HIGH COURT BULLETIN

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[2011] HCAB 09 (14 November 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

SUMMARY OF NEW ENTRIES

1: Cases Handed Down

Case	Title
Commonwealth Director of Public Prosecutions v Poniatowska	Criminal Law
Hargraves v The Queen; Stoten v The Queen	Criminal Law

2: Cases Reserved

Case	Title
Australian Securities and Investments Commission v Shafron; *Australian Securities and Investments Commission v Terry;* *Australian Securities and Investments Commission v Hellicar;* *Australian Securities and Investments Commission v Brown;* *Australian Securities and Investments Commission v Gillfillan;* *Australian Securities and Investments*	Corporations Law

Commission v Koffel; *Australian Securities and Investments Commission v O'Brien;* *Australian Securities and Investments Commission v Willcox;* *Shafron v Australian Securities and Investments Commission*	

3: Original Jurisdiction

Case	**Title**
There are no new matters ready for hearing in the original jurisdiction of the High Court.	

4: Special Leave Granted

Case	**Title**
Pilbara Infrastructure Pty Ltd & Anor v Australian Competition Tribunal & Ors; The National Competition Council v Hamersley Iron Pty Ltd & Ors; The National Competition Council v Robe River Mining Co Pty Ltd & Ors	Competition Law
International Litigation Partners Pte Ltd v Chameleon Mining NL (Receivers & Managers Appointed) & Ors	Corporations Law
Baker v The Queen	Criminal Law
*Clodumar v Nauru Lands Committee**	Property Law

* Appeal as of right from Supreme Court of Nauru pursuant to *Nauru (High Court Appeals) Act* 1976 (Cth).

1: Cases Handed Down

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

Criminal Law

Commonwealth Director of Public Prosecutions v Poniatowska

A20/2010: [2011] HCA 43.

Judgment delivered: 26 October 2011.

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

Catchwords:

Criminal law — Physical element of offence — Omission — Respondent convicted of multiple charges of obtaining financial advantage from Commonwealth entity contrary to s 135.2(1) of *Criminal Code* (Cth) ("Code") — Respondent failed to advise Centrelink of receipt of payments of commission from employer — Whether omission to perform act that person not under legal obligation to perform can be physical element of offence created by s 135.2(1) of Code — Whether s 4.3 of Code gave expression to common law principle that criminal liability does not attach to omission unless it is omission to perform act that person is under legal obligation to perform.

Words and phrases — "engages in conduct", "makes it so", "obtains a financial advantage", "omission".

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

Hargraves v The Queen; Stoten v The Queen

B28/2011; B24/2011: [2011] HCA 44.

Judgment delivered: 26 October 2011.

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

Catchwords:

Criminal law — Trial — Directions to jury — Appellants convicted of charges arising from tax avoidance scheme — Appellants' dishonesty only issue at trial — Appellants gave evidence — Prosecution called appellants' accountant as witness — Appellants'

counsel cross-examined accountant suggesting he tailored evidence to avoid own prosecution — Trial judge told jury they could evaluate credibility by considering a witness's "interest in the subject matter of the evidence" including "self-protection" — Whether misdirection causing miscarriage of justice — Whether direction deflected jury from need to be persuaded beyond reasonable doubt of appellants' guilt — Whether direction invited jury to test appellants' evidence according to appellants' interest in outcome of trial — Principles applicable to directions about evaluation of evidence.

Appealed from Qld SC (CA): [2010] QCA 328.

2: CASES RESERVED

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

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.

Citizenship and Migration

Shahi v Minister for Immigration and Citizenship
M10/2011: [2011] HCATrans 266.

Date heard: 26 September 2011 — *Judgment reserved*.

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

Catchwords:

> Citizenship and migration — Migration — Refugees — Humanitarian visas — Part 202 of Sched 2 to Migration Regulations 1994 (Cth) ("Regulations") prescribes criteria for grant of, inter alia, Refugee and Humanitarian (Class XB), Subclass 202 (Global Special Humanitarian) visa — Criteria include, inter alia, that applicant's entry to Australia proposed by holder of Subclass 866 (Protection) visa, applicant a "member of the immediate family of the proposer on the date of application for that visa" and "applicant continues to

be a member of the immediate family of the proposer" — Plaintiff born in Afghanistan — Plaintiff's precise age unknown — In May 2009, plaintiff arrived in Australia at Christmas Island as unaccompanied minor without valid visa — Plaintiff granted Subclass 866 (Protection) visa in September 2009 — In December 2009, plaintiff's mother applied for Subclass 202 (Global Special Humanitarian) visa — Plaintiff the "proposer" of his mother's application — Plaintiff's mother a "member of the immediate family" of plaintiff in December 2009 for purpose of reg 1.12AA(1) of Regulations — In September 2010, delegate of defendant refused plaintiff's mother's application on grounds including that, at time of decision, plaintiff's mother not a member of plaintiff's immediate family because plaintiff had turned 18 — Whether applicant who satisfies criterion in cl 202.211 of Sched 2 to Regulations at time of application is eligible for Subclass 202 visa if, at time of decision, applicant no longer a "member of the immediate family" of proposer — Whether cl 202.221 of Sched 2 to Regulations requires that, at time of decision, applicant continues to be a "member of the immediate family" of proposer where application made pursuant to cl 202.211(1)(b) — Whether defendant's delegate committed jurisdictional error in finding plaintiff's mother failed to meet requirements of cl 202.221 of Sched 2 to Regulations — *Migration Act* 1958 (Cth), ss 29, 31, 39, 40, 45, 65.

Words and phrases — "continues to be", "continues to satisfy", "member of the immediate family", "on the date of application for that visa", "proposer".

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

Constitutional Law

Sportsbet Pty Ltd v The State of New South Wales & Ors; Betfair Pty Limited v Racing New South Wales & Ors

S118/2011; S116/2011: [2011] HCATrans 230; [2011] HCATrans 231; [2011] HCATrans 232.

Dates heard: 30 & 31 August 2011, 1 September 2011 — *Judgment reserved.*

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

Catchwords:

Constitutional law (Cth) — Freedom of interstate trade, commerce and intercourse — Appellant Sportsbet Pty Ltd ("Sportsbet") a licensed wagering operator in Northern Territory ("NT") — Section 33 of *Racing Administration Act* 1998 (NSW) ("Racing Act") prohibited use of race field information by wagering operators

unless operator authorised by approval and complied with conditions of approval — Section 33A(2)(a) of Racing Act and reg 16 of Racing Administration Regulations 2005 (NSW) ("Regulations") gave racing control bodies, including second and third respondents, power to grant approvals and impose conditions including imposition of race field fee of up to 1.5 per cent of wagering turnover — Fees imposed on all wagering operators irrespective of whether in NSW — NSW racing control bodies set thresholds for payment of fees, and arranged reduction in pre-existing fees, such that NSW on-course bookmakers largely unaffected — Sportsbet required to pay fees without regard to fees paid as conditions for licence in NT — TAB Limited ("TAB"), dominant wagering operator in NSW, received sums of money by second and third respondents equal to fees paid by it to those bodies — Whether intended and practical effect of ss 33 and 33A of Racing Act and Pt III of Regulations ("Scheme") was to impose discriminatory burden of protectionist nature on Sportsbet and other interstate wagering operators by prohibiting use of essential element of interstate trade and commerce subject to discretion of racing control bodies — Whether purpose and effect of Scheme was imposition of economic impost on interstate traders which would not be borne by intrastate traders — Whether validity of Scheme to be determined by comparing interstate and intrastate traders' positions — Whether practical effect of Scheme determinable without consideration of offsetting reductions in existing fees payable by intrastate traders — Whether fee conditions imposed by racing control bodies inconsistent with freedom of interstate trade, commerce and intercourse — Whether necessary for Sportsbet to demonstrate that it had a competitive advantage derived from its place of origin, or that the Scheme sought to erode its competitive advantage — Whether arrangements amongst NSW wagering operators and TAB were private contractual arrangements falling outside the purview of s 49 of *Northern Territory (Self Government) Act* 1978 (Cth) — Whether Scheme appropriate and adapted to legitimate non-protectionist objective — Whether fee conditions, approvals or Scheme invalid — Whether Scheme can be read consistently with freedom of interstate trade, commerce and intercourse pursuant to s 31 of *Interpretation Act* 1987 (NSW) ("Interpretation Act") — *Commonwealth Constitution*, ss 92 and 109.

S118/2011 appealed from FCA FC: (2010) 189 FCR 448; (2010) 274 ALR 12; [2010] FCAFC 132.

