** French CJ, Gummow, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Constitutional law — Operation and effect of Commonwealth Constitution — Inconsistency of laws under s 109 of Commonwealth Constitution — Commonwealth legislative scheme imposing obligation upon employers to pay for long service leave — State law imposing obligation upon employers in construction industry to contribute to fund for portable long service leave entitlements — Whether inconsistency between State and federal legislative schemes — Commonwealth Constitution, s 109 — *Construction Industry Long Service Leave Act 1997* (Vic).

**Appealed from FCA FC:** (2009) 180 FCR 576; (2009) 263 ALR 374; [2009] FCAFC 176; (2009) 191 IR 236; [2010] ALMD 2942.

***Wainohu v The State of New South Wales***

**S164/2010:** [\[2010\] HCATrans 319](#).

**Date heard:** 2 December 2010 — *Judgment reserved*.

**Coram:** French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Constitutional law — Operation and effect of Commonwealth Constitution — Chapter III — Institutional integrity of State courts — Plaintiff member of Hells Angels Motorcycle Club (“Hells Angels”) — *Crimes (Criminal Organisations Control) Act 2009* (NSW) (“Act”) provided for any judge of Supreme Court of NSW to be declared, with consent, “eligible Judge” for purposes of Act — Commissioner of Police applied to eligible judge for declaration under Act in respect of Hells Angels — Where some evidence classified “criminal intelligence” under Act and withheld from legal representatives of Hells Angels — Where ex parte hearing held under Act to allow eligible judge to determine whether certain evidence “properly classified” by Commissioner of Police — Where eligible judge under no obligation to give reasons — Whether Act or any provision thereof undermines institutional integrity of Supreme Court of NSW — Whether Act or any provision thereof outside legislative powers of Parliament of NSW — Whether eligible judge acts *persona designata* in exercising functions under Act — *Crimes (Criminal Organisations Control) Act 2009* (NSW).

Constitutional law — Operation and effect of Commonwealth Constitution — Implied freedom of political communication — Section 26 of Act creates offence of associating with person the subject of control order made under Act — Where associating defined to include any communication — Whether Act burdens political communication and, if so, whether Act reasonably appropriate and adapted to serve a purpose compatible with representative and responsible government.

This writ of summons was filed in the original jurisdiction of the High Court.

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See also **Criminal Law:** *Momcilovic v The Queen*

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## Contracts

*Shoalhaven City Council v Firedam Civil Engineering Pty Limited*  
S216/2010: [\[2011\] HCATrans 11](#); [\[2011\] HCATrans 14](#).

**Date heard:** 2 & 4 February 2011 — *Judgment reserved*.

**Coram:** French CJ, Gummow, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Contracts — Building, engineering and related contracts — Settlement of disputes — Expert determination — Where express contractual obligation to give reasons in expert determination — Nature and extent of contractual obligation to give reasons — Whether expert determination contained inconsistency in reasons — Whether inconsistency in reasons means expert did not give reasons for determination as a whole — Whether inconsistency in reasons means contractual obligation not fulfilled and determination not binding on parties.

**Appealed from NSW SC (CA):** [2010] NSWCA 59.

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## Corporations

*Australian Securities and Investments Commission v Lanepoint Enterprises Pty Ltd (Receivers and Managers Appointed)*  
P43/2010: [\[2011\] HCATrans 49](#).

**Date heard:** 8 March 2011 — *Judgment reserved*.

**Coram:** Gummow, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Corporations — Winding up — Winding up in insolvency — Where respondent presumed to be insolvent once receiver was appointed: *Corporations Act* 2001 (Cth) s 459C — Where respondent required to rebut presumption in an application for winding up in insolvency — Respondent disputed extent of indebtedness — Whether

company should be wound-up on basis of disputed debt — Whether court may determine merits of disputed debt in course of winding up proceeding.

**Appealed from FCA FC:** (2010) 78 ACSR 487; (2010) 28 ACLC 10-035; [2010] FCAFC 49.

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## Criminal Law

*Commonwealth Director of Public Prosecutions v Poniatowska*  
A20/2010: [\[2011\] HCATrans 46](#).

**Date heard:** 3 March 2011 — *Judgment reserved*.

**Coram:** French CJ, Gummow, Heydon, Kiefel and Bell JJ.

**Catchwords:**

Criminal law — Offences — Respondent failed to declare \$71,000 in commission payments while receiving parenting benefit from Centrelink — Whether omitting to perform act a physical element of offence — Whether existence of legal duty or obligation to perform act, imposed by offence provision or other Commonwealth statute, determinative of question about physical element — *Criminal Code* 1995 (Cth), ss 4.3 and 135.2.

Words and phrases — “engages in conduct”.

**Appealed from SA SC (FC):** (2010) SASR 578; (2010) 240 FLR 466; (2010) 271 FLR 610; [2010] SASCF 19; [2010] ALMD 7469.

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*White v Director of Public Prosecutions for Western Australia*  
P44/2010: [\[2011\] HCATrans 47](#).

**Date heard:** 4 March 2011 — *Judgment reserved*.

**Coram:** French CJ, Gummow, Heydon, Crennan and Bell JJ.

**Catchwords:**

Criminal law — Procedure — Confiscation of proceeds of crime and related matters — Restraining or freezing order — Where appellant did not own and have effective control of property where offences committed — Where freezing orders made over appellant's property in place of property where offences took place — Whether property where offences took place was “crime-used” property — Scope of court's power to set aside a freezing order — *Criminal Property Confiscation Act* 2000 (WA), ss 22, 82, 146.

Words and phrases — “crime-used”, “criminal use”.

**Appealed from WA SC (CA):** (2010) 199 A Crim R 448; [2010] WASCA 47.

*Momcilovic v The Queen*

**M134/2010:** [\[2011\] HCATrans 15](#); [\[2011\] HCATrans 16](#); [\[2011\] HCATrans 17](#).

**Date heard:** 8, 9 & 10 February 2011 — *Part-heard (this appeal is listed for further argument on 7 June 2011).*

**Coram:** French CJ, Gummow, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Criminal law — Particular offences — Drug offences — Possession — Where person deemed to be in possession of drugs “upon any land or premises” occupied by person, unless person satisfies court to the contrary: *Drugs, Poisons and Controlled Substances Act 1981* (Vic) (“Act”) s 5 — Whether s 5 of Act creates legal onus on accused to disprove possession on balance of probabilities or evidential onus of adducing or pointing to evidence capable of raising a reasonable doubt about possession.

Criminal law — Appeal — Grounds of appeal — Conduct of trial judge — Misdirection or non-direction — Where drugs found in appellant’s home — Where appellant and her partner gave evidence that drugs were her partner’s and that appellant had no knowledge of them — Whether trial judge should have directed jury that prosecution must prove appellant’s knowledge of drugs in order to prove possession.

Human rights — Presumption of innocence — Statutory reversal of burden of proof of possession of drugs — Where *Charter of Human Rights and Responsibilities Act 2006* (Vic) (“Charter”) s 32 provides “[s]o far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights” — Whether s 5 of Act construed in light of s 37 of Charter is compatible with right to presumption of innocence — Charter ss 7(2), 25(1), 32(1).

Statutes — Acts of Parliament — Interpretation — Whether necessary to construe statutory provision without regard to s 32 of Charter to achieve “ordinary” construction of provision — Whether s 32 of Charter to be applied after a statutory provision is measured against s 7(2) of Charter — Whether s 32 of Charter a “cardinal principle” of statutory construction or a measure of last resort.

Constitutional law — Operation and effect of Commonwealth Constitution — Commonwealth Constitution, Chapter III — Federal

jurisdiction of State courts — Local limitations of State court — Whether s 32 of Charter confers a legislative function on State courts — Whether institutional integrity of State courts impaired — *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51.

