



HIGH COURT BULLETIN

Produced by the Legal Research Officer,
High Court of Australia Library
[2012] HCAB 08 (24 August 2012)

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

1: Cases Handed Down	3
2: Cases Reserved	8
3: Original Jurisdiction	30
4: Special Leave Granted.....	32
5: Cases Not Proceeding or Vacated.....	40
6: Special Leave Refused.....	41

SUMMARY OF NEW ENTRIES

1: Cases Handed Down

Case	Title
<i>Public Service Association of South Australia Incorporated v Industrial Relations Commission of South Australia & Anor</i>	Administrative Law
<i>J T International SA v Commonwealth of Australia; British American Tobacco Australasia Limited & Ors v Commonwealth of Australia - Orders Only</i>	Constitutional Law
<i>RCB as Litigation Guardian of EKV, CEV, CIV and LRV v The Honourable Justice Colin James Forrest, One of the Judges of the Family Court of Australia & Ors - Orders Only</i>	Constitutional Law
<i>Baker v The Queen</i>	Criminal Law
<i>Douglass v The Queen - Orders Only</i>	Criminal Law
<i>Patel v The Queen</i>	Criminal Law
<i>The Queen v Khazaal</i>	Criminal Law
<i>Minister for Home Affairs of the Commonwealth & Ors v Zentai & Ors</i>	Extradition

<i>Sweeney (BHNFBell) v Thornton – Special Leave Refused by Enlarged Bench</i>	Torts
--	-------

2: Cases Reserved

Case	Title
<i>RCB as Litigation Guardian of EKV, CEV, CIV and LRV v The Honourable Justice Colin James Forrest, One of the Judges of the Family Court of Australia & Ors – Orders Made</i>	Constitutional Law
<i>Andrews & Ors v Australian and New Zealand Banking Group Limited</i>	Contract Law
<i>Certain Lloyds Underwriters Subscribing to Contract No IHOOAAQS v Cross; Certain Lloyds Underwriters Subscribing to Contract No IHOOAAQS v Thelander; Certain Lloyds Underwriters Subscribing to Contract No IHOOAAQS v Thelander</i>	Costs
<i>State of New South Wales v Williamson</i>	Costs
<i>Cooper v The Queen</i>	Criminal Law
<i>Douglass v The Queen – Orders Made</i>	Criminal Law

3: Original Jurisdiction

Case	Title
<i>TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the</i>	Constitutional Law
<i>X7 v Australian Crime Commission and Anor</i>	Constitutional Law

4: Special Leave Granted

Case	Title
<i>Baini v The Queen</i>	Criminal Law
<i>Commissioner of Police v Eaton & Anor</i>	Jurisdiction
<i>Commissioner of Taxation v Consolidated Media Holdings Ltd</i>	Taxation
<i>Mills v Commissioner of Taxation</i>	Taxation

1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the August 2012 sittings.

Administrative Law

Public Service Association of South Australia Incorporated v Industrial Relations Commission of South Australia
A7/2011: [\[2012\] HCA 25](#).

Judgment delivered: 11 July 2012.

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

Catchwords:

Administrative law – Judicial review – Excess or want of jurisdiction – Appellant commenced proceedings in Industrial Relations Commission of South Australia ("Commission") – Commission had jurisdiction with respect to "industrial disputes" which meant a dispute about an "industrial matter" as defined by *Fair Work Act 1994 (SA)* ("Act") – Commission determined that it lacked jurisdiction because there was no industrial dispute – Full Court of Supreme Court of South Australia dismissed summons for judicial review because s 206 of Act excluded review except for "excess or want of jurisdiction", which phrase it interpreted as excluding failure or refusal to exercise jurisdiction – Whether Commission had duty to determine jurisdictional fact of existence of industrial dispute – Whether s 206 of Act precluded mandamus but not prohibition and certiorari – Whether "excess or want of jurisdiction" in s 206 of Act included jurisdictional error or only some species of jurisdictional error.

Constitutional law (Cth) – Judicial power of Commonwealth – Constitution, Ch III – State Supreme Courts – Defining characteristics of State Supreme Courts – Application of *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531 in determining characteristics of State Supreme Courts identified in Ch III of Constitution – Whether power to issue mandamus to inferior courts and to tribunals a defining feature of State Supreme Courts – Whether s 206 of Act limited State Supreme Court jurisdiction to exercise judicial review for jurisdictional error.

Words and phrases – "excess or want of jurisdiction", "judicial review", "jurisdiction", "jurisdictional error", "jurisdictional fact", "mandamus".

Appealed from SA SC (FC): (2011) 109 SASR 223; (2011) 207 IR 1; [2011] SASCF 14.

Criminal Law

Baker v The Queen

M154/2011: [\[2012\] HCA 27](#).

Judgment delivered: 15 August 2012

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

Catchwords:

Criminal law – Evidence – Common law – Hearsay – Admissions – Appellant and co-accused jointly tried for murder – Appellant convicted; co-accused acquitted – Co-accused made certain admissions in police interview and to witnesses ("out-of-court confessional statements") – Consideration of *Bannon v The Queen* [1995] HCA 27; (1995) 185 CLR 1 – Whether out-of-court confessional statements were admissible in exculpation of appellant as exception to hearsay rule.

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

Patel v The Queen

B25/2011; B11/2012: [\[2012\] HCA 29](#).

Judgment delivered: 24 August 2012.

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

Catchwords:

Criminal law – Manslaughter by criminal negligence – Appellant convicted of manslaughter and unlawfully doing grievous bodily harm – Section 288 of *Criminal Code* (Q) imposes duty on persons who undertake to administer surgical treatment to have reasonable skill and use reasonable care – Prosecution alleged appellant breached his duty by deciding to operate on certain patients – Whether "surgical treatment" in s 288 encompasses decision to operate.