Constitutional law (Cth) — Freedom of interstate trade, commerce and intercourse — Appellant Betfair Pty Limited ("Betfair") a licensed betting exchange domiciled in Tasmania — Section 33 of Racing Act prohibited use of race field information by wagering operators unless operator authorised by approval and complied with conditions of approval — Section 33A(2)(a) of Racing Act and reg 16 of Regulations gave racing control bodies, including first and second respondents, power to grant approvals and impose

conditions including imposition of race field fee of 1.5 per cent of wagering turnover — Wagering turnover defined as revenue from wagers that an event will occur ("back bets") — Fees imposed on all wagering operators irrespective of whether in NSW — Betfair generates revenue from back bets and bets that an event will not occur — Fees constituted greater proportion of Betfair's gross revenue than that of TAB and other wagering operators with different commission structures — Whether fee conditions imposed by first and second respondents pursuant to s 33 of Racing Act inconsistent with freedom of interstate trade, commerce and intercourse — Whether sufficient for Betfair to show that fee conditions imposed and were intended to impose significantly greater business costs on Betfair than on TAB — Whether Betfair required to demonstrate that practical effect or likely practical effect of fee conditions was to cause it to suffer loss of market share or profitability because fee conditions facially neutral — Whether Scheme appropriate and adapted to legitimate non-protectionist objective — Whether fee conditions, approvals or Scheme invalid — Whether Scheme can be read consistently with freedom of interstate trade, commerce and intercourse pursuant to s 31 of Interpretation Act — *Commonwealth Constitution*, s 92.

S116/2011 appealed from FCA FC: (2010) 189 FCR 356; (2010) 273 ALR 664; [2010] FCAFC 133.

Williams v The Commonwealth

S307/2010: [2011] HCATrans 198; [2011] HCATrans 199; [2011] HCATrans 200.

Dates heard: 9, 10 & 11 August 2011 — *Judgment reserved.*

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

Catchwords:

Constitutional law (Cth) — Executive — Plaintiff the parent of children enrolled at Darling Heights State Primary School ("School") — Commonwealth implemented National School Chaplaincy Programme ("NSCP") in 2007 — Commonwealth entered into funding agreement with Scripture Union Queensland ("SUQ") for provision of funding to School under NSCP ("Funding Agreement") — From 2007, chaplaincy services provided to School by SUQ for reward using NSCP funding — Whether Funding Agreement invalid by reason of being beyond executive power of Commonwealth — Whether executive power of Commonwealth includes power to enter into, and make payments pursuant to, contracts in respect of matters other than those in respect of which the *Constitution* confers legislative power — Whether executive power of Commonwealth includes power to enter into, and make payments pursuant to, contracts in respect of which the *Constitution* confers

legislative power — Whether executive power of Commonwealth includes power to enter into, and make payments pursuant to, contracts with respect to the provision of benefits to students within meaning of s 51(xxiiiA) of *Constitution* — Whether executive power of Commonwealth includes power to enter into contracts with trading corporations within meaning of s 51(xx) of *Constitution* — Whether payments to SUQ under Funding Agreement provide "benefits to students" — Whether SUQ a trading corporation — *Commonwealth Constitution*, ss 51(xx), 51(xxiiiA), 61.

Constitutional law (Cth) — Revenue and appropriation — Payments under Funding Agreement drawn from Consolidated Revenue Fund ("CRF") by Appropriation Acts — Whether drawing of money from CRF for purpose of making payments under Funding Agreement authorised by Appropriation Acts — Whether Appropriation Acts authorised expenditure only for "ordinary annual services of government" — Whether permitted and appropriate to have regard to practices of Parliament to determine "ordinary annual services of the Government" — Whether payments to SUQ under Funding Agreement were "ordinary annual services of government" — *Commonwealth Constitution*, ss 54, 56, 81, 83.

Constitutional law (Cth) — Restrictions on Commonwealth legislation — Laws relating to religion — Whether definition of "school chaplains" in NSCP Guidelines, as incorporated in Funding Agreement, invalid by reason of imposing religious test as qualification for office under the Commonwealth in contravention of s 116 of *Commonwealth Constitution*.

High Court of Australia — Original jurisdiction — Practice and procedure — Parties — Standing — Whether plaintiff has standing to challenge validity of Funding Agreement — Whether plaintiff has standing to challenge drawing of money from CRF for purpose of making payments pursuant to Funding Agreement — Whether plaintiff has standing to challenge Commonwealth payments to SUQ pursuant to Funding Agreement.

Words and phrases — "office under the Commonwealth", "ordinary annual services of the Government", "provision of benefits to students", "religious test", "school chaplains", "trading corporation".

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

Wotton v The State of Queensland & Anor

S314/2010: [2011] HCATrans 191.

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

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

Catchwords:

Constitutional law (Cth) — Implied freedom of communication about government or political matters — Section 132(1)(a) of *Corrective Services Act* 2006 (Q) ("Act") prohibits person from interviewing prisoners or obtaining written or recorded statements from prisoners, including persons on parole — Section 200(2) of Act allows parole board to impose conditions on grant of parole order — Plaintiff convicted of offence of rioting causing destruction and sentenced to imprisonment — Plaintiff granted parole subject to conditions prohibiting, inter alia, attendance at public meetings on Palm Island without prior approval of corrective services officer, and receipt of direct or indirect payments from the media ("Conditions") — Plaintiff sought approval to attend public meeting on Palm Island concerning youth crime and juvenile justice — Plaintiff's request denied by parole officer of second defendant, Central and Northern Queensland Regional Parole Board — Whether s 132(1)(a) of Act contrary to *Commonwealth Constitution* by impermissibly burdening implied freedom — Whether s 132(1)(a) of Act to be construed so as not to apply to a prisoner on parole — Whether s 200(2) of Act invalid to extent it authorises imposition of Conditions — Whether Conditions invalid as infringing implied freedom if s 200(2) of Act construed in conformity with implied freedom.

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

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

S23/2010: [2011] HCATrans 117; [2011] HCATrans 118; [2011] HCATrans 119.

Dates heard: 10, 11 & 12 May 2011 — *Judgment reserved*.

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

Catchwords:

Constitutional law (Cth) — Operation and effect of *Commonwealth Constitution* — Copyrights, patents and trade marks — 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* 1968 (Cth) ("provisions") within legislative competence of Parliament by reason of s 51(xviii) of *Commonwealth Constitution* — Whether provisions beyond legislative competence of Parliament by reason of s 51(xxxi) of *Commonwealth Constitution* — Whether provisions should be read down or severed and, if so, how — Whether copyright in sound recordings under *Copyright Act* 1912 (Cth) property — Whether provisions effected acquisition of property — Whether any acquisition of property on just terms within s 51(xxxi) of *Commonwealth Constitution*.

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

Corporations Law

Australian Securities and Investments Commission v Shafron;
Australian Securities and Investments Commission v Terry;
Australian Securities and Investments Commission v Hellicar;
Australian Securities and Investments Commission v Brown;
Australian Securities and Investments Commission v Gillfillan;
Australian Securities and Investments Commission v Koffel;
Australian Securities and Investments Commission v O'Brien;
Australian Securities and Investments Commission v Willcox;
Shafron v Australian Securities and Investments Commission
S174/2011—S181/2011; S173/2011: [2011] HCATrans 293; [2011] HCATrans 294; [2011] HCATrans 295.

Dates heard: 25, 26 & 27 October 2011 — *Judgment reserved*.

Catchwords:

Corporations — Management and administration — Civil penalties — Evidence — Misleading announcement describing corporate restructuring proposal issued by board of James Hardie Industries Limited ("JHIL") to Australian Stock Exchange ("ASX") — At trial, Australian Securities and Investments Commission ("ASIC") failed to call solicitor ("Mr Robb") advising JHIL who attended meeting of board at which draft ASX announcement allegedly approved — Trial judge made adverse findings and declarations of contravention against first to eighth respondents — Court of Appeal found ASIC failed to discharge burden of proof because it breached obligation of fairness in failing to call Mr Robb, which affected cogency of ASIC's case and vitiated finding that respondents breached s 180(1) of *Corporations Law* and *Corporations Act* 2001 (Cth) ("Acts") — Whether ASIC failed to discharge burden of proving that non-executive directors voted in favour of, and JHIL board passed, draft ASX announcement resolution ("Resolution") — Whether, in civil penalty proceedings, ASIC subject to obligation of fairness which can be breached by failure to call particular witness — Whether obligation of fairness inconsistent with s 1317L of Acts and s 64 of *Judiciary Act* 1903 (Cth) — Whether ASIC obliged to call Mr Robb to give evidence of firm's receipt of draft ASX announcement — Whether ASIC's failure to comply with obligation of fairness, if extant, had negative evidentiary impact on cogency of ASIC's case — Whether minutes of board meeting at which Resolution allegedly passed evidence of passing of Resolution — Whether amendments to draft ASX announcement, prior to issuing of final announcement to ASX, evidence that Resolution not passed — Whether oral

evidence of respondents Brown and Koffel ought to have been accepted as correlating with terms of draft ASX announcement — Whether of evidentiary significance that company associated with respondents O'Brien and Terry produced to ASIC identical version of draft ASX announcement — Whether declarations of contravention made in respect of first to eighth respondents should be set aside.