Constitutional law — Operation and effect of Commonwealth Constitution — Inconsistency under s 109 of Commonwealth Constitution — Whether ss 5 and/or 71AC of Act inconsistent with ss 13.1, 13.2 and 302.4 of *Criminal Code* 1995 (Cth) ("Code").

Constitutional law — Operation and effect of Commonwealth Constitution — Inconsistency under s 109 of Commonwealth Constitution — Whether s 300.4 of Code evinces clear legislative intent not to cover the field — Whether Part 9.1 of Code intended to exclude or limit concurrent operation of cognate State or Territory laws — *Dickson v The Queen* (2010) 270 ALR 1.

High Court and Federal Court — High Court of Australia — Appellate jurisdiction — Where relief sought includes order setting aside declaration of inconsistent interpretation under s 36 of Charter made by intermediate appellate court — Whether High Court has jurisdiction under s 73 of Constitution to grant relief sought.

**Appealed from Vic SC (CA):** (2010) 265 ALR 751; [2010] VSCA 50; [2010] ALMD 4185.

### *SKA v The Queen*

**S100/2010:** [\[2010\] HCATrans 290](#).

**Date heard:** 9 November 2010 — *Judgment reserved*.

**Coram:** French CJ, Gummow, Heydon, Crennan and Kiefel JJ.

#### **Catchwords:**

Criminal law — Appeal and new trial — Verdict unreasonable or insupportable having regard to evidence — Test to be applied — Where appellate court had available to it videotape of interview of complainant played at trial — Where appellate court did not view videotaped evidence — Whether appellate court erred in application of test by not viewing videotaped evidence — *M v The Queen* (1994) 181 CLR 487.

Criminal law — Appeal and new trial — Verdict unreasonable or insupportable having regard to evidence — Opinion of trial judge — Where inconsistencies in complainant's evidence — Where trial judge said "impossible to see how any jury acting reasonably could be satisfied beyond reasonable doubt" — Where appellate court made no reference to opinion of trial judge — Whether appellate court erred in not advertent to opinion of trial judge.

**Appealed from NSW SC (CCA):** [2009] NSWCCA 186.

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*Roach v The Queen*

**B41/2010:** [\[2010\] HCATrans 288](#).

**Date heard:** 5 November 2010 — *Judgment reserved*.

**Coram:** French CJ, Hayne, Heydon, Crennan and Kiefel JJ.

**Catchwords:**

Criminal law — Evidence — Propensity, tendency and co-incidence — Admissibility and relevancy — Propensity evidence — Evidence of uncharged acts — Appellant convicted of one count of assault occasioning bodily harm — “Relationship evidence” — Principles from *Pfennig v The Queen* (1995) 182 CLR 461 (“*Pfennig*”) — History of violence and of domestic relationship between appellant and complainant — Whether s 132B of *Evidence Act 1977* (Qld) (“*Act*”) allows admission of evidence of relevant history without application of *Pfennig* test — Whether requirement of fairness in admission of evidence in s 130 of *Act* mandates application of *Pfennig* test to admission of relationship evidence — Whether unfair to admit evidence unless, as stated in *Phillips v The Queen* (2006) 225 CLR 303 at 308, when “viewed in the context of the prosecution case, there is no reasonable view of the [relationship] evidence consistent with the innocence of the accused”.

**Appealed from Qld SC (CA):** [2009] QCA 360.

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*Braysich v The Queen*

**P32/2010:** [\[2010\] HCATrans 268](#).

**Date heard:** 19 October 2010 — *Judgment reserved*.

**Coram:** French CJ, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Criminal law — Particular offences — Financial transaction offences — Creating false or misleading appearance of active trading in securities — *Corporations Act 2001* (Cth), s 998(1) — Where “deeming” provision relied on by Crown — Where appellant deemed to have created false or misleading appearance of active trading by virtue of entering into or carrying out share transaction not involving change in beneficial ownership: s 998(5) — Where defence available if proved that purpose of transaction was not or did not include creating false or misleading appearance of active trading: s 998(6) — Where appellant did not expressly state in examination-in-chief that purpose was not to create false or misleading appearance of active trading — Where trial judge

directed jury defence not available — Whether sufficient evidence to support defence — Whether direction to jury that defence unavailable correct.

Criminal law — Evidence — Where Crown adduced expert evidence to show that share trading transactions were likely to create a false or misleading appearance of active trading in order to rebut any defence appellant might raise — Where appellant sought to adduce expert evidence to refute Crown evidence — Where trial judge ruled defence not available — Whether appellant's expert evidence admissible.

**Appealed from WA SC (CCA):** (2009) 260 ALR 719; (2009) 238 FLR 1; (2009) 74 ACSR 387; (2010) 27 ACLC 1678; [2009] WASCA 178.

## Defamation

*Boland v Dillon; Cush v Dillon*

**S310/2010; S309/2010:** [\[2011\] HCATrans 82](#).

**Date heard:** 7 April 2011 — *Judgment reserved*.

**Coram:** French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ.

### Catchwords:

Defamation — Defences — Qualified privilege — Boland and respondent directors and Cush general manager of Border Rivers-Gwydir Catchment Management Authority ("CMA") — Respondent told chairman of CMA that "[i]t is common knowledge among people in the CMA that [the appellants] are having an affair" — Common ground at trial that appellants not having affair and that respondent did not believe appellants having affair when comment made — Respondent denied making comment — Jury found respondent made comment — Respondent advanced defence of qualified privilege founded on perceived need to inform chairman of CMA of "the rumour and the accusation" of affair — Whether publication of imputations of affair between director and General Manager of statutory body published by another director to chairman on occasion of qualified privilege — Relevance of duty respondent owed to CMA to occasion of qualified privilege.

**Appealed from NSW SC (CA):** [2010] NSWCA 165.

## Energy and Resources

*Jemena Gas Networks (NSW) Ltd v Mine Subsidence Board*

**S312/2010:** [\[2011\] HCATrans 80](#).

**Date heard:** 5 April 2011 — *Judgment reserved.*

**Coram:** French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Energy and resources — Compensation for subsidence caused by mining — Appellant owned and operated gas pipeline — Coal mining in vicinity of pipeline caused subsidence — Subsidence insufficient to damage pipeline, but future mining expected to cause cumulative level of subsidence sufficient to damage pipeline — Appellant engaged in preventive and mitigation works to protect pipeline — Works concluded prior to commencement of mining expected to cause damaging subsidence — Claim for compensation for costs of works rejected by respondent — Whether compensation payable for costs incurred with respect to anticipated subsidence — Whether requirement of causation in s 12A(1)(b) of *Mine Subsidence Compensation Act 1961* (NSW) determined by reference to single mining event or by reference to ongoing extraction in accordance with mining plan — *Mine Subsidence Board v Wambo Coal Pty Ltd* (2007) 54 LGERA 60 — *Mine Subsidence Compensation Act 1961* (NSW), s 12A(1)(b).

**Appealed from NSW SC (CA):** (2010) 175 LGERA 16; [2010] NSWCA 146; [2010] ALMD 7059.

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## Equity

*Byrnes & Anor v Kendle*

**A23/2010:** [\[2010\] HCATrans 322](#).

**Date heard:** 8 December 2010 — *Judgment reserved.*

**Coram:** French CJ, Gummow, Hayne, Heydon and Crennan JJ.

**Catchwords:**

Equity — Trusts and trustees — Powers, duties, rights and liabilities of trustees — Purchase or lease of trust property — Respondent husband held legal title to property but held half-share on trust for wife, the second appellant — Respondent leased property to his son but failed to collect rent — Where second appellant aware of failure to collect rent and did not object — Whether respondent had a duty as trustee of the property to collect rent — Whether second appellant was able to, and in fact did, consent to respondent's actions.