Criminal law – Miscarriage of justice – Change in prosecution case at late point in trial – Prejudicial evidence admitted – Whether test of criminal negligence is objective – Whether evidence remained relevant on revised case – Significance of tactical decisions by defence counsel.

Criminal law – Appeal – Application of "proviso" – Irrelevant and prejudicial evidence admitted – Whether no substantial miscarriage of justice actually occurred – Consideration of *Wilde v The Queen* [1988] HCA 6; (1988) 164 CLR 365 and concept of fundamental error.

Words and phrases – "fundamental error", "miscarriage of justice", "moral culpability", "no substantial miscarriage of justice has actually occurred", "proviso", "surgical treatment".

Appealed from Qld SC (CA): [2011] QCA 81.

The Queen v Khazaal
S344/2011: [\[2012\] HCA 26](#).

Judgment delivered: 10 August 2012.

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

Catchwords:

Criminal law – Terrorism – Collecting or making documents likely to facilitate terrorist acts – Jury misdirection – Respondent convicted of making document "connected with ... assistance in a terrorist act", knowing of that connection, contrary to s 101.5(1) of *Criminal Code* (Cth) ("Code") – Trial judge directed jury that words "connected with ... assistance in a terrorist act" had no special or technical meaning – Whether trial judge misdirected jury.

Criminal law – Terrorism – Collecting or making documents likely to facilitate terrorist acts – Exception to liability – Evidential burden – Section 101.5(5) of Code created exception to liability under s 101.5(1) if making of document "not intended to facilitate ... assistance in a terrorist act" – Respondent bore evidential burden under s 101.5(5), as defined in s 13.3(6) – Whether evidence at trial suggested reasonable possibility that making of document by respondent not intended to facilitate assistance in a terrorist act.

Words and phrases – "connected with", "evidential burden".

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

Extradition

Minister for Home Affairs of the Commonwealth & Ors v Zentai & Ors

P56/2011: [\[2012\] HCA 28](#).

Judgment delivered: 15 August 2012.

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

Catchwords:

Extradition – First appellant determined to surrender first respondent for extradition to Republic of Hungary pursuant to s 22(2) of *Extradition Act* 1988 (Cth) ("Act") for qualifying extradition offence of "war crime" – "War crime" not offence under Hungarian law at time of acts said to constitute offence – Act applies in relation to Hungary subject to Treaty on Extradition between Australia and the Republic of Hungary ("Treaty") – Art 2.5(a) of Treaty states that extradition may be granted irrespective of when relevant offence committed, provided it was offence in Requesting State at time of acts or omissions constituting offence – Whether offence for which extradition sought must be offence in Requesting State at time of acts or omissions constituting offence.

Words and phrases – "offence in relation to which extradition is sought", "qualifying extradition offence", "surrender determination".

Appealed from FCA (FC): (2010) 195 FCR 515; (2010) 280 ALR 728; (2010) 122 ALD 455; [2011] FCAFC 102.

Torts

Madeleine Louise Sweeney bhnf Norma Bell v Thornton
S321/2011: [\[2012\] HCATrans 179](#).

Special Leave Refused by an Enlarged Bench: 8 August 2012.

Coram: Hayne, Heydon, Crennan, Kiefel and Bell JJ.

Catchwords:

Torts — Negligence — Motor vehicle accident — Duty of care — Applicant learner driver — Content of duty of care owed by voluntary supervisor to learner driver — Applicant suffered personal injury when she crashed a car when navigating a bend — Whether supervisor's failure to warn driver to reduce speed constituted breach of the duty of care — Whether the Court of Appeal erred as to the content of the respondent's duty of care — Whether the Court of Appeal erred in its findings on causation — Whether the Court of Appeal erred in its limitation of effect of the respondent's

admission on the content of the duty of care — Whether the Court of Appeal erred with respect to various factual findings.

Appealed from NSW SC (CA): (2011) 59 MVR 155; [2011] NSWCA 244.

2: CASES RESERVED

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

Administrative Law

See also [Citizenship and Migration](#): *Plaintiff M47/2012 v Director General of Security & Ors*.

See also [Citizenship and Migration](#): *Plaintiff S10/2011 v Minister for Immigration and Citizenship & Anor*; *Kaur v Minister for Immigration and Citizenship & Anor*; *Plaintiff S49/2011 v Minister for Immigration and Citizenship & Anor*; *Plaintiff S51/2011 v Minister for Immigration and Citizenship & Anor*.

See also [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*.

Banking and Finance

See also [Contract Law](#): *Andrews & Ors v Australian and New Zealand Banking Group Limited*

Citizenship and Migration

Plaintiff M47/2012 v Director General of Security & Ors
M47/2012: [\[2012\] HCATrans 144](#); [\[2012\] HCATrans 145](#); [\[2012\] HCATrans 149](#).

Dates heard: 18, 19 & 21 June 2012 — *Judgment reserved*.

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

Catchwords:

Citizenship and migration – Migration – Refugees – Plaintiff Sri Lankan national seeking asylum – Australian Security and Intelligence Organisation ("ASIO") officers interviewed Plaintiff –

ASIO subsequently issued adverse security assessment of Plaintiff – Plaintiff therefore did not meet requirements for protection visa – Whether ASIO failed to accord Plaintiff procedural fairness – Whether Plaintiff notified of relevant matters and provided with meaningful opportunity to respond to allegations.