Corporations — Management and administration — Civil penalties — Whether Shafron an officer of JHIL within meaning of s 9 of Acts, as person who participated in decisions affecting business of JHIL — Whether, in performing impugned conduct, Shafron discharged role as company secretary or general counsel of JHIL — If Shafron discharged role as general counsel, whether subject to s 180(1) of Acts because also company secretary of JHIL — Whether Shafron failed to comply with duty imposed by s 180(1) of Acts.

Words and phrases — "obligation of fairness".

Appealed from NSW SC (CA): (2010) 274 ALR 205; (2010) 247 FLR 140; (2010) 81 ACSR 285; [2010] NSWCA 331.

Criminal Law

PGA v The Queen

A15/2011: [2011] HCATrans 267.

Date heard: 27 September 2011 — *Judgment reserved*.

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

Catchwords:

Criminal law — Rape and sexual assault — Consent — Existence of common law presumption of marital consent — Appellant charged in 2010 with two counts of rape, allegedly committed in 1963, against then wife — In 1963, s 48 of *Criminal Law Consolidation Act* 1935 (SA) ("Act") made person convicted of rape guilty of felony — Where elements of offence of rape in South Australia in 1963 supplied by common law — Act amended in 1976 to remove presumption of marital consent to sexual intercourse in certain circumstances — Whether common law of Australia in 1963 permitted husband to be found guilty of rape of his wife — Whether common law recognises retrospective imposition of criminal liability absent statutory requirement — Whether appellant liable to be found guilty of offence of rape of his wife allegedly committed in 1963 — Effect of *R v L* (1991) 174 CLR 379 — Whether enactment of *Criminal Law Consolidation Act Amendment Act* 1976 (SA) precluded subsequent amendment of common law position

prevailing in 1963 — Act, ss 48 and 73 — *Acts Interpretation Act* 1915 (SA), s 16.

Appealed from SA SC (CCA): [2010] SASCFC 81.

BBH v The Queen

B76/2010: [2011] HCATrans 254.

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

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

Catchwords:

Criminal law — Appeal and new trial — Evidence — Applicant found guilty by jury of maintaining indecent relationship with child under 16, indecent treatment of child under 16 and sodomy of a person under 18 — Complainant was applicant's daughter — Complainant's brother gave evidence of incident involving applicant and complainant which was said to be capable of establishing the applicant's sexual interest in the complainant — Whether evidence of discreditable conduct admissible in a criminal trial when a reasonable view of that evidence is consistent with innocence— Whether evidence of complainant's brother admissible at applicant's trial — Whether test for admissibility in *Pfennig v The Queen* (1995) 182 CLR 461 applies to evidence of discreditable conduct.

Words and phrases — "discreditable conduct".

Appealed from Qld SC (CA): [2007] QCA 348.

Handlen v The Queen; Paddison v The Queen

B26/2011; B27/2011: [2011] HCATrans 253.

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

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

Catchwords:

Criminal law — Appeal and new trial — Directions to jury — Miscarriage of justice — Section 668E(1A) of *Criminal Code* (Q) ("proviso") allows a court to dismiss an appeal, even though points raised by an appellant might be decided in appellant's favour, if court considers no substantial miscarriage of justice occurred — Appellants found guilty by jury of two counts of importing commercial quantity of border controlled drugs contrary to s 307.1 of *Criminal Code* (Cth) ("Code") ("importation counts") and one count of attempting to possess border controlled drugs contrary to

s 307.5 of Code ("possession count") — Court of Appeal found case put to jury in respect of importation counts "in terms alien to the forms of criminal responsibility" then recognised by the Code and appellants only criminally responsible as aiders and abetters under s 11.2 of Code — Court of Appeal applied proviso and dismissed appeals — Whether misdirection as to factual requirements for conviction under Code in respect of importation counts a substantial miscarriage of justice — Whether misdirection gave rise to substantial miscarriage of justice in respect of possession count.

Words and phrases — "fair trial", "substantial miscarriage of justice".

Appealed from Qld SC (CA): (2010) 247 FLR 261; [2010] QCA 371.

Moti v The Queen

B19/2011: [2011] HCATrans 192; [2011] HCATrans 194.

Dates heard: 3 & 4 August 2011 — *Judgment reserved*.

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

Catchwords:

Criminal law — Procedure — Stay of proceedings — Abuse of process — Primary judge stayed indictment charging appellant with seven counts of engaging in sexual intercourse with person under age of 16 whilst outside Australia — Primary judge found financial support given to witnesses by Australian Federal Police an abuse of process — Whether open to conclude that appellant's 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 — Appellant deported from Solomon Islands to Australia without extradition proceedings and allegedly with knowledge and "connivance or involvement" of Australian Executive — Appellant previously charged with similar offences in Vanuatu but discharged — Appellant contended removal from Solomon Islands a disguised extradition in breach of Solomon Islands' *Deportation Act* and Order of Magistrates' Court restraining authorities from effecting deportation — Whether principle in *R v Horseferry Magistrates' Court; Ex Parte Bennett (No 1)* [1994] 1 AC 42 allows an Australian court to grant stay of proceedings — Meaning of "connivance or involvement" — Whether Australian Executive involved itself or connived in unlawful rendition of appellant to Australia.

Words and phrases — "connivance", "involvement".

Appealed from Qld SC (CA): (2010) 240 FLR 218; [2010] QCA 178.

High Court of Australia

See **Constitutional Law:** *Williams v The Commonwealth*

Mortgages

Waller v Hargraves Secured Investments Limited
S223/2011: [2011] HCATrans 278.

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

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

Catchwords:

Mortgages — Primary industry — Farm debt mediation — Mortgagee's remedies — Possession — Section 8(1) of *Farm Debt Mediation Act* 1994 (NSW) ("Act") provides that creditor to whom farm debt is owed under farm mortgage must not take enforcement action against farmer until notice given of availability of mediation ("Notice") — Where Rural Assistance Authority ("Authority") may issue certificate that Act does not apply to farm mortgage in prescribed circumstances — Where s 8(1) of Act inapplicable where certificate issued by Authority in force "in respect of the farm mortgage concerned" — Where enforcement action taken by creditor other than in compliance with Act is void — Respondent loaned money to appellant secured by statutory charge over appellant's farm under *Real Property Act* 1900 (NSW) — Appellant breached terms of loan agreement and respondent gave Notice — Parties engaged in mediation under Act and entered into deed of settlement and second loan agreement — Appellant defaulted under second loan agreement — Parties entered into third loan agreement, under which appellant also defaulted — Respondent did not give Notice and applied for certificate from Authority — Authority issued certificate referring to appellant's indebtedness under first loan agreement — Respondent commenced proceedings for possession of property and money judgment — Whether extinguishment of first and second farm debts and creation of new farm debts by second and third loan agreements created new farm mortgages — Whether certificate issued by Authority void or issued in respect of previous farm mortgage — Whether respondent failed to comply with s 8(1) of Act by not giving Notice to appellant in respect of farm mortgage sought to be enforced — Whether respondent's non-compliance with Act requires setting aside of

grant of possession and money judgment in amount owing under mortgage — Act, ss 4, 6, 8 and 11.

Words and phrases — "enforcement action", "farm debt", "farm mortgage", "in respect of the farm mortgage concerned".

Appealed from NSW SC (CA): [2010] NSWCA 300.

Practice and Procedure

Michael Wilson & Partners Limited v Nicholls & Ors
S67/2011: [2011] HCATrans 141; [2011] HCATrans 142.

Dates heard: 31 May 2011, 1 June 2011 — *Judgment reserved.*

Coram: Gummow ACJ, Hayne, Heydon, Crennan and Bell JJ.

Catchwords:

Practice and procedure — Supreme Court procedure — Abuse of process — Appellant 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 appellant ("Award") — Respondents not party to Award — Whether abuse of process for appellant 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.

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.

Dates 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.

Statutes

Australian Education Union v Department of Education and Children's Services
A4/2011: [2011] HCATrans 269.

Date heard: 28 September 2011 — *Judgment reserved*.

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

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.

Words and phrases — "in addition to".

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

Torts

Amaca Pty Limited (Under NSW Administered Winding Up) v Booth & Anor; Amaba Pty Limited (Under NSW Administered Winding Up) v Booth & Anor

S219/2011; S220/2011: [2011] HCATrans 276; [2011] HCATrans 277.