**Appealed from SA SC (FC):** [2009] SASC 385.

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## Evidence

*Dasreef Pty Limited v Hawchar*  
S313/2010: [\[2011\] HCATrans 81](#).

**Date heard:** 6 April 2011 — *Judgment reserved*.

**Coram:** French CJ, Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Evidence — Admissibility and relevance — Opinion evidence — Expert opinion — Expert with experience relevant to general topic of industrial dust gave opinion evidence to Dust Diseases Tribunal on concentration of silica in air — Whether expert had specialised knowledge enabling determination of respirable fraction of silica in dust clouds from observation alone — Whether expert disclosed facts, assumptions and reasoning in manner sufficient to make it plain to trial judge that expert opinion wholly or substantially based on expert's specialised knowledge in area of contention — Whether such disclosure necessary in order for evidence to be admissible — *Evidence Act 1995 (NSW)*, s 79.

**Appealed from NSW SC (CA):** [2010] NSWCA 154.

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## High Court and Federal Court

See **Criminal Law:** *Momcilovic v The Queen*

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## Human Rights

See **Criminal Law:** *Momcilovic v The Queen*

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## Insurance

*Westport Insurance Corporation & Ors v Gordian Runoff Limited*  
S219/2010: [\[2011\] HCATrans 12](#); [\[2011\] HCATrans 13](#).

**Date heard:** 3 & 4 February 2011 — *Judgment reserved*.

**Coram:** French CJ, Gummow, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Insurance — Reinsurance — Application of s 18B of *Insurance Act* 1902 (NSW) ("Act") to reinsurance contracts.

Arbitration — The award — Appeal or judicial review — Grounds for remitting or setting aside — Error of law — Where arbitrators found s 18B(1) of Act required appellant reinsurers to indemnify respondent reinsured in respect of certain claims made under insurance policy issued by respondent — Whether error of law to conclude that respondent's loss not caused by existence of relevant "circumstances" under s 18B(1) of Act — Whether s 18B(1) of Act applied to contracts — *Commercial Arbitration Act* 1984 (NSW), ss 38(5)(b)(i), 38(5)(b)(ii).

Arbitration — The award — Appeal or judicial review — Grounds for remitting or setting aside — Whether arbitrators gave adequate reasons for making the award — *Commercial Arbitration Act* 1984 (NSW), s 29(1).

**Appealed from NSW SC (CA):** (2010) 267 ALR 74; (2010) 16 ANZ Insurance Cases 61-840; [2010] NSWCA 57.

## Real Property

*Springfield Land Corporation (No 2) Pty Ltd & Anor v State of Queensland & Anor*

**B39/2010:** [\[2010\] HCATrans 291](#).

**Date heard:** 10 November 2010 — *Judgment reserved*.

**Coram:** French CJ, Gummow, Hayne, Heydon and Crennan JJ.

### Catchwords:

Real property — Compulsory acquisition of land — Compensation — Assessment — Adjoining land — Where parties agreed compensation would be determined using *Acquisition of Land Act* 1963 (Qld) ("Act") — Where disagreement as to compensation referred to arbitrator — Whether s 20(3) of Act requires causal connection between enhancement in value and carrying out of purpose for which land was acquired — Whether characterisation of purpose for which land was acquired should be broad or narrow — Whether characterisation of purpose for which land was acquired a question of fact — Whether enhancement of value of land adjoining land compulsorily acquired which arose prior to and independently of expansion of purpose for which land was acquired can be set off against assessed compensation under s 20(3) of Act — *Acquisition of Land Act* 1963 (Qld).

**Appealed from Qld SC (CA):** (2009) 171 LGERA 38; [2010] ALMD 5984; [2009] QCA 381.

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## Restitution

*Equuscorp Pty Ltd (formerly Equus Financial Services Ltd) v Haxton; Equuscorp Pty Ltd (formerly Equus Financial Services Ltd) v Bassat; Equuscorp Pty Ltd (formerly Equus Financial Services Ltd) v Cunningham's Warehouse Sales Pty Ltd*  
**M128/2010; M129/2010; M130/2010—M132/2010:**  
[\[2011\] HCATrans 50](#); [\[2011\] HCATrans 51](#).

**Date heard:** 9 & 10 March 2011 — *Judgment reserved*.

**Coram:** French CJ, Gummow, Heydon, Crennan, Kiefel and Bell JJ.

**Catchwords:**

Restitution — Restitution resulting from unenforceable, incomplete, illegal or void contracts — Recovery of money paid or property transferred — Respondents investors in tax driven blueberry farming schemes — Funds for farm management fees lent to investors by Rural Finance Ltd (“Rural”) — Appellant lent money to Rural — Rural subsequently wound up — Loan contracts between respondents and Rural assigned to applicant — Appellant’s enforcement of contractual debts statute-barred — Where parties agreed in court below loan contracts illegal and unenforceable — Whether total failure of consideration — Whether respondents’ retention of loan funds “unjust”.

Restitution — Assignment of rights of restitution — Where Deed of Assignment assigning Rural’s loans to appellant included assignment of “legal right to such debts ... and all legal and other remedies” — Whether rights of restitution able to be assigned — Whether rights of restitution assigned in this case.

**Appealed from Vic SC (CA):** (2010) 265 ALR 336; [2010] VSCA 1.

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## Statutes

See **Criminal Law:** *Momcilovic v The Queen*

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## Taxation and Duties

*Commissioner of Taxation v BHP Billiton Limited; Commissioner of Taxation v BHP Billiton Petroleum (North West Shelf) Pty Ltd;*

*Commissioner of Taxation v The Broken Hill Proprietary Company Pty Ltd; Commissioner of Taxation v BHP Billiton Minerals Pty Ltd* M117/2010—M120/2010; M121/2010 and M123 2010; M122/2010; M124/2010 and M125/2010: [\[2010\] HCATrans 320](#); [\[2010\] HCATrans 321](#).

**Date heard:** 7 & 8 December 2010 — *Judgment reserved*.

**Coram:** French CJ, Gummow, Heydon, Crennan and Bell JJ.

**Catchwords:**

Taxation and duties — Income tax and related legislation — Deductions — BHP Billiton Finance Limited (“BHP Finance”) and BHP Billiton Direct Reduced Iron Pty Ltd (“BHP Direct”) wholly owned subsidiaries of BHP Billiton Limited — BHP Direct partly financed capital expenditure on processing plant with funds borrowed from BHP Finance — BHP Finance classified large portion of loans to BHP Direct as irrecoverable after carrying value of BHP Direct’s assets written down — BHP Direct able to claim capital allowance tax deductions for expenditure incurred on processing plant — Capital allowance deductions reduced by appellant applying *Income Tax Assessment Act 1997* (Cth), Div 243 — Div 243 applies where “limited recourse debt” used to finance expenditure, debt not paid in full at time of discharge and debtor can deduct amount as capital allowance for year in which discharge occurs, or has done so for earlier year: s 243-15 — “Limited recourse debt” is debt where creditor’s rights of recovery against debtor limited to property purchased using borrowed funds or where creditors rights are capable of being so limited: s 243-20 — Whether loans from BHP Finance to BHP Direct were “limited recourse debts” by virtue of being capable of being so limited — *Income Tax Assessment Act 1997* (Cth), s 243-20(2).

**Appealed from FCA FC:** (2010) 182 FCR 526; (2010) 76 ATR 472; (2010) ATC 20-169; [2010] ALMD 5417; [2010] FCAFC 25.

## Torts

*Kuhl v Zurich Financial Services & Anor*  
P31/2010: [\[2010\] HCATrans 267](#).