Citizenship and migration – Unlawful non-citizen – Plaintiff refused protection visa – Plaintiff held in mandatory detention – Plaintiff found to be owed "protection obligations" within meaning of s 36 *Migration Act* 1958 (Cth) ("the Act") – Plaintiff refused visa because he did not satisfy public interest criterion 4002 due to ASIO's adverse security assessment – Plaintiff held in detention as unlawful non-citizen – No third country currently available to receive Plaintiff – Whether s 198 of the Act authorises Plaintiff's removal from Australia – Whether ss 189 and 196 of the Act authorise Plaintiff's detention – Whether cl 866.225 of Sched 2 of the Migration Regulations 1994, to the extent it establishes public interest criterion 4002, beyond the delegated legislative power conferred by the Act – Whether *Al-Kateb v Godwin* (2004) 219 CLR 562 correctly decided.

Constitutional law (Cth) – Judicial power of Commonwealth – Unlawful non-citizen in immigration detention – No real prospect of removal from Australia in reasonably foreseeable future – Whether indefinite detention without judicial order infringes Ch III of Constitution – Whether detention for period within control of Executive involves exercise of judicial power of Commonwealth by Executive.

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

Plaintiff S51/2011 v Minister for Immigration and Citizenship & Anor

S51/2011: [\[2012\] HCATrans 16](#); [\[2012\] HCATrans 17](#); [\[2012\] HCATrans 18](#).

Dates heard: 7, 8 & 9 February 2012 — *Judgment reserved*.

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

Catchwords:

Citizenship and migration — Migration — Ministerial discretion — Non-compellable powers — Procedural fairness — Section 195A of *Migration Act* 1958 (Cth) ("the Act") empowers first defendant ("Minister") to grant visa to person in immigration detention pursuant to s 189 of the Act, if Minister thinks "in the public interest to do so" — Section 417 the Act empowers Minister to substitute decision of Refugee Review Tribunal ("RRT") made under s 415 of

the Act with another decision more favourable to an applicant, if Minister thinks "in the public interest to do so" — Section 48B of the Act empowers Minister to determine that s 48A of the Act does not apply to prevent application for protection visa made by non-citizen, if Minister thinks "in the public interest to do so" — In December 2009, favourable assessment made under Minister's Guidelines for s 195A in respect of plaintiff, though matter not referred to Minister ("the s 195A decision") — Plaintiff applied for Ministerial intervention pursuant to ss 48B and 417 of Act — In December 2010, Minister's delegate informed plaintiff that Minister had decided not to exercise power under s 417 of the 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 195A decision by denying plaintiff opportunity to make submissions addressing matters in s 195A and Department's adverse summary of initial departmental processes — Whether Minister and/or second defendant through his officers failed to accord procedural fairness to plaintiff in the s 417 decision by denying plaintiff opportunity to address criterion used in the s 195A decision — Whether Minister and/or second defendant through his officers failed to accord procedural fairness to plaintiff in the s 417 decision and the s 48B decision by denying plaintiff opportunity to address adverse material.

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

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

S10/2011: [\[2012\] HCATrans 16](#); [\[2012\] HCATrans 17](#); [\[2012\] HCATrans 18](#).

Dates heard: 7, 8 & 9 February 2012 — *Judgment reserved*.

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

Catchwords:

Citizenship and migration — Migration — Ministerial discretion — Non-compellable powers — Procedural fairness — Section 417 of *Migration Act 1958* (Cth) ("the Act") empowers first defendant ("Minister") to substitute decision of Refugee Review Tribunal ("RRT") made under s 415 of the Act with another decision more favourable to an applicant, if Minister thinks "in the public interest to do so" — Section 48B of the Act empowers Minister to determine that s 48A of the Act does not apply to prevent application for protection visa made by non-citizen, if Minister thinks "in the public interest to do so" — Plaintiff applied for Ministerial intervention

pursuant to ss 48B and 417 of the Act — In October 2010, Minister's delegate informed plaintiff that Minister had decided not to exercise power under s 417 of the 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 the 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: [\[2012\] HCATrans 16](#); [\[2012\] HCATrans 17](#); [\[2012\] HCATrans 18](#).

Dates heard: 7, 8 & 9 February 2012 — *Judgment reserved.*

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

Catchwords:

Citizenship and migration — Migration — Ministerial discretion — Non-compellable powers — Procedural fairness — Section 417 of *Migration Act* 1958 (Cth) ("the Act") empowers first defendant ("Minister") to substitute decision of Refugee Review Tribunal ("RRT") made under s 415 of the Act with another decision more favourable to an applicant, if Minister thinks "in the public interest to do so" — Section 48B of the Act empowers Minister to determine that s 48A of the Act does not apply to prevent application for protection visa made by non-citizen, if Minister thinks "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 on Indian passport — In June 2009, plaintiff applied for Ministerial intervention under ss 48B and 417 of the 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 the 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 the 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: [\[2012\] HCATrans 16](#); [\[2012\] HCATrans 17](#); [\[2012\] HCATrans 18](#).

Dates heard: 7, 8 & 9 February 2012 — *Judgment reserved*.

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

Catchwords:

Citizenship and migration — Migration — Ministerial discretion — Non-compellable powers — Procedural fairness — Section 351 of *Migration Act 1958* (Cth) ("the Act") empowers first defendant ("Minister") to substitute decision of Migration Review Tribunal ("MRT") made under s 349 of the Act with another decision more favourable to an applicant, if Minister thinks "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 the Act — Federal Court of Australia rejected plaintiff's application for review of decision of MRT — Plaintiff again sought Ministerial intervention under s 351 of the 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 the Act.

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

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

M45/2011; M46/2011; M155-157/2011: [\[2012\] HCATrans 52](#); [\[2012\] HCATrans 53](#); [\[2012\] HCATrans 54](#).

Dates heard: 6, 7 & 8 March 2012 — *Judgment reserved*.