Dates heard: 4 & 5 October 2011 — *Judgment reserved*.

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

Catchwords:

Torts — Negligence — Causation — Dust diseases — First respondent ("Booth") suffers from mesothelioma — Booth exposed to asbestos in four domestic and employment periods, in addition to ordinary background exposure — Third and fourth periods of exposure occurred while Booth worked with brake linings containing asbestos manufactured by appellants — Trial judge found each appellant responsible for 70 per cent of asbestos fibre to which Booth exposed in third and fourth periods, and each appellant negligent in failing to warn Booth of dangers associated with working with asbestos brake linings — Whether evidence capable of establishing that Booth's mesothelioma caused by exposure to asbestos products manufactured by appellants — Whether causation can be established by reference to increased risk of developing mesothelioma and, if so, whether increase in risk attributable to appellants caused Booth's injury.

Appealed from SC NSW (CA): [2010] Aust Torts Reports 82-079; [2010] NSWCA 344.

Strong v Woolworths Limited t/as Big W & Anor

S172/2011: [2011] HCATrans 194.

Date heard: 13 May 2011 — *Judgment reserved*.

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

Catchwords:

Torts — Negligence — Causation — Appellant slipped on chip and fell in area of shopping centre where respondent had exclusive right to conduct sidewalk sales — Whether causation established — Whether s 5D(1) of *Civil Liability Act* 2002 (NSW) excludes consideration of material contribution to harm and increase in risk — Whether appellant demonstrated lack of adequate cleaning system responsible for debris on centre floor.

Words and phrases — "necessary condition".

Appealed from SC NSW (CA): [2010] NSWCA 282.

3: ORIGINAL JURISDICTION

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

Citizenship and Migration

Plaintiff S10/2011 v Minister for Immigration and Citizenship & Anor
S10/2011

Catchwords:

Citizenship and migration — Migration — Ministerial discretion — Procedural fairness — Section 417 of *Migration Act* 1958 (Cth) ("Act") empowers first defendant ("Minister") to substitute decision of Refugee Review Tribunal ("RRT") made under s 415 of Act with another decision more favourable to an applicant, if Minister thinks it is "in the public interest to do so" — Section 48B of Act empowers Minister to determine that s 48A of Act does not apply to prevent application for protection visa made by non-citizen, if Minister thinks it is "in the public interest to do so" — Plaintiff applied for Ministerial intervention pursuant to ss 48B and 417 of Act — In October 2010, Minister's delegate informed plaintiff that Minister had decided not to exercise power under s 417 of Act ("the s 417 decision), and plaintiff's s 48B application had been assessed against Minister's Guidelines but was not referred to Minister ("the s 48B decision") — Whether Minister and or second defendant through his officers failed to accord procedural fairness to plaintiff in the s 48B decision and the s 417 decision by taking into consideration certain matters without providing plaintiff with opportunity to know about or comment on those matters — Whether plaintiff had legitimate expectation that information provided by him in respect of his applications would be considered in assessing whether he fell within Guidelines — Whether Minister and or second defendant through his officers failed to apply Minister's Guidelines correctly by taking into account irrelevant considerations or failing to take into account relevant considerations — Whether jurisdictional error occurred irrespective of privative clause in s 474(2) of Act.

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

Plaintiff S49/2011 v Minister for Immigration and Citizenship & Anor
S49/2011

Catchwords:

Citizenship and migration — Migration — Ministerial discretion — Procedural fairness — Section 417 of *Migration Act* 1958 (Cth) ("Act") empowers first defendant ("Minister") to substitute decision of Refugee Review Tribunal ("RRT") made under s 415 of Act with another decision more favourable to an applicant, if Minister thinks it is "in the public interest to do so" — Section 48B of Act empowers Minister to determine that s 48A of Act does not apply to prevent application for protection visa made by non-citizen, if Minister thinks it is "in the public interest to do so" — Plaintiff, an Indian national, arrived in Australia in 1998 carrying Indian passport issued in particular name — Plaintiff detained as unlawful non-citizen in 2003 — Plaintiff claimed to be national of Bangladesh with different name to that in Indian passport — In June 2009, plaintiff applied for Ministerial intervention under ss 48B and 417 of Act — In October 2009, Minister's delegate informed plaintiff that his s 48B application did not meet Minister's Guidelines for intervention and was not referred to Minister ("the s 48B decision") — In December 2010, Minister's delegate informed plaintiff that Minister had decided not to exercise power under s 417 of Act with respect to plaintiff ("the s 417 decision") — Whether Minister and or second defendant through his officers failed to accord procedural fairness to plaintiff in the s 48B decision and the s 417 decision by taking into consideration certain matters without providing plaintiff with opportunity to know about or comment on those matters — Whether Minister and or second defendant through his officers failed to apply Minister's Guidelines correctly by taking into account irrelevant considerations or failing to take into account relevant considerations — Whether jurisdictional error occurred irrespective of privative clause in s 474(2) of Act.

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

Kaur v Minister for Immigration and Citizenship & Anor
S43/2011

Catchwords:

Citizenship and migration — Migration — Ministerial discretion — Procedural fairness — Section 351 of *Migration Act* 1958 (Cth) ("Act") empowers first defendant ("Minister") to substitute decision of Migration Review Tribunal ("MRT") made under s 349 of Act with another decision more favourable to an applicant, if Minister thinks it is "in the public interest to do so" — Plaintiff granted Subclass

573 Higher Education Sector student visa in September 2005, expiring in August 2008 — In June 2006, Minister's delegate notified plaintiff by letter that she had been granted Subclass 573 Higher Education Sector student visa with permission to change education provider — Letter stated plaintiff's visa valid until June 2008 — Plaintiff applied for Subclass 572 Vocational Education and Training Sector visa in September 2008 — Applications for Subclass 572 visas must be made within 28 days after day when last substantive visa ceased to be in effect: Migration Regulations 1994 (Cth), Sched 2, sub-item 572.211(3)(c)(i) — Minister's delegate refused plaintiff's application for Subclass 572 visa because application filed out of time — MRT rejected plaintiff's application for review of delegate's decision — Plaintiff unsuccessfully applied for Ministerial intervention under s 351 of Act — Federal Court of Australia rejected plaintiff's application for review of decision of MRT — Plaintiff again sought Ministerial intervention under s 351 of Act — In January 2011, Minister's delegate informed plaintiff that second Ministerial intervention application would not be forwarded to Minister — Whether Minister and or second defendant through his officers failed to accord procedural fairness to plaintiff by considering information or matters adverse to plaintiff without providing plaintiff with opportunity to know about or comment on those matters — Whether second defendant through his officers denied plaintiff procedural fairness by failing to apply Minister's Guidelines correctly — Whether jurisdictional error occurred irrespective of privative clause in s 474(2) of Act.

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

4: SPECIAL LEAVE GRANTED

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

Administrative Law

Public Service Association of South Australia Incorporated v Industrial Relations Commission of South Australia & Anor

A7/2011: [2011] HCATrans 149.

Date heard: *Referred to an enlarged Court on 8 June 2011 without oral submissions.*

Catchwords:

Administrative law — Judicial review — Grounds of review — Jurisdictional matters — Applicant notified two disputes in Industrial Relations Commission of South Australia ("Commission") — Commission at first instance and on appeal ruled it lacked jurisdiction to determine disputes — Section 206 of *Fair Work Act* 1994 (SA) ("Act") precludes review of Commission determinations unless "on the ground of an excess or want of jurisdiction" — Full Court of Supreme Court of South Australia ("Court") held it lacked jurisdiction to review Commission's determinations and dismissed summons for judicial review — Whether s 206 of Act precludes judicial review by Court of jurisdictional error not in "excess or want of jurisdiction" — Whether s 206 of Act beyond power of South Australian Parliament — Whether *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531 impliedly overruled *Public Service Association of South Australia v Federated Clerks' Union of Australia, South Australian Branch* (1991) 173 CLR 132.

Constitutional law (Cth) — *Commonwealth Constitution*, Ch III — State Supreme Courts — Power of State Parliament to alter defining characteristic of Supreme Court of a State — Supervisory jurisdiction — Whether all jurisdictional errors of tribunals must be subject to review by the Supreme Court of a State — Whether s 206 of Act impermissibly limits Court's jurisdiction to exercise judicial review where jurisdictional error has occurred.

Industrial law — South Australia — Commission — Jurisdiction — Public servants — Disputes raised in Commission concerning "no forced redundancy" commitment, recreational leave loading and long service leave provisions in Enterprise Agreement — Whether Commission and Court erred in relation to jurisdiction.

Words and phrases — "on the ground of an excess or want of jurisdiction".

Appealed from SA SC (FC): (2011) SASR 223; [2011] SASCFC 14.