**Date heard:** 19 October 2010 — *Judgment reserved*.

**Coram:** French CJ, Gummow, Heydon, Crennan and Bell JJ.

**Catchwords:**

Torts — Negligence — Essentials of action for negligence — Duty of care — Reasonable foreseeability of damage — Where appellant

injured while operating high-pressure vacuum hose — Where company insured by first respondent provided vacuum hose — Where appellant not employee of company — Whether duty of care owed by company to appellant — Whether risk of injury reasonably foreseeable — Whether any duty of care owed was breached — Where modifications made to hose system following injury to appellant — Whether subsequent changes to work system relevant to analysis of whether any duty of care breached — Where speculation as to precise mechanism whereby appellant injured — Whether evidence as to how, precisely, accident occurred necessary before causation can be found — *Nelson v John Lysaght (Australia) Ltd* (1975) 132 CLR 201.

**Appealed from WA SC (CA):** [2010] Aust Torts Reports 82-053; [2010] WASCA 50; (2010) 194 IR 74.

## Trade and Commerce

*Insight Vacations Pty Ltd t/as Insight Vacations v Young*  
**S273/2010:** [\[2011\] HCATrans 79](#).

**Date heard:** 1 April 2011 — *Judgment reserved*.

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

### Catchwords:

Trade and commerce — *Trade Practices Act 1974* (Cth) (“TPA”) and related legislation — Consumer protection — Conditions and warranties in consumer transactions — Warranties — Whether s 74(2A) of TPA applies to State law authorising contractual provision limiting or precluding liability for breach of implied warranty of due care and skill in s 74(1) of TPA — Whether s 74(2A) of TPA only applies to State laws which limit or preclude liability for breach of implied warranty in s 74(1) of TPA by their own terms — Whether s 74(2A) of TPA picks up and applies s 5N(1) of *Civil Liability Act 2002* (NSW) (“CLA”) — Whether exclusion clause authorised by s 5N of CLA is contract term purporting to exclude, restrict or modify application of s 74(1) of TPA, within meaning of s 68 of TPA — *Trade Practices Act 1974* (Cth), ss 68, 74(2A) — *Civil Liability Act 2002* (NSW), s 5N.

**Appealed from NSW SC (CA):** (2010) 241 FLR 125; (2010) 268 ALR 570; [2010] Aust Torts Reports 82-061; [2010] ASAL 55-209; [2010] NSWCA 137; [2010] ALMD 6898; [2010] ALMD 7034.

## 3: ORIGINAL JURISDICTION

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

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### Constitutional Law

*Phonographic Performance Company of Australia Limited & Ors v The Commonwealth & Ors*

**S307/2010**

**Catchwords:**

Constitutional law — Operation and effect of Commonwealth Constitution — Powers with respect to property — Power to acquire property on just terms — Whether some or all of provisions in ss 109 and 152 of *Copyright Act* 1986 (Cth) beyond legislative competence of Parliament by reason of s 51(xxxi) of Commonwealth Constitution — If so, whether such provisions should be read down or severed and, if so, how — Commonwealth Constitution, s 51(xxxi) — *Copyright Act* 1986 (Cth), ss 109, 152.

This matter was filed in the original jurisdiction of the High Court.

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## 4: SPECIAL LEAVE GRANTED

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

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### Constitutional Law

*Queanbeyan City Council v ACTEW Corporation Ltd & Anor*  
C6/2010; C7/2010: [\[2011\] HCATrans 83](#).

**Date heard:** 8 April 2011 — *Special leave granted*.

**Catchwords:**

Constitutional law — Duties of excise — Water abstraction charge ("WAC") imposed by Ministerial determination — WAC calculated by reference to quantum abstracted — Whether discernible relationship to value of acquisition necessary for governmental levy for access to and acquisition of natural resource to escape characterisation as a tax — If discernible relationship required, whether requirement satisfied where government charges any rate borne by market, including monopoly rent — Evidence required to establish absence of discernible relationship between charge and value of acquired resource — *Water Resources Act 2007* (ACT).

Constitutional law — Duties of excise — Utilities Network Facilities Tax ("UNFT") imposed on owners of network facilities — UNFT calculated by reference to "route length" of network facility — Whether fee said to be for exercise of legislative power authorising utilities to trespass on land a fee for service and therefore not a tax — Whether following factors sufficient to establish that a levy on network facilities not an excise: UNFT payable by owner, rather than operator, of network; UNFT imposed by reference to conferral of right to use and occupy land on which facility located; quantum of tax referable to length land occupied; quantum of UNFT not explicable only on basis of quantity and value of water supplied by respondent; payment of fee not a condition on transportation of water; UNFT does not select water network for discrimination so as to warrant conclusion that tax upon water carried in network — *Utilities (Network Facilities Tax) Act 2006* (ACT).

Practice and procedure — Precedents — Decisions of High Court of Australia ("HCA") — Binding effect on other courts — Whether intermediate appellate court may depart from dicta of justices of HCA, subsequently approved by other justices of HCA, where no decision of HCA has disagreed with those dicta.

**Appealed from FCA FC:** [2010] FCAFC 124.

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***Sportsbet Pty Ltd v State of New South Wales & Ors***  
**S290/2010; S291/2010: [\[2011\] HCATrans 52](#).**

**Date heard:** 11 March 2011 — *Special leave granted on limited grounds.*

**Catchwords:**

Constitutional law — Freedom of interstate trade — Applicant a licensed bookmaker domiciled in Northern Territory — NSW legislative scheme prohibited use of race field information without approval and authorised imposition of fee as condition for approval ("Scheme") — Fee imposed on all wagering operators irrespective of whether domiciled in NSW — NSW racing control bodies subsidised NSW wagering operators — Whether practical effect of fee was to impose discriminatory burden of protectionist nature on interstate trade — Whether Scheme inconsistent with freedom of interstate trade, commerce and intercourse — Commonwealth Constitution, ss 92, 109 — *Northern Territory (Self Government) Act 1978* (Cth), s 49 — *Racing Administration Act 1998* (NSW), s 33(1).

Constitutional law — Freedom of interstate trade — Whether Scheme inconsistent with freedom of interstate trade, commerce and intercourse — Whether practical effect of Scheme determinable without consideration of offsetting reductions in existing fees payable by intrastate traders — Whether necessary for interstate trader to show that interstate trader's competitive advantage derived from place of origin in another State or Territory and Scheme imposed discriminatory burden affecting that advantage — Whether Scheme protectionist if imposed with intention of protecting intrastate traders and fee not reasonably appropriate or adapted to non-protectionist objective — Whether validity of statutory prohibition, combined with administrative discretion to relax prohibition, to be determined by comparing interstate and intrastate traders' positions — Whether relevant or determinative that State and administrative bodies intend discretion over prohibition to be exercised to protect intrastate traders — Commonwealth Constitution, ss 92, 109 — *Northern Territory (Self Government) Act 1978* (Cth), s 49 — *Racing Administration Act 1998* (NSW), s 33(1).

**Appealed from FCA FC:** [2010] FCAFC 132.

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***Betfair Pty Limited v Racing New South Wales & Ors***  
**S294/2010: [\[2011\] HCATrans 53](#).**

**Date heard:** 11 March 2011 — *Special leave granted.*

**Catchwords:**

Constitutional law — Freedom of interstate trade — Applicant a licensed betting exchange domiciled in Tasmania — NSW legislative scheme prohibited use of race field information without approval and authorised imposition of fee as condition for approval ("Scheme") — Fee imposed on all wagering operators irrespective of whether domiciled in NSW — Where imposition of fee allegedly reduce applicant's commission by disproportionate amount compared to NSW operators — Whether practical effect of fee was to impose discriminatory burden of protectionist nature on interstate trade — Whether Scheme inconsistent with freedom of interstate trade, commerce and intercourse — Constitution, s 92 — *Racing Administration Act 1998 (NSW)*, s 33(1).