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

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 to National Competition Council ("NCC") for a recommendation that the Minister declare the Hamersley and Robe lines 'essential facilities', pursuant to s 44F of Trade Practices Act 1974 (Cth) (now Competition and Consumer Act 2010 (Cth)) ("Act") — Declaration would allow third party trains and rolling stock to move along the lines — Commonwealth Minister declared Hamersley and Robe lines for period of 20 years pursuant to s 44H of Act — Rio applied to Australian Competition Tribunal ("Tribunal") for review of decision to declare — Tribunal made determination, pursuant to s 44K(7) of Act, setting aside Hamersley declaration and varying Robe declaration to ten year period — Section 44H(4) of Act required Minister to be satisfied of certain matters — Tribunal found, inter alia, that s 44H(4)(b) was satisfied because Hamersley and Robe lines were natural monopolies — Tribunal found that s 44H(4)(f) was not satisfied in respect of Hamersley line because access would be contrary to public interest, because putative benefits associated with construction of alternate railway lines

outweighed costs of providing access to existing railway lines — Tribunal held that it would at any rate exercise its residual discretion not to declare — Full Court of Federal Court upheld Tribunal's decision in respect of Hamersley line and set aside declaration in respect of Robe line — Full Court found that neither s 44H(4)(b) nor s 44H(4)(f) were satisfied — Full Court held, however, that Tribunal had denied procedural fairness to TPI and Fortescue Metals Group Ltd (together, 'Fortescue') in respect of Hamersley line proceedings, because the Tribunal relied on material irregularly provided to it by Rio Tinto to support its conclusion that it was likely that Fortescue would, in the absence of declaration, construct an alternate railway 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 that would arise were a declaration to be made — Scope of the residual discretion conferred by s 44H(2) of Act — Whether there was a denial of procedural fairness in denying Fortescue the opportunity to comment on Rio's submissions as to the alternate line

High Court of Australia — Application for leave to amend notice of appeal — In proceedings before the High Court of Australia on 8 March 2012, Fortescue sought leave to file an amended notice of appeal raising a new ground of appeal, namely, that Tribunal misconceived the nature of its role under s 44K of Act — Whether Tribunal was required to reconsider afresh the application made to NCC — Whether Tribunal's role was confined to considering the correctness of the Minister's decision to declare in light of the NCC's recommendation — Whether Tribunal could consider any material the parties considered relevant

Words and phrases — "uneconomical for anyone to develop another facility to provide the service" — "would not be contrary to the public interest" — "review by the Tribunal is a re-consideration of the matter".

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

Constitutional Law

J T International SA v Commonwealth of Australia; British American Tobacco Australasia Limited & Ors v Commonwealth of Australia

S389/2011; S409/2011: [\[2012\] HCATrans 91](#); [\[2012\] HCATrans 92](#); [\[2012\] HCATrans 93](#); [\[2012\] HCA 30](#).

Dates heard: 17, 18 & 19 April 2012 — *Orders made on 15 August 2012, Court will publish reasons at later date.*

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

Catchwords:

Constitutional law (Cth) — Legislative power — Acquisition of property on just terms — Plaintiffs hold registered and unregistered trade marks and other intellectual property rights in relation to tobacco products and packaging — Tobacco Plain Packaging Act 2011 (Cth) ("Packaging Act") regulates and standardises retail packaging and appearance of tobacco products — Packaging Act, s 15 provides, among other things, that Packaging Act "does not apply to the extent (if any) that its operation would result in an acquisition of property from a person otherwise than on just terms" — Whether Packaging Act would, but for s 15, result in acquisition of plaintiffs' property (including intellectual property rights, goodwill, and rights to determine appearance of tobacco products and packaging) otherwise than on just terms — Whether plaintiffs' rights constitute "property" for purposes of Constitution, s 51(xxxi) — Whether Commonwealth has acquired rights in plaintiffs' property for purposes of Constitution, s 51(xxxi) — Whether any acquisition of property effected by Packaging Act an "acquisition-on-just-terms" within meaning of compound expression in Constitution, s 51(xxxi) or Packaging Act a law with respect to alternative head of legislative power — Whether "just terms" provided for purposes of Constitution, s 51(xxxi) — Whether, by reason of s 15, operative provisions of Packaging Act have no operation with respect to plaintiff's property.

Constitutional law (Cth) — Judicial power — Constitution, Ch III — Implied limits on Commonwealth legislative power — Whether Packaging Act, s 15 impermissibly confers legislative power upon judiciary — Whether Packing Act, s 15 invalid.

These matters were filed in the original jurisdiction of the High Court.

RCB as Litigation Guardian of EKV, CEV, CIV and LRV v The Honourable Justice Colin James Forrest, One of the Judges of the Family Court of Australia & Ors

B28/2012: [\[2012\] HCATrans 178](#).

Date heard: 7 August 2012 — *Orders made on 7 August 2012, Court will publish reasons at later date.*

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

Catchwords:

Constitutional law (Cth) – Judicial power of Commonwealth – Constitution, Ch III – Family court proceedings – Director-General of the Department of Child Safety (Queensland) initiated proceedings in the Family Court of Australia under Family Law (Child Abduction Convention) Regulations 1986 ("regulations") – Court ordered that EKV, CEV, CIV and LRV ("the affected children") be returned to Italy – Affected children did not have separate and independent legal representation in proceedings – Section 68L(3) of *Family Law Act 1975* (Cth) ("Act") provides that in proceedings under the regulations a court "may order that the child's interests ... be independently represented ... only if the court considers there are exceptional circumstances that justify doing so" – Whether s 68L(3) of Act and the regulations require a Chapter III court to exercise judicial power in a manner repugnant to the judicial process.

Administrative law – Procedural fairness – Scope and content of duty of procedural fairness – Application by litigation guardian to intervene in hearing of application to discharge return order – Whether refusal of opportunity to have separate and independent representation denied affected children procedural fairness.

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

See also [Citizenship and Migration](#): *Plaintiff M47/2012 v Director General of Security & Ors*.