Competition Law

The Pilbara Infrastructure Pty Ltd & Anor v Australian Competition Tribunal & Ors; The National Competition Council v Hamersley Iron Pty Ltd & Ors; The National Competition Council v Robe River Mining Co Pty Ltd & Ors

M42/2011—M44/2011; M45/2011; M46/2011: [2011] HCATrans 300.

Date heard: 28 October 2011 — *Special leave granted in matters M42/2011 – M44/2011. Matters M45/2011 and M46/2011 referred to an enlarged Court.*

Catchwords:

Competition law — Declared services — Rio Tinto Ltd and associated entities ("Rio") operate Hamersley and Robe railway lines in Pilbara region — The Pilbara Infrastructure Pty Ltd ("TPI") applied for declarations to allow third party trains and rolling stock to move along Hamersley and Robe lines — Commonwealth Treasurer declared Hamersley and Robe lines for period of 20 years pursuant to s 44H of *Trade Practices Act* 1974 (Cth) (now *Competition and Consumer Act* 2010 (Cth)) ("Act") — Australian Competition Tribunal ("Tribunal") made determination, pursuant to s 44K(7) of Act, setting aside Hamersley declaration and varying Robe declaration to ten year period — Tribunal found, inter alia, that Hamersley and Robe lines are natural monopolies, but access would be, by reason of putative benefits associated with construction of alternate railway lines and cost to Rio and therefore national economy, contrary to public interest — Full Court of Federal Court upheld Tribunal's decision in respect of Hamersley line and set aside limited declaration in respect of Robe line — Whether criterion for declaration of service specified in s 44H(4)(b) of Act imposes test of private profitability or test applying economic principles taking into account natural monopoly characteristics — Whether public interest criterion in s 44H(4)(f) of Act requires or permits inquiry into likely net balance of social costs and benefits if declaration made — Whether s 44H of Act confers broad discretion on Minister to conduct social cost-benefit analysis if prescribed matters in s 44H point in favour of declaration being made — Whether Minister's discretion confined to matters within purpose and object of s 44H — Whether open to National Competition Council to recommend Hamersley and Robe line services be subject of declaration under s 44H of Act.

Words and phrases — "uneconomical for anyone to develop another facility to provide the service".

Appealed from FCA (FC): (2011) 193 FCR 57; (2011) 277 ALR 282; [2011] FCAFC 58.

Constitutional Law

See **Administrative Law:** *Public Service Association of South Australia Incorporated v Industrial Relations Commission of South Australia & Anor*

Contracts

ALH Group Property Holdings Pty Limited v Chief Commissioner of State Revenue

S128/2011: [2011] HCATrans 215.

Date heard: 12 August 2011 — *Special leave granted on limited grounds.*

Catchwords:

Contracts — Discharge by agreement — Novation — Contract for sale of land ("Parkway Hotel") between Oakland Glen Pty Ltd ("Vendor") and Permanent Trustee Company Limited as trustee of ALE Direct Property Trust ("Purchaser") executed in 2003 ("2003 Contract") — Deed of Consent and Assignment between Vendor, Purchaser and applicant, executed in 2008, assigned rights and entitlements of Purchaser under 2003 Contract to applicant ("Deed") — Commissioner assessed Deed to ad valorem duty under s 22(2) of *Duties Act* 1997 (NSW) ("Duties Act") as transfer of dutiable property — By Deed of Termination, Vendor and applicant rescinded Deed and 2003 Contract and entered new contract for sale of Parkway Hotel on which ad valorem duty paid — Applicant claimed Deed of Termination avoided liability of Deed for ad valorem duty and conferred right to refund under s 50 of Duties Act — Whether Deed effected novation of 2003 Contract — Whether Deed rescinded 2003 Contract and substituted for it a new contract for sale of Parkway Hotel between Vendor and applicant on terms of 2003 Contract as varied by Deed — Whether Deed a "hybrid tripartite contract" wherein Vendor's obligations flowed from assignment and applicant's obligations flowed from Deed — Duties Act ss 8(1)(a), 22(2), 50.

Words and phrases — "hybrid tripartite contract".

Appealed from NSW SC (CA): [2011] NSWCA 32.

See also **Corporations Law**: *Fortescue Metals Group Ltd v Australian Securities and Investments Commission & Anor; Forrest v Australian Securities and Investments Commission & Anor*

Corporations Law

International Litigation Partners Pte Ltd v Chameleon Mining NL (Receivers & Managers Appointed) & Ors

S232/2011: [2011] HCATrans 296.

Date heard: 28 October 2011 — *Special leave granted on condition of applicant's provision of security for costs.*

Catchwords:

Corporations law — Financial products — Litigation funding — Parties entered into funding deed under which applicant ("ILP") was to fund proceedings brought by first respondent ("CHM") ("Funding Deed") — Clause 4 of Funding Deed provided for early termination fee in event of change of control of CHM — CHM granted fixed and floating charge in favour of ILP as security for payment of moneys owed ("Charge") — CHM entered agreement with second respondent, Cape Lambert Resources Ltd ("CLR"), under which CLR provided standby facility to CHM in exchange for charge over CHM's assets — CHM notified ILP that it disputed ILP's entitlement to payment under funding deed on basis that ILP engaged in unlicensed financial services business in Australia and notified rescission of funding deed under s 925A of *Corporations Act* 2001 (Cth) ("Act) — ILP appointed receivers to CHM under Charge — Primary judge upheld ILP's entitlement to engage in litigation funding absent an Australian Financial Services License ("AFSL") and its right to early termination fee but dismissed claim to further payment — Whether Funding Deed a financial product within meaning of ss 762A-762C, 763A and 763C of Act as facility through which, or through acquisition of which, a person manages financial risk — If Funding Deed a statutory financial product, whether reasonable to assume that any financial product purpose of Funding Deed an incidental purpose such that Funding Deed not a financial product pursuant to s 763E of Act — If Funding Deed a statutory financial product, whether a credit facility within meaning of s 765A(h)(i) of Act and regs 7.1.06(1) and (3) of Corporations Regulations 2001 (Cth) and consequently excluded from being a financial product — Whether litigation funder required to comply

with provisions of Act engaged by issuing of financial product, including requirement to obtain AFSL pursuant to s 911A of Act — Whether Funding Deed validly rescinded by CHM pursuant to s 925A(1) of Act.

Appealed from NSW SC (CA): (2011) 276 ALR 138; (2011) 248 FLR 149; (2011) 82 ACSR 517; [2011] NSWCA 50.

Fortescue Metals Group Ltd v Australian Securities and Investments Commission & Anor; Forrest v Australian Securities and Investments Commission & Anor

P6/2011; P7/2011: [2011] HCATrans 271.

Date heard: 29 September 2011 — *Special leave granted*.

Catchwords:

Corporations law — Continuous disclosure — Misleading and deceptive conduct — Fortescue Metals Group Ltd ("FMG") entered into framework agreements with three Chinese entities — Forrest the Chairman and CEO of FMG — FMG made public announcements that FMG and Chinese entities had executed binding agreements to build, finance and transfer infrastructure for mining project in Pilbara region — Whether, in making announcements, FMG contravened ss 674(2) and 1041H of *Corporations Act* 2001 (Cth) ("Act"), and Forrest contravened ss 180(1) and 674(2) of Act — Whether announcements made by FMG misleading or deceptive or likely to be misleading or deceptive in contravention of s 1041H of Act or s 52 of *Trade Practices Act* 1974 (Cth) — Whether announcements would have been understood by reasonable person as statement of FMG's honest, or honest and reasonable, belief as to terms and effect of framework agreements rather than statements that warranted or guaranteed their truth — Whether FMG and Forrest honestly, or honestly and reasonably, believed framework agreements effective as binding contracts — Whether FMG and Forrest contravened s 674(2) of Act because neither had "information" that framework agreements unenforceable at law — Whether, if announcements by FMG misleading or deceptive or likely to be misleading or deceptive, Forrest contravened s 180(1) of Act — Whether s 180(1) of Act provides for civil liability of directors for contraventions of other provisions of Act — Whether s 180(2) of Act available as defence to alleged contravention of s 180(1) if proceedings based on contravention of provisions containing exculpatory provisions — Whether s 180(2) of Act applies to decisions concerning compliance with Act.

Contracts — Agreements contemplating existence of fuller contracts — Certainty — Whether framework agreements contained binding core obligations on Chinese entities in respect of Pilbara project — Whether framework agreements uncertain as to subject matter —

Whether inclusion of terms making price determinable by third party rendered framework agreements uncertain.

Appealed from FCA (FC): (2011) 190 FCR 364; (2011) 274 ALR 731; (2011) 5 BFRA 220; (2011) 81 ACSR 563; (2011) 29 ACLC 11-015; [2011] FCAFC 19.