Constitutional law — Freedom of interstate trade — Whether Scheme inconsistent with freedom of interstate trade, commerce and intercourse — Whether insufficient for interstate trader to show fees imposed greater business costs on interstate traders than intrastate traders — Whether necessary for interstate trader to show that interstate trader's competitive advantage derived from place of origin in another State or Territory and Scheme imposed discriminatory burden affecting that advantage — Whether Scheme protectionist if imposed with intention of protecting intrastate traders and fee not reasonably appropriate or adapted to non-protectionist objective — Whether validity of statutory prohibition, combined with administrative discretion to relax prohibition, to be determined by comparing interstate and intrastate traders' positions — Whether relevant or determinative that State and administrative bodies intend discretion over prohibition to be exercised to protect intrastate traders — Constitution, s 92 — *Racing Administration Act 1998 (NSW)*, s 33(1).

**Appealed from FCA FC:** [2010] FCAFC 133.

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## Contracts

**See Practice and Procedure:** *Wynton Stone Australia Pty Ltd (in liq) v MWH Australia Pty Ltd (formerly Montgomery Watson Australia Pty Ltd)*

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## Criminal Law

*Green v The Queen; Quinn v The Queen*  
**S18/2010; S61/2010:** [\[2011\] HCATrans 100](#).

**Date heard:** 8 April 2011 — *Special leave granted on limited grounds.*

**Catchwords:**

Criminal law — Sentencing — Applicants pleaded guilty to cultivation of large commercial quantity of cannabis — Crown appealed against inadequacy of applicants' sentences — Where no appeal instituted against sentence of another participant who pleaded guilty to taking part in supply of commercial quantity of cannabis — Where NSW Court of Criminal Appeal increased applicants' sentences — Whether sentence which at first instance achieves parity with sentence imposed on co-offender can be regarded as manifestly inadequate — Whether open to intermediate appellate court to increase sentence when increase will engender sentencing disparity — *Drug Misuse and Trafficking Act 1985* (NSW), s23(2)(a); *Criminal Appeal Act 1912* (NSW), s 5D; *Crimes (Sentencing Procedure) Act 1999* (NSW), Div 1A.

**Appealed from NSW SC (CA):** [2010] NSWCCA 313.

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*Moti v The Queen*

**B47/2010:** [\[2011\] HCATrans 96](#).

**Date heard:** 8 April 2011 — *Special leave granted on limited grounds.*

**Catchwords:**

Criminal law — Procedure — Stay of proceedings — Abuse of process — Indictment charging applicant with seven counts of engaging in sexual intercourse with person under 16 whilst outside Australia stayed by primary judge — Where primary judge found financial support given to witnesses by Australian Federal Police an abuse of process — Whether open to conclude that prosecution based on evidence of witnesses paid by Australian Executive, in amounts alleged to exceed expenses of giving evidence and in response to alleged threats to withdraw from prosecution, an abuse of process — Whether stay of proceedings should be set aside.

Criminal law — Procedure — Stay of proceedings — Abuse of process — Where applicant deported from Solomon Islands to Australia without extradition proceedings and allegedly with "knowledge and connivance or involvement" of Australian Executive — Where applicant previously charged with similar offences in Vanuatu but discharged — Where applicant contended removal from Solomon Islands a disguised extradition and criminal investigation politically motivated — Whether principle in *R v Horseferry Magistrates' Court; Ex Parte Bennett (No 1)* [1994] 1 AC 42 should be applied in Australia — Whether discretion to stay proceedings as abuse of process in light of facts and applicant's allegations ought to be exercised.

**Appealed from QCA:** [2010] QCA 178.

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*Muldrock v The Queen*

**S231/2010:** [\[2011\] HCATrans 55](#).

**Date heard:** 11 March 2011 — *Special leave granted*.

**Catchwords:**

Criminal law — Sentence — Applicant pleaded guilty to charge of sexual intercourse with child under age of 10 years — Further offence of aggravated indecent assault taken into account in sentencing — Applicant intellectually disabled — Applicant previously convicted of similar offence — Relevance of standard non-parole period in cases of less than mid-range seriousness — Whether applicant "significantly intellectually disabled" such that deterrence objective inappropriate — Whether full-time custody an exceptional penalty for intellectually disabled offenders — Relevance of rehabilitation and community protection to sentencing of intellectually disabled offenders — Whether applicant a person with "special circumstances" — *Crimes Act 1900 (NSW)*, ss 61M(1), 66A — *Crimes (Sentencing Procedure) Act 1999 (NSW)*, ss 3A, 54A, 54B.

Words and phrases — "significantly intellectually disabled", "special circumstances".

**Appealed from NSW SC (CCA):** [2010] NSWCCA 106.

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## Damages

*Maurice Blackburn Cashman v Brown*

**M176/2010:** [\[2010\] HCATrans 331](#).

**Date heard:** 10 December 2010 — *Special leave granted*.

**Catchwords:**

Damages — Statutory constraint on action for damages — Respondent former employee of applicant — Respondent made claim pursuant to *Accident Compensation Act 1985 (Vic)* ("Act") for statutory compensation for non-economic loss arising from psychological injury suffered as result of actions of fellow employee — Victorian WorkCover Authority ("WorkCover") accepted respondent had psychological injury arising out of employment with applicant — WorkCover referred medical questions to Medical Panel for opinion under s 67 of Act — Medical Panel certified respondent had 30% permanent psychiatric impairment resulting from

accepted injury — Respondent deemed by Act to have suffered “serious injury” and permitted to commence common law proceedings for damages as result — Proceedings commenced in County Court of Victoria — Applicant’s pleadings in defence contested causation and injury — Respondent pleaded in reply that applicant estopped from making assertion inconsistent with Medical Panel opinion — Whether defendant’s right to contest common law damages claims subject to Act compromised by Medical Board opinion — Whether Medical Board opinion gives rise to issue estoppel for purposes of common law damages proceeding.

**Appealed from Vic SC (CA):** [2010] VSCA 206.

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## Environment and Planning

*Cumerlong Holdings Pty Ltd v Dalcross Properties Pty Ltd & Ors*  
S227/2010: [\[2011\] HCATrans 56](#).

**Date heard:** 11 March 2011 — *Special leave granted*.

**Catchwords:**

Environment and planning — Building control — Planning instruments — Interpretation — Ku-ring-gai Local Environment Plan 194 (“LEP 194”) rezoned applicant’s land — Whether LEP 194 a “provision”, for purpose of s 28(3) of *Environmental Planning and Assessment Act 1979* (NSW) (“Act”), that accords with s 28(2) of Act — Whether s 28(3) of Act required approval of Governor to effect change of zoning under LEP 194 — Whether s 28(3) of Act engaged if LEP 194 contains no express provision identifying regulatory instrument which shall not apply to any particular development.

Words and phrases — “provide”, “provision”.

**Appealed from NSW SC (CA):** [2010] NSWCA 214; (2010) 175 LGERA 433; [2011] ALMD 220.

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## Equity

*HIH Claims Support Limited v Insurance Australia Limited*  
M147/2010: [\[2011\] HCATrans 60](#).