Contract Law

Andrews & Ors v Australian and New Zealand Banking Group Limited

M48/2012: [\[2012\] HCATrans 181](#).

Date heard: 14 August 2012.

Coram: French CJ, Gummow, Crennan, Kiefel and Bell JJ

Catchwords:

Contract law — Liquidated damages — Law of penalties — History of the law of penalties — Law of penalties in Australia and United Kingdom — Relationship between equity and the common law — Requirement for breach — Relationship between banker and customer — Applicants customers of respondent ("ANZ") — ANZ charged customers a variety of fees for overdrawn facilities,

overdrawn accounts, dishonouring instructions and over-limit credit card accounts ("Exception Fees") — Whether Exception Fees were capable of characterisation as penalties — Whether the "jurisdiction" in respect of penalties is available only at common law or remains alive in equity — Scope of jurisdiction in equity — Whether relief against penalties requires a breach of contract — Whether jurisdiction to relieve against penalties capable of application in any transaction where, viewed as a matter of substance, an obligation is imposed on one party to pay a sum of money or transfer property to the other in order to secure the performance or enjoyment of a principal object of that transaction — Consideration of core banking law principles pertaining to banker customer relationship — Whether relief against penalties available against Exception Fees.

Cause Removed from the Federal Court of Australia: (2011) 86 ACSR 292; [2011] FCA 1376.

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

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

P44/2011; P45/2011: [\[2012\] HCATrans 48](#); [\[2012\] HCATrans 49](#); [\[2012\] HCATrans 84](#).

Dates heard: 29 February 2012, 1 March 2012 & 30 March 2012 — *Judgment reserved*.

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

Catchwords:

Corporations law — Continuous disclosure — Misleading and deceptive conduct — Fortescue Metals Group Ltd ("FMG") entered into framework agreements with three Chinese entities — Forrest 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(2A) of Act — Whether announcements made by FMG misleading or deceptive or likely to mislead or deceive 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 legal 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 contravened s 674(2) and Forrest contravened s 674(2A) of Act because neither had "information" that framework agreements unenforceable at law — Whether Forrest could avail himself of the defence under s 674(2B) of Act — Whether, if announcements by FMG misleading or deceptive or likely to mislead or deceive, Forrest failed to act with due care and skill contrary to 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 business judgment rule under 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 obliged Chinese entities to build, finance and transfer infrastructure for Pilbara project — Whether FMG and Chinese entities intended to create legal relations — Whether framework agreements uncertain as to subject matter — Whether provision for third party determination of certain matters rendered framework agreements certain.

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.

International Litigation Partners Pte Ltd v Chameleon Mining NL (Receivers & Managers Appointed) & Ors
S262/2011: [\[2012\] HCATrans 146](#)

Date heard: 20 June 2012 — *Judgment reserved.*

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

Catchwords:

Corporations law — Financial products — Litigation funding — Parties entered into litigation funding agreement ("funding deed") — Respondent disputed payment owed under funding deed on basis that appellant engaged in an unlicensed financial services business and notified rescission of funding deed under s 925A of *Corporations Act 2001* (Cth) ("the Act") — Whether funding deed a financial product within meaning of ss 762A-762C, 763A and 763C of the 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 the deed is an incidental purpose such that it is not a financial product under s 763E of the Act — If funding deed a statutory financial product, whether it is a credit facility within meaning of s 765A(h)(i) of the Act and reg 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 the Act engaged by issuing of financial product, including requirement to obtain license pursuant to s 911A of the Act — Whether funding deed validly rescinded.

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

Mansfield v The Queen; Kizon v The Queen
P60/2011; P61/2011: [\[2012\] HCATrans 102](#).

Date heard: 9 May 2012 — *Judgment reserved*.

Coram: Hayne, Heydon, Crennan, Kiefel and Bell JJ.

Catchwords:

Corporations law — Insider trading — Inside information — Applicants prosecuted on indictment alleging offences contrary to *Corporations Act* 2001 (Cth) ("Act"), s 1043A and (former) s 1002G — Trial judge held inside information "must, in general circumstances, be a factual reality" and directed verdicts of acquittal on all but four counts against Mansfield — Whether "information", for purpose of offence in (former) s 1002G and s 1043A of Act, as defined in (former) s 1002G and s 1042A of Act, must be, a factual reality and cannot include falsehoods or lies — Whether element of offence of insider trading that inside information possessed by accused corresponds with information possessed by entity entitled to have or use it.

Words and Phrases — "information".

Appealed from WA SC (CA): (2011) 251 FLR 286; [2011] WASCA 132.

Costs

Certain Lloyds Underwriters Subscribing to Contract No IHOOAAQS v Cross; Certain Lloyds Underwriters Subscribing to Contract No IHOOAAQS v Thelander; Certain Lloyds Underwriters Subscribing to Contract No IHOOAAQS v Thelander

S418/2011; S419/2011: [\[2012\] HCATrans 182](#).

Date heard: 15 August 2012.

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

Catchwords:

Costs — Recoverable costs — Limitations — Personal injury damages — Trial judge held respondents suffered injuries from assaults committed by employees of Australian Venue Security Services Pty Ltd ("Insured") — Trial judge held verdict for damages against Insured covered by Insured's insurance policy held with applicant — Whether respondents' claims were claims for personal injury damages within meaning of s 198D of *Legal Profession Act* 1987 (NSW) or s 338 of *Legal Profession Act* 2004 (NSW) — Whether expression "personal injury damages" in *Legal Profession Acts* has same meaning as in *Civil Liability Act* 2002 (NSW).

Words and phrases — "personal injury damages", "the same meaning".

Appealed from NSW SC (CA): [2011] NSWCA 136.

State of New South Wales v Williamson

S416/2011: [\[2012\] HCATrans 182](#).