Criminal Law

Baker v The Queen

M67/2011: [2011] HCATrans 304.

Date heard: 28 October 2011 — *Special leave granted.*

Catchwords:

Criminal law — Evidence — Hearsay — Admissions — Applicant, along with co-accused at trial, LM, involved in altercation following which one Mr Snowball fell through glass window to street below and died — Applicant found guilty of murder of Mr Snowball — LM acquitted — Witnesses gave competing versions of events leading to death of Mr Snowball — Version implicating applicant as person who pushed or punched Mr Snowball in manner resulting in his fall was preferred by jury — In case against LM, Crown relied on evidence of admissions made by LM that suggested he was responsible for Mr Snowball's fall — Trial judge directed jury that case against each accused was to be assessed only in light of evidence applicable to each accused, meaning evidence of LM's admissions not evidence in case against applicant — Whether evidence of LM's admissions was admissible in exculpation of applicant — Whether potential exception to hearsay considered in *Bannon v The Queen* (1995) 185 CLR 1 ought to be recognised and whether LM's admissions within scope of any such exception — Whether applicant's trial miscarried and jury's verdict unsafe or unsatisfactory by reason of exclusion of LM's admissions.

Appealed from Vic SC (CA): [2010] VSCA 226.

R v Khazaal

S236/2011: [2011] HCATrans 279.

Date heard: 7 October 2011 — *Special leave granted.*

Catchwords:

Criminal law — Terrorism — Collecting or making documents likely to facilitate terrorist acts — Section 101.5(1) of *Criminal Code* 1995 (Cth) ("Code") makes an offence the collection or making of a

document connected with preparation for, engagement of a person in, or assistance in a terrorist act, where that person knows of the connection — Section 101.5(5) of Code creates defence if collection or making of document not intended to facilitate preparation for, engagement of a person in, or assistance in a terrorist act — Defendant bears evidential burden of proof under s 101.5(5), as defined in s 13.3(6) of Code — Respondent found guilty of offence of making document connected with terrorist act knowing of that connection contrary to s 101.5(1) of Code — Whether respondent discharged evidential burden under s 101.5(5) of Code, having regard to s 13.3(6) of Code — Whether evidence at trial suggested reasonable possibility that making of document by respondent not intended to facilitate assistance in terrorist act so as to engage defence in s 101.5(5) of Code.

Words and phrases — "assistance in a terrorist act", "connected with", "evidential burden".

Appealed from NSW SC (CCA): [2011] NSWCCA 129.

R v Getachew

M58/2011: [2011] HCATrans 275.

Date heard: 29 September 2011 — *Special leave granted.*

Catchwords:

Criminal law — Rape — Mens rea — Trial judge directed jury that mens rea established if accused ("respondent") aware that complainant might be asleep — Respondent led no evidence of his mental state at trial — Court of Appeal held direction precluded consideration by jury of possibility that respondent believed complainant was consenting to anal intercourse while asleep — Whether sufficient evidence before jury to require direction that respondent may have believed complainant consenting while asleep — Whether incumbent upon respondent's counsel to raise respondent's awareness of complainant's lack of consent — Appropriate test to be applied in determining sufficiency of evidence for purpose of giving direction — Whether respondent able to hold belief that complainant gave consent where jury found beyond reasonable doubt that respondent knew or believed complainant asleep at time of penetration — *Crimes Act* 1958 (Vic), ss 36, 37, 37AA, 37AAA, 38 — *Pemble v The Queen* (1971) 124 CLR 107.

Appealed from Vic SC (CA): [2011] VSCA 164.

Baiada Poultry Pty Ltd v The Queen
M20/2011: [2011] HCATrans 251.

Date heard: 2 September 2011 — *Special leave granted on limited grounds.*

Catchwords:

Criminal law — Occupational health and safety — Duties of employer — Control — Applicant convicted of breaching s 21(1) of *Occupational Health and Safety Act* 2004 (Vic) ("Act") following death of driver ("decedent") engaged as independent contractor by applicant — Decedent struck by crate being moved by forklift operated by unlicensed driver employed by third party company engaged as independent contractor by applicant — Court of Appeal held trial judge's directions to jury inadequate on basis that jury ought to have been directed that, if satisfied that control on the part of the applicant was established, they were bound to consider whether they were satisfied beyond reasonable doubt that the applicant's engagement of independent contractors was not sufficient to discharge obligations — Court of Appeal held no substantial miscarriage of justice occasioned by misdirection and applied s 568(1) of *Crimes Act* 1958 (Vic) ("proviso") to dismiss appeal — Whether Court of Appeal erred in application of proviso by finding it had discretion to apply proviso and in circumstances where applicant was denied jury's consideration of one of its principal defences.

Appealed from Vic SC (CA): (2011) 203 IR 396; [2011] VSCA 23.

King v The Queen
M27/2011: [2011] HCATrans 249.

Date heard: 2 September 2011 — *Special leave granted.*

Catchwords:

Criminal law — Dangerous driving causing death — Direction to jury — Applicant found guilty of two counts of culpable driving causing death contrary to s 318 of *Crimes Act* 1958 (Vic) ("Act") — Primary judge left to jury alternative charge of dangerous driving causing death contrary to s 319(1) of Act — Primary judge directed jury that Crown case in respect of dangerous driving charge required same analysis as culpable driving charge — Whether primary judge erred in directing jury that, in relation to dangerous driving charge, driving need only have significantly increased risk of hurting or harming others, and that driving need not be deserving of criminal punishment — Whether a substantial miscarriage of justice — *R v De Montero* (2009) 25 VR 694.

Words and phrases — "substantial miscarriage of justice".

Appealed from Vic SC (CA): (2011) 57 MVR 373; [2011] VSCA 69.

Bui v Director of Public Prosecutions (Cth)

M28/2011: [2011] HCATrans 244.

Date heard: 2 September 2011 — *Special leave granted on limited grounds.*

Catchwords:

Criminal law — Sentencing — Application of State legislation in Crown appeal against sentence instituted by respondent — Applicant pleaded guilty to importation of marketable quantity of heroin contrary to s 307.2(1) of *Criminal Code* (Cth) — Applicant sentenced to three years imprisonment to be released forthwith upon provision of security and good behaviour undertaking — In mitigation, applicant relied on exceptional hardship to infant daughters and undertaking to cooperate with future investigations — Respondent appealed on basis that sentence manifestly inadequate and that sentencing judge erred in finding exceptional circumstances or in weight afforded to exceptional circumstances — At time of appeal, *Criminal Procedure Act* 2009 (Vic) ("Act") in operation — Sections 289 and 290 of Act provide that double jeopardy in relation to Crown appeals against sentence not to be taken into account — Whether ss 289(2) and 290(3) of Act picked up and applied pursuant to *Judiciary Act* 1903 (Cth) in Crown appeal against sentence instituted by respondent.

Words and phrases — "double jeopardy".

Appealed from Vic SC (CA): [2011] VSCA 61.

Aytugrul v The Queen

S149/2011: [2011] HCATrans 238.

Date heard: 2 September 2011 — *Special leave granted on limited grounds.*

Catchwords:

Criminal law — Identification evidence — DNA evidence — Admissibility — Discretion to admit or exclude evidence — Applicant convicted of murder of former partner — Evidence led by prosecution at trial that a hair found on deceased's thumbnail consistent with applicant's mitochondrial DNA profile — Prosecution expert gave evidence that 99.9 per cent of people in general population would not have a profile matching the hair ("the

statistical evidence") — Expert's statistical evidence did not take ethnicity into account — Different prosecution witness gave evidence that approximately two per cent of persons of applicant's ethnicity would be expected to share DNA profile found in the hair — Whether trial judge ought to have refused to admit the statistical evidence — *Evidence Act* 1995 (NSW), ss 135 and 137.

Appealed from NSW SC (CCA): (2010) 205 A Crim R 157; [2010] NSWCCA 272.

Defamation

Harbour Radio Pty Limited v Keysar Trad

S141/2011: [2011] HCATrans 234.

Date heard: 2 September 2011 — *Special leave granted on limited grounds*.

Catchwords:

Defamation — Defence of substantial truth — Application of defence — Respondent engaged in public speech concerning activities of Radio 2GB, a station owned and operated by the applicant — Radio 2GB broadcast response to respondent's speech consisting of a presenter monologue, audio recording of part of respondent's speech and talkback calls — Respondent brought proceedings for defamation — Jury found certain defamatory imputations arose from broadcast — Applicant relied on, inter alia, defence of substantial truth — Trial judge found certain imputations were matters of substantial truth and applicant not actuated by malice — Court of Appeal overturned trial judge's findings with respect to defence of truth on the basis that while the correct test had been identified, it was not applied, and therefore could not be sustained — Whether trial judge failed to apply relevant test for defence of truth — *Defamation Act* 1974 (NSW), s 15.