**Date heard:** 11 March 2011 — *Special leave granted*.

**Catchwords:**

Equity — Contribution — Equal and coordinate liability — Scaffolder Steele sub-contracted to Australian Grand Prix Corporation ("AGPC") — Steele held insurance policy with company in HIH group which, but for HIH collapse, responded to Steele's liability to AGPC — Applicant administrator of HIH Claim Support Scheme — AGPC held insurance policy with State Government Insurance Corporation ("SGIC") which extended to sub-contractors — SGIC's rights, liabilities and obligations vested in respondent — Whether applicant entitled to contribution from respondent — Whether liabilities of applicant and Steele and respondent and Steele equal and coordinate — Whether indemnities not coordinate because applicant may recover from liquidation of HIH — Whether equitable doctrine of contribution sufficiently flexible to do "practical justice" — Whether characterisation of separate contracts of insurance as "primary" and "secondary" prevents contribution — Whether relevant date for determining right to contribution is date of indemnity payment or date of casualty.

**Appealed from Vic SC (CA):** [2010] VSCA 255; (2010) 16 ANZ Insurance Cases 61-863.

## Evidence

*Lithgow City Council v Jackson*  
**S158/2010:** [\[2010\] HCATrans 27](#).

**Date heard:** 11 February 2011 — *Special leave granted*.

### Catchwords:

Evidence — Admissibility and relevance — Notes of ambulance officers ("Notes") — Whether Notes an opinion and inadmissible under s 76 of *Evidence Act 1995* (NSW) ("Act") — Whether Notes a lay opinion and admissible under s 78 of Act — Whether opinion of underlying matter or event includes perceptions of aftermath of matter or event — Meaning of "necessary" in s 78(b) of Act — *Evidence Act 1995* (NSW), ss 76, 78.

**Appealed from NSW SC (CA):** [2010] NSWCA 136.

## Practice and Procedure

*Wynton Stone Australia Pty Ltd (in liq) v MWH Australia Pty Ltd (formerly Montgomery Watson Australia Pty Ltd)*  
**M158/2010; M159/2010:** [\[2011\] HCATrans 61](#).

**Date heard:** 11 March 2011 — *Referred to an enlarged Court*.

**Catchwords:**

Practice and procedure — Pleadings — Trial judge stated, without objection, that pleaded issues would be treated as abandoned if not run in final submissions — Whether respondent abandoned breach of warranty claim.

Trade and commerce — Misleading and deceptive conduct — Warranty — Whether statement of fact in warranty constituted misleading and deceptive conduct — Causation — Reliance — Inferred reliance — Whether causation able to be inferred in absence of direct evidence of reliance — *Gould v Vaggelas* (1985) 157 CLR 215; *Campbell v Backoffice Investments Pty Ltd* [2010] VSCA 245.

Contracts — Construction and interpretation — Intention of parties — Deed of Novation — Whether release of "all claims and demands whatsoever in respect of the contract" intended to cover breaches of contract occurring before date of Deed — Application of "business commonsense point of view" where language not ambiguous on its face.

**Appealed from Vic SC (CA):** [2010] VSCA 245.

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*Michael Wilson & Partners Limited v Nicholls & Ors*  
**S236/2010:** [\[2011\] HCATrans 28](#).

**Date heard:** 11 February 2011 — *Special leave granted*.

**Catchwords:**

Practice and procedure — Supreme Court procedure — Abuse of process — Applicant obtained judgment against respondents in Supreme Court of NSW ("NSWSC") for knowing participation in breach of fiduciary duty by a non-party — London arbitrators subsequently issued interim award upholding breach of duties by non-party but denying compensation to applicant ("Award") — Respondents not party to Award — Whether abuse of process for applicant to seek to enforce judgment in NSWSC in face of Award.

Practice and procedure — Courts and judges — Disqualification of judges for interest or bias — Apprehended bias — Application of lay observer test in *Johnson v Johnson* (2000) 201 CLR 488 — Whether lay observer test "unnecessary" and "wholly artificial" where judge personally apprehends bias — Whether conclusion of NSW Court of Appeal on trial judge's apprehensible bias justified on facts.

Practice and procedure — Waiver — Trial judge refused to recuse himself ("recusal decision") and invited respondents to appeal

recusal decision — Respondents did not appeal recusal decision until after trial and judgment adverse to respondents delivered — Whether recusal decision an order or judgment — Whether recusal decision amenable to appeal — Whether respondents waived right to appeal recusal decision by proceeding with trial.

**Appealed from NSW SC (CA):** (2010) 243 FLR 177; [2010] NSWCA 222.

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See also **Constitutional Law:** *Queanbeyan City Council v ACTEW Corporation Ltd & Anor* and **Taxation and Duties:** *American Express Wholesale Currency Services Pty Ltd v Commissioner of Taxation; American Express International Inc v Commissioner of Taxation* and

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## Statutes

*AB v State of Western Australia & Anor; AH v State of Western Australia & Anor*  
P36/2010; P37/2010: [\[2011\] HCATrans 87](#).

**Date heard:** 8 April 2011 — *Special leave granted*.

### Catchwords:

Statutes — Acts of Parliament — Interpretation — Gender reassignment — Applicants born female — Applicants gender dysphoric and diagnosed as having gender identity disorder — Applicants commenced and continue to undergo testosterone therapy, rendering each currently infertile — Applicants underwent bilateral mastectomies but not hysterectomies — Applicants have not undergone phalloplasty due to associated risks — Gender Reassignment Board refused applicants' applications for certificates recognising reassignment of their gender from female to male — Whether *Gender Reassignment Act* 2000 (WA) ("Act") remedial or beneficial legislation requiring liberal interpretation — Whether each applicant has "the physical characteristics by virtue of which a person is identified as male" to be determined by reference to general community standards and expectations or from perspective of reasonable member of community informed of facts and circumstances, including remedial purpose of Act — Whether decision to issue gender reassignment certificate to be made having regard solely to applicants' external physical characteristics or also by reference to applicants' internal physical characteristics — Whether female-to-male re-assignee with internal and external female genitals must undertake surgery to remove internal female genitals and construct external male genitals in order to have "the

physical characteristics by virtue of which a person is identified as male" — *Gender Reassignment Act 2000 (WA)*, ss 3, 14, 15.

Words and phrases — "the physical characteristics by virtue of which a person is identified as male", "gender characteristics", "reassignment procedure".

**Appealed from WA SC (CA):** [2010] WASCA 172.

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*Australian Education Union v Department of Education and Children's Services*

**A12/2010:** [\[2011\] HCATrans 22](#).

**Date heard:** 11 February 2011 — *Special leave granted*.

**Catchwords:**

Statutes — Acts of Parliament — Interpretation — Statutory powers and duties — Conferral and extent of power — General matters constrained by specific — Applicants teachers appointed under s 9(4) of *Education Act 1972 (SA)* ("Act") — Where s 15 of Act enabled Minister to appoint teachers "officers of the teaching service" — Where s 9(4) of Act enabled Minister to appoint officers and employees "in addition to" officers of teaching service — Meaning of "in addition to" — Whether general power in s 9(4) constrained by specific power in s 15 — Whether within Minister's power to appoint teachers under s 9(4) of Act or whether s 15 sole source of Executive power — *Education Act 1972 (SA)*, ss 9(4), 15.

Words and phrases — "in addition to".