Date heard: 15 August 2012.

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

Catchwords:

Costs — Recoverable costs — Limitations — Personal injury damages — Respondent sought damages from applicant for trespass to person constituting battery and false imprisonment — Judgment for respondent entered by consent without admission as to liability and undifferentiated sum paid in settlement of all claims — Respondent sought declaration that costs of proceeding not regulated by s 338 of *Legal Profession Act* 2004 (NSW) — Whether respondent's claim a claim for personal injury damages — Whether deprivation of liberty and loss of dignity capable of being personal injury or "impairment of a person's physical or mental condition" for purpose of *Civil Liability Act* 2002 (NSW), s 11 — Whether claim for damages that includes claims based on false imprisonment and assault, which are not severable, a claim for personal injury damages — Whether claim for damages for false imprisonment severable from claim for damages for assault — Whether New South Wales Court of Appeal bound by decision in *Cross v Certain Lloyds Underwriters* [2011] NSWCA 136.

Appealed from NSW SC (CA): [2011] NSWCA 183.

Criminal Law

Burns v The Queen

S46/2012: [\[2012\] HCATrans 99](#); [\[2012\] HCATrans 100](#).

Dates heard: 2 & 3 May 2012 — *Judgment reserved*.

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

Catchwords:

Criminal law — Homicide — Manslaughter — Involuntary manslaughter — Manslaughter by gross criminal negligence — Appellant unlawfully supplied methadone to deceased at her premises — Deceased died after consuming that methadone — Deceased had shown symptoms of overdose — Appellant had insisted that deceased be removed from her premises — Deceased had refused offer by appellant's husband to call ambulance — Whether appellant owed a duty of care to deceased — Whether trial judge's directions as to existence of a duty of care erroneous — Whether a person who creates a dangerous situation owes a duty of care to minimise the potential damage of that situation — Whether deceased's refusal of treatment negated duty of care in light of his intoxicated state.

Criminal law — Homicide — Manslaughter — Involuntary manslaughter — Manslaughter by unlawful and dangerous act — Whether Crown case at trial was that the relevant unlawful and dangerous act was supply, or whether relevant act was said to be joint criminal enterprise with deceased to self-administer methadone.

Criminal law — Homicide — Manslaughter — Involuntary manslaughter — Causation — Whether the trial judge's directions as to causation erroneous — Whether causation can be established on either limb of involuntary manslaughter where a person by his or her own act voluntarily consumes the substance that substantially causes his or her death — Whether a decision to consume which is not "rational, voluntary and informed" can constitute an intervening act — Whether deceased was "informed" if he knew of methadone's nature and effects.

Appealed from NSW SC (CCA): (2011) 205 A Crim R 240, [2011] NSWCCA 56

Cooper v The Queen

S135/2011: [\[2012\] HCATrans 180](#).

Date heard: 9 August 2012.

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

Catchwords:

Criminal law — Homicide — Appeal against conviction — Appellant convicted of murder — Appellant originally stood trial with co-accused — Co-accused acquitted of the murder at separate trial — Co-accused subsequently gave evidence at appellant's trial — Co-accused gave evidence that appellant assaulted deceased with bat and axe — Evidence was adduced that suggested deceased threatened appellant's daughter and assaulted appellant — Another witness "C" gave evidence that co-accused admitted hitting deceased with an axe — Crown presented case as appellant solely responsible for the death or alternatively guilty for participation in a joint criminal enterprise with co-accused — Trial judge included joint criminal enterprise in written directions and further written directions to jury — Culpability for joint criminal enterprise was said to be founded on C's evidence coupled with a rejection of self-defence — Court of Criminal Appeal accepted that joint criminal enterprise was not supported by the evidence but applied the proviso in s 6(1) of the *Criminal Appeal Act* 1912 (NSW) — Whether the error upheld in appellant's appeal, in which joint criminal enterprise liability was left to the jury when it was not open on the evidence, so fundamental as to preclude application of the proviso — Whether the Court erred in holding that there was no error or inadequacy in the trial judge's directions on joint criminal enterprise, self-defence (or defence of another) and the co-accused's confession to witness "C" — Whether the Court of Criminal Appeal erred in holding that defence counsel's failure to adduce relevant evidence in relation to the deceased's mental condition did not occasion a miscarriage of justice.

Appealed from NSW (CCA): [2011] NSWCCA 258.

Douglass v The Queen

A/17: [\[2012\] HCATrans 184](#).

Date heard: 16 August 2012 — *Orders made on 16 August 2012, Appeal allowed, Court will publish reasons at later date.*

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

Catchwords:

Criminal law — Evidence — Burden of proof — Sexual offences — Unsworn evidence — Appellant tried before a judge alone of two counts of indecent assault against his daughter ("LD") and one count of aggravated indecent assault against LD's daughter ("CD") — Appellant found not guilty of counts concerning LD and guilty of count concerning CD — LD's evidence given in form of a video under s 34CA of the *Evidence Act 1929* (SA) — LD's evidence unsworn and uncorroborated — LD's evidence contradicted in court by accused's sworn evidence — Only evidence adduced by prosecution in relation to the offence against LD was that of LD — Whether or not the burden of proof against the appellant discharged — Whether the Court of Appeal erred in considering that this case was a case of "word against word".

Appealed from SASC (CCA) [2010] SASFC 66.

Likiardopoulos v The Queen

M24/2012: [\[2012\] HCATrans 129](#).

Date heard: 31 May 2012 — *Judgment reserved*.