Appealed from NSW SC (CA): (2011) 279 ALR 183; [2011] Aust Torts Reports 82-080; [2011] NSWCA 61.

Papaconstuntinos v Holmes a Court

S142/2011: [2011] HCATrans 235.

Date heard: 2 September 2011 — *Special leave granted*.

Catchwords:

Defamation — Defence of qualified privilege — Respondent involved in bid to invest funds in South Sydney District Rugby League

Football Club ("Club") in exchange for controlling interest — Applicant, employee of Construction, Forestry, Mining and Energy Union ("CFMEU"), opposed respondent's bid — Prior to Extraordinary General Meeting at which bid was to be put to Club members, respondent sent letter of complaint to State Secretary of CFMEU, copied to former Chairman of Club, which also came to attention of applicant's immediate supervisor — Trial judge found letter conveyed three defamatory imputations and rejected, inter alia, respondent's plea of common law qualified privilege on the basis that there was no "pressing need" for the respondent to protect his interests by volunteering the defamatory information — Court of Appeal held defence of qualified privilege established since respondent had a legitimate interest in publishing the defamatory letter, and that the trial judge erred in applying the test of "pressing need" to establish qualified privilege — Whether defence of qualified privilege at common law requires evidence of "pressing need" to communicate defamatory matter — Whether absence of "pressing need" decisive — Whether requisite reciprocity of interest existed on occasion of communication of defamatory matter — Whether respondent's communication of suspicion of applicant's criminality fairly warranted to protect of further respondent's interests.

Words and phrases — "pressing need".

Appealed from NSW SC (CA): [2011] Aust Torts Reports 82-081; [2011] NSWCA 59.

Industrial Law

Australian Education Union v General Manager of Fair Work Australia Tim Lee & Ors

M8/2011: [2011] HCATrans 245.

Date heard: 2 September 2011 — *Referred to an enlarged Court.*

Catchwords:

Industrial law — Registered organisations — Interpretation of *Fair Work (Registered Organisations) Act* 2009 (Cth) ("Act") — Third respondent applied to Australian Industrial Relations Commission ("AIRC") for registration and organisation under *Workplace Relations Act* 1996 (Cth) — Applicant objected to registration — AIRC granted application for registration — Full Court of Federal Court ("FCAFC") quashed decision of AIRC and third respondent's registration because its rules did not contain "purging rule" — Third respondent applied to AIRC for leave to change its rules — Applicant objected to application and FCAFC reserved decision — On 1 July 2009, s 26A of the Act, which provides that registration of an

organisation which would have been valid but for the absence of a purging rule is taken to be valid and always have been valid, came into effect — First respondent informed applicant and third respondent that Fair Work Australia regarded itself as obliged by s 26A of the Act to treat third respondent as registered organisation — Third respondent withdrew application to AIRC to alter rules — Whether s 26A of the Act validates registration of third respondent when such registration previously quashed by FCAFC prior to commencement of s 26A — Whether s 26A invalid as impermissible usurpation of, or interference with, judicial power of Commonwealth.

Appealed from FC FCA: (2010) 189 FCR 259; (2010) 201 IR 315; [2010] FCAFC 153.

Board of Bendigo Regional Institute of Technical and Further Education v Barclay & Anor

M18/2011: [2011] HCATrans 243.

Date heard: 2 September 2011 — *Special leave granted.*

Catchwords:

Industrial law — Adverse action — General protection — First respondent ("Barclay") an employee of applicant ("Institute") and Sub-Branch President at Institute of second respondent ("AEU") — Barclay sent email to AEU members employed at Institute noting reports of serious misconduct by unnamed persons at Institute — Barclay did not advise managers of details of alleged misconduct — Chief Executive Officer ("CEO") of Institute wrote to Barclay requiring him to show cause why he should not be disciplined for failing to report alleged misconduct — Barclay suspended on full pay — Respondents alleged action taken by CEO of Institute constituted adverse action under s 342 of *Fair Work Act* 2009 (Cth) ("Act") — Trial judge found adverse action taken by CEO on basis of breach of Institute's code of conduct rather than Barclay's union activity — Full Court of Federal Court held that sending of email was part of Barclay's functions as AEU officer and therefore adverse action had been taken within meaning of Act — Whether evidence that adverse action taken for innocent and non-proscribed reason sufficient to establish defence to cause of action under Pt 3.1 of Act ("general protections provisions") — Whether a decision-maker who is not conscious of a proscribed reason able to be found to have engaged in adverse action contrary to general protection provisions — Whether a distinction exists between the cause of conduct said to constitute adverse action and the reason a person took adverse action — Act, ss 341, 342, 346, 360, 361 — *General Motors Holden Pty Ltd v Bowling* (1976) 12 ALR 605; *Purvis v State of New South Wales* (2003) 217 CLR 92.

Appealed from FCA FC: (2011) 182 FCR 27; [2011] FCAFC 14.

See also **Administrative Law:** *Public Service Association of South Australia Incorporated v Industrial Relations Commission of South Australia & Anor*

Intellectual Property

Roadshow Films Pty Ltd & Ors v iiNet Limited

S115/2011: [2011] HCATrans 210.

Date heard: 12 August 2011 — *Special leave granted on limited grounds*.

Catchwords:

Intellectual property — Copyright — Infringement — Authorisation — Applicants owners and exclusive licensees of copyright in commercially-released motion pictures — Respondent an internet service provider whose agreements with customers contained terms requiring customers to comply with all laws and reasonable directions by respondent as well as obligation not to use service to infringe copyright — Respondent availed of legal and technical capacity to issue warnings to customers whose services being used to infringe copyright — Australian Federation Against Copyright Theft, on behalf of applicants, served copyright infringement notices on respondent, alleging users of respondent's network infringing copyright in cinematographic films by making them available online — Respondent took no action in response to notices — Whether respondent authorised infringements of applicants' copyright by users of respondent's internet services — Whether proper account taken of matters listed in s 101(1A) of *Copyright Act* 1968 (Cth) — Whether respondent had sufficient knowledge of infringing acts to support finding of authorisation — Whether applicants required to present respondent with "unequivocal and cogent evidence" of infringing acts and undertaking to reimburse and indemnify respondent — Application of principles in *University of New South Wales v Moorhouse* (1975) 133 CLR 1 — Whether respondent's conduct constituted "countenancing" of infringing acts.

Words and phrases — "authorise", "copyright", "countenance", "infringe", "unequivocal and cogent evidence".

Appealed from FCA FC: (2011) 194 FCR 285; (2011) 275 ALR 1; (2011) 89 IPR 1; [2011] AIPC 92-410; [2011] FCAFC 23.

Property Law

Clodumar v Nauru Lands Committee
M37/2011

Appeal as of right pursuant to s 5(1) of Nauru (High Court Appeals) Act *1976 (Cth).*

Catchwords:

Property law — Transfers inter vivos — Presidential approval — Section 3 of *Lands Act* 1976 (Nauru) requires Presidential approval of land transfers — Mr Burenbeiya attempted to transfer inter vivos certain lands in Yaren District of Nauru to appellant ("Transfer") — Transfer not perfected, and therefore legally inoperative, by reason of finding of fact that Presidential approval not obtained, based on information provided to Court by respondent — Appellant subsequently made aware that Presidential approval had been given in respect of Transfer — Whether evidence of Presidential approval of Transfer admissible in appeal to High Court of Australia — Whether finding that Presidential approval of Transfer was not obtained, and judgment pursuant to that finding, should be set aside.

Appealed from Supreme Court of Nauru: Civil Action No 16/2000.

Public International Law

PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission
S166/2011: [2011] HCATrans 280.

Date heard: 7 October 2011 — *Special leave granted*.

Catchwords:

Public international law — Jurisdiction — Sovereign immunity — Section 11(1) of *Foreign States Immunities Act* 1985 (Cth) ("Act") provides that a foreign State is not immune in a proceeding that concerns a "commercial transaction" — Respondent commenced proceedings against applicant alleging anti-competitive conduct in relation to international air freight contrary to Pt IV of *Trade Practices Act* 1974 (Cth) — Applicant a "separate entity" of Republic of Indonesia, as defined in s 22 of Act — Respondent alleges applicant participated in conduct outside Australia amounting to arrangements or understandings with other carriers concerning fuel surcharges — Whether civil penalty proceeding brought by respondent against an entity otherwise entitled to sovereign

immunity falls within "commercial transaction" exception in Act — Whether applicant immune under Act from exercise of jurisdiction.

Words and phrases — "commercial transaction", "concern".

Appealed from FCA (FC): (2011) 192 FCR 393; (2011) 277 ALR 67; [2011] FCAFC 52.