**Appealed from SA SC (FC):** [2010] SASC 161.

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*Peter Nicholas Moloney t/a Moloney & Partners v Workers Compensation Tribunal*

**A22/2010:** [\[2011\] HCATrans 25](#).

**Date heard:** 11 February 2011 — *Special leave granted*.

**Catchwords:**

Statutes — Subordinate legislation — Validity — Where s 88E(1)(f) of *Workers Rehabilitation Compensation Act 1986 (SA)* ("Act") authorised President of Workers Compensation Tribunal to make Rules regulating "costs" — Where s 88G of Act regulated recovery of costs by worker's representative — Where r 31(2) of *Workers Compensation Tribunal Rules 2009* restricted recovery of costs by worker's representative — Whether "costs" in s 88E(1)(f) of Act includes solicitor-client costs or only party-party costs — Whether

power conferred by s 88E(1)(f) limited by s 88G of Act — Whether s 88G invalidates r 31(2) — *Workers Rehabilitation Compensation Act 1986* (SA), ss 88E(1)(f), 88G — *Workers Compensation Tribunal Rules 2009* (SA), r 31(2).

**Appealed from SA SC (FC):** (2010) 108 SASR 1; [2010] SASCFC 17.

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## Taxation and Duties

*American Express Wholesale Currency Services Pty Ltd v Commissioner of Taxation; American Express International Inc v Commissioner of Taxation*  
**S238/2010; S239/2010:** [\[2011\] HCATrans 26](#).

**Date heard:** 11 February 2011 — *Referred to an enlarged Court.*

### Catchwords:

Taxation and duties — Goods and services tax — Applicants providers of charge cards and credit cards — Whether payments (liquidated damages and late payment fees) received by applicants from cardholders ("Default Fees") revenue from or consideration for a "financial supply" within meaning of Div 40 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and *A New Tax System (Goods and Services Tax) Regulations 1999* (Cth) ("Regulations") — Whether Default Fees revenue from provision, acquisition or disposal of an interest in or under "a debt, credit arrangement or right to credit, including a letter of credit": Item 2 of table to r 40-5.09(3) of Regulations — Whether Default Fees revenue from supply of or interest in or under "a payment system": Item 4 of table to r 40-5.12 of Regulations.

Taxation and duties — Goods and services tax — Whether right to present a card as payment for goods and services and incur a corresponding obligation to pay at a later date an "interest" within meaning of r 40-5.09 of Regulations — Whether Default Fees paid for that "interest".

Practice and procedure — Appeals — Amendment — Respondent granted leave to amend Notices of Appeal — Whether Full Court of Federal Court of Australia erred in granting leave.

**Appealed from FCA FC:** (2010) 187 FCR 398; (2010) 77 ATR 12; (2010) ATC 20-212; [2010] FCAFC 122.

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## Trade and Commerce

See **Practice and Procedure**: *Wynton Stone Australia Pty Ltd (in liq) v MWH Australia Pty Ltd (formerly Montgomery Watson Australia Pty Ltd)*

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## 5: CASES NOT PROCEEDING OR VACATED

The following cases in the High Court of Australia are not proceeding or have been vacated since High Court Bulletin 02 [2011] HCAB 02.

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### Immigration

*SZNKX v Minister for Immigration and Citizenship & Anor; SZKNW v Minister for Immigration and Citizenship & Anor*  
S321/2010; S322/2010: [\[2011\] HCATrans 93](#).

**Date:** *Appeals allowed by consent on 8 April 2011.*

**Catchwords:**

Immigration — Refugees — Review by Refugee Review Tribunal (“RRT”) — Applicants claimed to be homosexual couple — RRT received anonymous facsimile stating SZKNW’s claim to be homosexual “totally bogus” — Applicants advised of letter, but not given copy, at separate hearings before RRT — Letter included material particular to SZKNW, including passport number and departmental file number — Where applicants allege letter provided by disgruntled former migration agent — Whether RRT failed to comply with statutory requirement in s 424A of *Migration Act* 1958 (Cth) (“Act”) to provide clear particulars of letter by not providing copy of letter and failing to advise letter contained departmental file number — Whether s 424AA of Act engaged — *Migration Act* 1958 (Cth), ss 424AA, 424A.

**Appealed from FCA:** [2009] FCA 1407; [2010] FCA 55.

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## 6: SPECIAL LEAVE REFUSED

### Canberra: 5 April 2011

(Publication of reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
O'Keefe	Wyndham City Council (M151/2010)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application dismissed <a href="#">[2011] HCASL 39</a>
MZYGN	Minister for Immigration and Citizenship & Anor (M163/2010)	Federal Court of Australia [2010] FCA 1369	Application dismissed <a href="#">[2011] HCASL 40</a>
Tey	Optima Financial Group Pty Ltd (P49/2010)	Supreme Court of Western Australia (Court of Appeal) [2010] WASCA 219	Application dismissed <a href="#">[2011] HCASL 41</a>
Markisic & Anor	Commonwealth of Australia (S262/2010)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 273	Application dismissed <a href="#">[2011] HCASL 42</a>
Uddin	Minister for Immigration & Citizenship & Anor (S275/2010)	Federal Court of Australia [2010] FCA 1281	Application dismissed <a href="#">[2011] HCASL 43</a>
SZOFZ	Minister for Immigration & Citizenship & Anor (S280/2010)	Federal Court of Australia [2010] FCA 1288	Application dismissed <a href="#">[2011] HCASL 44</a>
McLean	Star City Pty Limited (S282/2010)	Supreme Court of New South Wales (Court of Appeal) (no media neutral citation)	Application dismissed <a href="#">[2011] HCASL 45</a>
SZOHJ	Minister for Immigration & Citizenship & Anor (S283/2010)	Federal Court of Australia [2010] FCA 1268	Application dismissed <a href="#">[2011] HCASL 46</a>
SZNPJ	Minister for Immigration & Citizenship & Anor (S284/2010)	Federal Court of Australia [2010] FCA 1233	Application dismissed <a href="#">[2011] HCASL 47</a>
SZMXZ	Minister for Immigration & Citizenship & Anor (S286/2010)	Federal Court of Australia [2010] FCA 1376	Application dismissed <a href="#">[2011] HCASL 48</a>
SZOCW	Minister for Immigration & Citizenship & Anor (S287/2010)	Federal Court of Australia [2010] FCA 1307	Application dismissed <a href="#">[2011] HCASL 49</a>

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
SZOMA	Minister for Immigration & Citizenship & Anor (S292/2010)	Federal Court of Australia [2010] FCA 1249	Application dismissed <a href="#">[2011] HCASL 50</a>
SZOCL	Minister for Immigration & Citizenship & Anor (S293/2010)	Federal Court of Australia [2010] FCA 1254	Application dismissed <a href="#">[2011] HCASL 51</a>
Mia	Minister for Immigration and Citizenship & Anor (S295/2010)	Federal Court of Australia [2010] FCA 1312	Application dismissed <a href="#">[2011] HCASL 52</a>
Johnson	Smith & Anor (S296/2010)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 306	Application dismissed <a href="#">[2011] HCASL 53</a>
SZOHK	Minister for Immigration and Citizenship & Anor (S300/2010)	Federal Court of Australia [2010] FCA 1291	Application dismissed <a href="#">[2011] HCASL 54</a>
SZOGZ & Anor	Minister for Immigration and Citizenship & Anor (S301/2010)	Federal Court of Australia [2010] FCA 1284	Application dismissed <a href="#">[2011] HCASL 55</a>
SZOIV	Minister for Immigration and Citizenship & Anor (S320/2010)	Federal Court of Australia [2010] FCA 1314	Application dismissed <a href="#">[2011] HCASL 56</a>
SZOGX	Minister for Immigration and Citizenship & Anor (S281/2010)	Federal Court of Australia [2010] FCA 1238	Application dismissed <a href="#">[2011] HCASL 57</a>
In the matter of an application by Geoffrey James Bird & Anor	(B65/2010)	High Court of Australia [2010] HCATrans 246	Application dismissed <a href="#">[2011] HCASL 58</a>
NN	DN (S101/2010)	Full Court of the Family Court of Australia (no media neutral citation)	Application dismissed <a href="#">[2011] HCASL 59</a>