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

Catchwords:

Criminal law — Homicide — Murder — Joint criminal enterprise — Counselling and procuring — Abuse of process — Deceased victim intellectually disabled 22 year old — Appellant and others charged with murder — Evidence demonstrated that appellant and co-accused engaged in sustained assault over several days on victim — Crown accepted pleas to lesser offences by appellant's co-accused namely manslaughter and being an accessory after the fact to manslaughter — Appellant found guilty of murder — Whether it is an abuse of process for the Crown to present a case based on the allegation that an accused has counselled or procured another or others to commit murder when none of the alleged principals had been convicted of murder — Whether it is open at law to convict of murder on the basis of counselling or procuring when the alleged principals have pleaded guilty to lesser offences.

Appealed from Vic SC (CA): (2010) 208 A Crim R 84; [2010] VSCA 344.

Defamation

Harbour Radio Pty Limited v Trad

S318/2011: [\[2012\] HCATrans 9](#); [\[2012\] HCATrans 51](#).

Dates heard: 3 February 2012 & 5 March 2012 — *Judgment reserved*.

Coram: Gummow, Hayne, Heydon, Kiefel & Bell JJ.

Catchwords:

Torts — Defamation — Application of defence — Imputations reply to public attack — Defence of qualified privilege — Defences of truth and contextual truth — Respondent engaged in public speech concerning activities of Radio 2GB, a station owned and operated by appellant — Radio 2GB broadcast response to respondent's speech consisting of presenter's 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 — Appellant relied on, inter alia, defences of qualified privilege, truth and contextual truth — Trial judge found appellant not actuated by malice and upheld defence of qualified privilege — Trial judge found certain imputations were matters of substantial truth and upheld defences of truth and contextual truth — Court of Appeal overturned trial judge's findings on all three defences — Whether common law defence of qualified privilege requires response to attack to be legitimate or proportionate to attack or requires merely absence of malice — Test to be applied in determining whether imputation a matter of 'substantial truth' — Whether Court of Appeal erred in exercising its jurisdiction under s 75A of the *Supreme Court Act 1970* (NSW) — *Defamation Act 1974* (NSW), ss 15 and 16.

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

Papaconstuntinos v Holmes a Court

S319/2011: [\[2012\] HCATrans 103](#).

Date heard: 10 May 2012 – *Judgment Reserved*.

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

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 conduct warranted to protect or further respondent's interests.

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

Equity

See also [Contract Law](#): *Andrews & Ors v Australian and New Zealand Banking Group Limited*

High Court of Australia

See also [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*

Industrial Law

Board of Bendigo Regional Institute of Technical and Further Education v Barclay & Anor
M128/2011: [\[2012\] HCATrans 83](#).

Date heard: 29 March 2012 — *Judgment reserved*.

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

Catchwords:

Industrial law — Adverse action — General protection — First respondent ("Barclay") an employee of appellant ("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.

Private International Law

PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission

S343/2011: [\[2012\] HCATrans 101](#).

Date heard: 8 May 2012 – *Judgment Reserved*.

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

Catchwords:

Private international law — Sovereign immunity — Sections 9 and 22 of *Foreign States Immunities Act 1985* (Cth) ("Act") provide that foreign States and separate entities of foreign States are immune from jurisdiction of Australian courts, subject to exceptions created by Act — Section 11(1) of Act provides that foreign States and separate entities of foreign States are "not immune in a proceeding

in so far the proceeding concerns a commercial transaction" — Appellant a "separate entity" of Republic of Indonesia, as defined in s 3 of Act — Respondent commenced civil penalty proceeding against appellant alleging anti-competitive conduct in relation to international air freight contrary to Pt IV of *Trade Practices Act 1974* (Cth) — Whether civil penalty proceeding brought by respondent against separate entity otherwise entitled to immunity under ss 9 and 22 of Act falls within exception in s 11(1) of Act.

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

Statutes

See also [Torts](#): *Newcrest Mining Limited v Thornton*

Taxation

Commissioner of Taxation v Qantas Airways Ltd
S47/2012: [\[2012\] HCATrans 131](#); [\[2012\] HCATrans 132](#).

Dates heard: 4 & 5 June 2012 – *Judgment Reserved*.

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

Catchwords:

Taxation — Goods and services tax — Taxable supply — Contract for supply of services — Airline travel — Whether goods and services tax ("GST") payable — Passenger made booking and paid fare but did not take actual flight or receive refund — Whether taxable supply occurred when customer made reservation or whether actual travel required — Whether appellant's assessment "excessive" within s 14ZZK of the *Taxation Administration Act 1953* (Cth) — Whether respondent made a "taxable supply" within the meaning of section 9-5 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth) in circumstances where passengers made and paid for reservations or bookings for flights which they subsequently did not take.

Appealed from FCA (FC): (2001) 195 FCR 260, (2011) ATC 20-276, [2011] FCAFC 113.

Torts

Barclay v Penberthy & Ors

P55/2011;P57/2011: [\[2012\] HCATrans 98](#).

Date heard: 1 May 2012 – *Judgment Reserved*.

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

Catchwords:

Torts — Negligence — Duty of care — Economic loss — Loss of services — action *per quod servitium amisit* — First respondent piloted aircraft that crashed, killing two and injuring three employees of third respondents — Cause of crash determined to be failure of part designed by appellant — Court of Appeal held appellant and first respondent owed third respondents duty of care, which they breached, causing economic loss to third respondents — Whether appellant owed third respondents duty of care in respect of economic loss — Whether existence of action *per quod servitium amisit* relevant in determining whether appellant owed third respondents duty of care — Whether existence of action *per quod servitium amisit* requires imposition of common law duty of care.

Torts — action *per quod servitium amisit* — Loss of services — Whether action *per quod servitium amisit* continues to exist in Australian common law — Whether appellant and first respondent liable to third respondents in action *per quod servitium amisit*.

Torts — Wrongful death — Rule in *Baker v Bolton* (1808) 1 Camp 493;[170 ER 1033] — Lord Campbell's Act — Fatal Accidents Act 1959 (WA) — Whether action for wrongful death exists at common law.