Taxation and Duties

The Commissioner of Taxation of the Commonwealth of Australia v Bargwanna & Anor

S104/2011: [2011] HCATrans 211.

Date heard: 12 August 2011 — *Special leave granted.*

Catchwords:

Taxation and duties — Income tax — Non-assessable income — Exempt entities — Funds established for public charitable purposes by instrument of trust — Section 50-105 of *Income Tax Assessment Act* 1997 (Cth) ("ITAA") requires Commissioner to endorse entity as exempt from income tax in certain circumstances — Section 50-60 of ITAA provides that funds established in Australia for public charitable purposes by will or instrument of trust are not exempt from income tax unless, inter alia, "the fund is applied for the purposes for which it was established" — Respondents constituted by deed the Kalos Metron Charitable Trust ("Fund") for public charitable purposes — Fund administered by accountant and held in accountant's trust account — Interest from Fund applied to pay accountant's fees — Respondents obtained housing loan with provision of mortgage security — Loan arrangements involved Fund depositing $210,000 into interest-offset account with lender — Respondents deposited other funds into account and withdrew funds in excess of deposits — Applicant refused Fund's application for endorsement under s 50-105 of ITAA — Whether application of part of Fund for purposes other than public charitable purposes meant criteria in s 50-60 of ITAA not satisfied — Whether misapplication of Fund moneys must be deliberate or intentional for conclusion that "is applied" criterion in s 50-60 not satisfied — Whether relevant inquiry is to application of Fund as a whole rather than individual transactions.

Words and phrases — "deliberate", "the fund is applied for the purposes for which it was established".

Appealed from FCA FC: (2010) 191 FCR 184; (2011) ATC 20-244; [2010] FCAFC 126.

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* 08 [2011] HCAB 08.

Australian Native Landscapes Pty Ltd v Minogue & Anor
S277/2010: [2010] HCATrans 240.

Date heard: 2 September 2011 — *Discontinued on 12 October 2011.*

Catchwords:

Torts — Damages — Contribution between tortfeasors — Applicant and first respondent found liable in action for personal injuries pursuant to *Motor Accidents Compensation Act* 1999 (NSW) ("MAC Act") — First respondent deemed to be applicant's agent by s 112 of MAC Act — Second respondent, employer of plaintiff and first respondent, found not liable because case pleaded and conducted against it not within MAC Act — Damages reduced by 50 per cent pursuant to s 151Z(2) of *Workers Compensation Act* 1987 (NSW) ("WC Act") — Applicant sought contribution and indemnity from respondents pursuant to s 5(1)(c) of *Law Reform (Miscellaneous Provisions) Act* 1946 (NSW) ("LRMP Act") — Primary judge held s 5(1)(c) of LRMP Act did not apply because second respondent not liable, and first respondent liable as applicant's agent rather than second respondent's agent — Court of Appeal held applicant prevented from seeking contribution because plaintiff in personal injury action unable to recover from second respondent under WC Act, and applicant's s 5(1)(c) claim raised issue not previously raised — Whether respondents' negligence able to be considered in applicant's proceeding for contribution under s 5(1)(c) of LRMP Act — Whether Court of Appeal erred in failing to allow applicant's claims against respondents — Effect of s 151E of WC Act — Application of *James Hardie & Co v Seltsam* (1998) 196 CLR 53.

Appealed from NSW SC (CA): [2010] NSWCA 279.

6: SPECIAL LEAVE REFUSED

Canberra: 26 October 2011

(Publication of reasons)

Applicant	*Respondent*	*Court appealed from*	*Result*
Ferdinands	Minister for Defence (A18/2011)	High Court of Australia [2011] HCATrans 173	Application dismissed [2011] HCASL 169
Singh	Secretary, Department of Education, Employment and Workplace Relations (M66/2011)	Federal Court of Australia [2011] FCA 799	Application dismissed [2011] HCASL 170
Udowenko & Ors	St George Bank Limited & Ors (S234/2011)	Supreme Court of New South Wales (Court of Appeal) (no media neutral citation)	Application dismissed [2011] HCASL 171
SZOTX	Minister for Immigration and Citizenship & Anor (S235/2011)	Federal Court of Australia [2011] FCA 648	Application dismissed [2011] HCASL 172
Maynes & Anor	Casey & Anor (S247/2011)	Supreme Court of New South Wales (Court of Appeal) [2011] NSWCA 158	Application dismissed [2011] HCASL 173
White & Anor	Thompson & Ors (S251/2011)	Supreme Court of New South Wales (Court of Appeal) [2011] NSWCA 161	Application dismissed [2011] HCASL 174
Parmar	Minister for Immigration and Citizenship & Anor (S254/2011)	Federal Court of Australia [2011] FCA 760	Application dismissed [2011] HCASL 175
Ghori	Minister for Immigration and Citizenship & Anor (S255/2011)	Federal Court of Australia [2011] FCA 759	Application dismissed [2011] HCASL 176
Collier	Director of Public Prosecutions & Anor (S265/2011)	Supreme Court of New South Wales (Court of Appeal) [2011] NSWCA 202	Application dismissed [2011] HCASL 177
SZOTJ	Minister for Immigration and Citizenship & Anor (S287/2011)	Federal Court of Australia [2011] FCA 878	Application dismissed [2011] HCASL 178
SZOVS	Minister for Immigration and Citizenship & Anor (S291/2011)	Federal Court of Australia [2011] FCA 916	Application dismissed [2011] HCASL 179

SZOWN	Minister for Immigration and Citizenship & Anor (S293/2011)	Federal Court of Australia [2011] FCA 906	Application dismissed [2011] HCASL 180
SZOXR	Minister for Immigration and Citizenship & Anor (S297/2011)	Federal Court of Australia [2011] FCA 897	Application dismissed [2011] HCASL 181
Hamade	State of New South Wales (S300/2011)	Supreme Court of New South Wales (Court of Appeal) [2011] NSWCA 237	Application dismissed [2011] HCASL 182
Televantos T/A Mastercraft Home Additions and Improvements	FCR Formwork Pty Ltd & Anor (S125/2011)	Supreme Court of New South Wales (Court of Appeal) (no media neutral citation)	Application dismissed with costs 2011] HCASL 183
WZAOH	Minister for Immigration and Citizenship & Anor (P36/2011)	Federal Court of Australia [2011] FCA 888	Application dismissed [2011] HCASL 184
WZAOI	Minister for Immigration and Citizenship & Anor (P38/2011)	Federal Court of Australia [2011] FCA 919	Application dismissed [2011] HCASL 185
Draoui	District Court of South Australia & Anor (A10/2011)	Full Court of the Supreme Court of South Australia [2011] SASCFC 15	Application dismissed with costs [2011] HCASL 186
Galea & Anor	Varga (S162/2011)	Supreme Court of New South Wales (Court of Appeal) [2011] NSWCA 76	Application dismissed with costs [2011] HCASL 187
Fitzgibbon	Council of the New South Wales Bar Association & Anor (S246/2011)	Supreme Court of New South Wales (Court of Appeal) [2011] NSWCA 165	Application dismissed with costs [2011] HCASL 188

Melbourne: 28 October 2011

Civil

Applicant	*Respondent*	*Court appealed from*	*Result*
Talacko	Talacko & Ors (M26/2011)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 71	Special leave refused with costs [2011] HCATrans 301
Nolan	MBF Investments Pty Ltd (M39/2011)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 114	Special leave refused with costs [2011] HCATrans 302

Criminal

Applicant	*Respondent*	*Court appealed from*	*Result*

Applicant	*Respondent*	*Court appealed from*	*Result*
Tognolini	The Queen (M36/2011)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 113	Special leave refused [2011] HCATrans 303
Paranihi	Director of Public Prosecutions (M61/2011)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 77	Special leave refused [2011] HCATrans 305
Soltan	Director of Public Prosecutions (M31/2011)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 77	Special leave refused [2011] HCATrans 305
Goussis	The Queen (M38/2011)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 117	Special leave refused [2011] HCATrans 306

Sydney: 28 October 2011

Civil

Applicant	*Respondent*	*Court appealed from*	*Result*
Western Export Services Inc and Others & Ors	Jireh International Pty Ltd (S227/2011)	Supreme Court of New South Wales (Court of Appeal) [2011] NSWCA 137	Special leave refused with costs [2011] HCATrans 297

Criminal

Applicant	*Respondent*	*Court appealed from*	*Result*
DAO	The Queen (S249/2011)	Supreme Court of New South Wales (Court of Criminal Appeal) [2011] NSWCCA 63	Special leave refused [2011] HCATrans 298
Raju	The Queen (S299/2011)	Supreme Court of New South Wales (Court of Criminal Appeal) [2010] NSWCCA 38	Special leave refused [2011] HCATrans 299