## Canberra: 6 April 2011

(Publication of reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Cuttler	J R Browne & Anor (B4/2011)	Supreme Court of Queensland (Court of Appeal) [2010] QCA 346	Application dismissed <a href="#">[2011] HCASL 60</a>

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
SZOHY	Minister for Immigration and Citizenship & Anor (S297/2010)	Federal Court of Australia [2010] FCA 1267	Application dismissed <a href="#">[2011] HCASL 61</a>
SZNZH	Minister for Immigration and Citizenship & Anor (S298/2010)	Federal Court of Australia [2010] FCA 1286	Application dismissed <a href="#">[2011] HCASL 62</a>
SZOEN	Minister for Immigration and Citizenship & Anor (S299/2010)	Federal Court of Australia [2010] FCA 1308	Application dismissed <a href="#">[2011] HCASL 63</a>
SZOLC	Minister for Immigration and Citizenship & Anor (S304/2010)	Federal Court of Australia [2010] FCA1285	Application dismissed <a href="#">[2011] HCASL 64</a>
SZOFV	Minister for Immigration and Citizenship & Anor (S306/2010)	Federal Court of Australia [2010] FCA 1330	Application dismissed <a href="#">[2011] HCASL 65</a>
SZOLF	Minister for Immigration and Citizenship & Anor (S317/2010)	Federal Court of Australia [2010] FCA 1333	Application dismissed <a href="#">[2011] HCASL 66</a>
SZOKF	Minister for Immigration and Citizenship & Anor (S1/2011)	Federal Court of Australia [2010] FCA 1359	Application dismissed <a href="#">[2011] HCASL 67</a>
SZOGR	Minister for Immigration and Citizenship & Anor (S3/2011)	Federal Court of Australia [2010] FCA 1357	Application dismissed <a href="#">[2011] HCASL 68</a>
SZOGY	Minister for Immigration and Citizenship & Anor (S4/2011)	Federal Court of Australia [2010] FCA 1356	Application dismissed <a href="#">[2011] HCASL 69</a>
Mohamad	Minister for Immigration and Citizenship & Anor (S15/2011)	Federal Court of Australia [2010] FCA 1415	Application dismissed <a href="#">[2011] HCASL 70</a>
Singh & Anor	Ginelle Pty Ltd (S21/2011)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 310	Application dismissed <a href="#">[2011] HCASL 71</a>
Singh & Anor	Ginelle P/L (S22/2011)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 310	Application dismissed <a href="#">[2011] HCASL 72</a>
SZOHB	Minister for Immigration and Citizenship & Anor (S27/2011)	Federal Court of Australia [2010] FCA 1394	Application dismissed <a href="#">[2011] HCASL 73</a>

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
SZMNX	Minister for Immigration and Citizenship & Anor (S50/2011)	Federal Court of Australia [2011] FCA 6	Application dismissed <a href="#">[2011] HCASL 74</a>
In the Matter of an Application by Vili Lui for Leave to Appeal	(M2/2011)	High Court of Australia [2010] HCATrans 313	Application dismissed <a href="#">[2011] HCASL 75</a>
Wende & Ors	Horwath (NSW) Pty Limited (S127/2010)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 62	Application dismissed with costs <a href="#">[2011] HCASL 76</a>
Hoffenberg	District Court of New South Wales & Anor (S245/2010)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 142	Application dismissed <a href="#">[2011] HCASL 77</a>
SZOER	Minister for Immigration and Citizenship & Anor (S256/2010)	Federal Court of Australia [2010] FCA 1100	Application dismissed with costs <a href="#">[2011] HCASL 78</a>

## Canberra: 7 April 2011

(Publication of reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Eastman	The Honourable Justice Anthony Besanko	Supreme Court of the Australian Capital Territory (Court of Appeal) [2010] ACTA 14	Application dismissed with costs <a href="#">[2011] HCASL 79</a>

## Canberra: 8 April 2011

(Heard in Canberra by video link to Perth)

### *Civil*

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Channel Seven Adelaide Pty Ltd	Manock (A27/2010)	Supreme Court of South Australia [2010] SASFC 59	Special leave refused with costs <a href="#">[2011] HCATrans 84</a>
AW	Rayney (P2/2011)	Supreme Court of Western Australia (Court of Appeal) [2010] WASCA 244	Special leave refused with costs <a href="#">[2011] HCATrans 86</a>
Yarri Mining Pty Ltd	Eaglefield Holdings Pty Ltd & Ors (P30/2010)	Supreme Court of Western Australia (Court of Appeal) [2010] WASCA 132	Special leave refused with costs <a href="#">[2011] HCATrans 89</a>

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Strzelecki Holdings Pty Ltd	Cable Sands Pty Ltd (P51/2010)	Supreme Court of Western Australia (Court of Appeal) [2010] WASCA 222	Special leave refused with costs <a href="#">[2011] HCATrans 90</a>
Graham Geoffrey Walker and Thelma Jean Walker as Trustees for the Walker Superannuation Fund	Clough Property Claremont Pty Ltd (P52/2010)	Supreme Court of Western Australia (Court of Appeal) [2010] WASCA 232	Special leave refused with costs <a href="#">[2011] HCATrans 91</a>
Bernadini Pty Ltd	Whitegum Petroleum Pty Ltd (P1/2011)	Supreme Court of Western Australia (Court of Appeal) [2010] WASCA 229	Special leave refused with costs <a href="#">[2011] HCATrans 92</a>

### *Criminal*

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Heyward	The Queen (A25/2010)	Supreme Court of South Australia (Court of Criminal Appeal) [2010] SASCFC 38	Special leave refused <a href="#">[2011] HCATrans 85</a>
Director of Public Prosecutions (WA)	Centurion Trust Company Ltd (P33/2010)	Supreme Court of Western Australia (Court of Appeal) [2010] WASCA 133	Special leave refused with costs <a href="#">[2011] HCATrans 88</a>

## **Sydney: 8 April 2011**

### *Civil*

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
British American Tobacco Australia Services Limited	Commissioner of Taxation (S278/2010)	Full Court of the Federal Court of Australia [2010] FCAFC 130	Special leave refused with costs <a href="#">[2011] HCATrans 94</a>
John Holland Pty Ltd	Industrial Court of New South Wales & Anor (S315/2010)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 338	Special leave refused with costs <a href="#">[2011] HCATrans 95</a>
Griffith	Australian Broadcasting Corporation & Anor (S255/2010)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 257	Special leave refused with costs <a href="#">[2011] HCATrans 98</a>
Abadeen Group Pty Limited & Anor	Bluestone Property Services Pty Limited & Ors (S5/2010)	Supreme Court of New South Wales (Court of Appeal) [2009] NSWCA 386	Special leave refused with costs <a href="#">[2011] HCATrans 99</a>
Brown & Ors	Hodgkinson & Ors (S6/2010)	Supreme Court of New South Wales (Court of Appeal) [2009] NSWCA 386	Special leave refused with costs <a href="#">[2011] HCATrans 99</a>

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Saleh	Romanous & Ors (S264/2010)	Supreme Court of New South Wales (Court of Appeal) [2010] NSWCA 274	Special leave refused with costs <a href="#">[2011] HCATrans 101</a>
TH	ERH (S274/2010)	Full Court of the Family Court of Australia (no media neutral citation)	Special leave refused <a href="#">[2011] HCATrans 102</a>

*Criminal*

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Monis	Regina (S62/2011)	Application for Removal	Application refused <a href="#">[2011] HCATrans 97</a>
Droudis	Regina (S107/2011)	Application for Removal	Application refused <a href="#">[2011] HCATrans 97</a>