Appealed from WA SC (CA): [2011] Aust Torts Reports 82-087; [2011] WASCA 102.

Newcrest Mining Limited v Thornton

P59/2011: [\[2012\] HCATrans 130](#).

Date heard: 1 June 2012 — *Judgment Reserved*.

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

Catchwords:

Torts — Joint or several tortfeasors — Contribution — Satisfaction — Double recovery — Statutory prohibition — Respondent injured in workplace accident — Settlement reached with employer and

consent judgment entered — Respondent subsequently issued summons against appellant, owner of mine site at which respondent injured — Appellant sought and received summary judgment on ground that respondent already compensated for injury by employer and s 7(1)(b) of *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* (WA) ("Act") precluded recovery of additional damages — Whether s 7(1)(b) of Act applies only to damages awarded following judicial assessment or also to judgments entered by consent — *Nau v Kemp & Associates* (2010) 77 NSWLR 687.

Statutes — Statutory construction — Whether consent judgment is a judgment within the meaning of s 7(1)(b) of Act.

Appealed from WA SC (CA): [2011] WASCA 92.

3: ORIGINAL JURISDICTION

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

Constitutional Law

TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia and Anor
S178/2012.

Catchwords:

Constitutional law — Judicial power of Commonwealth — Constitution, Ch III — Following an arbitral hearing conducted in Australia in accordance with an agreement between the parties, the second defendant was awarded damages and costs ('arbitral awards') — Second defendant commenced proceedings in the Federal Court of Australia seeking enforcement of the arbitral awards — Plaintiff resisted the enforcement proceedings — Whether Arts 35 and 36 of the UNCITRAL Model Law on International Commercial Arbitration, read with s 7 and Pt III of the *International Arbitration Act* 1974 (Cth) ('the provisions') purport to confer the judicial power of the Commonwealth on arbitral tribunals contrary to the requirements of Ch III of the Constitution — Whether the provisions impermissibly interfere with the judicial power of the Commonwealth — Whether the provisions undermine the institutional integrity of Ch III Courts and are thus invalid.

This application for an order to show cause was filed in the Original Jurisdiction of the High Court of Australia.

X7 v Australian Crime Commission and Anor
S100/2012.

Catchwords:

Constitutional law — Judicial power of Commonwealth — Constitution, Ch III — By summons under s 28 of the *Australian Crime Commission Act* 2002 (Cth) ('ACC Act') an ACC examiner required the plaintiff to attend before an examiner to give evidence on a set date — Before the set date, the Plaintiff was charged with offences under the *Criminal Code* (Cth) — Plaintiff subsequently interviewed by an ACC examiner — Whether Div 2 of Pt II of the

ACC Act empowers an ACC examiner to conduct an examination of a person charged where that examination concerns the subject matter of the offence so charged — If so, whether Div 2 of Pt II of the ACC Act invalid to the extent that it is contrary to Ch III of the Constitution.

This writ of summons was filed in the Original Jurisdiction of the High Court of Australia.

4: SPECIAL LEAVE GRANTED

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

Constitutional Law

Attorney-General for the State of South Australia v Corporation of the City of Adelaide & Ors

A22/2011: [\[2012\] HCATrans 107](#).

Date heard: 11 May 2012 – *Special leave granted*

Catchwords:

Constitutional law (Cth) — Operation and effect of Constitution — Interpretation — Implied freedom of political communication about government or political matters — System of representative and responsible government — Local government — Clauses 2.3 and 2.8 of the Corporation of the City of Adelaide By-Law No 4 (Roads), *inter alia*, prohibited preaching, canvassing, haranguing, and distribution of printed matter without permission on roads ("by-law") — Application of constitutional freedom of communication about government and political matters where possible to seek judicial review of an administrative decision that refused consent to communicate — Whether by-law complies with limitations on legislative power delegated to local government under s 667(1)9(XVI) of the *Local Government Act 1934* (SA) — Whether impugned by-law effectively burdens freedom of communicating about government and political matters — Whether by-law reasonably appropriate and adapted to serve legitimate end in manner compatible with maintenance of representative and responsible government — Whether potential that by-law may be erroneously administered relevant to validity.

Appealed from SASC (FC): (2011) 110 SASR 334, (2011) 182 LGERA 181, (2011) 252 FLR 418, [2011] SASCF 84.

Monis v The Queen & Anor; Droudis v The Queen & Anor

S2/2012; S4/2012: [\[2012\] HCATrans 161](#).

Date heard: 22 June 2012 — *Special leave granted*.

Catchwords:

Constitutional law (Cth) – Operation and effect of Constitution – Interpretation – Implied freedom of political communication about government or political matters – System of representative and responsible government – Applicants charged under s 471.12 of the *Criminal Code* 1995 (Cth) ("the Code") which creates an offence of using a postal or similar service in a way that reasonable persons would consider menacing, harassing or offensive – Whether s 471.12 of the Code invalid because it infringes the implied freedom of political communication about government or political matters.

Appealed from NSW SC (CCA): (2011) 256 FLR 28; [2011] NSWCCA 231.

The Public Service Association and Professional Officers' Association Amalgamated of NSW v Director of Public Employment & Ors

S384/2011: [\[2012\] HCATrans 113](#).

Date heard: 11 May 2012 – *Special leave granted*

Catchwords:

Constitutional law (Cth) — Constitution, Ch III — Vesting of federal jurisdiction in State courts — Institutional integrity of State Courts — Power of State Parliament to alter defining characteristic of Court of a State — Relationship between the NSW Industrial Commission and the Industrial Court — Presidential members of the NSW Industrial Commission are the only persons who may be appointed as members of the Industrial Court — Certain functions of the NSW Industrial Commission can only be exercised by the Commission constituted as Industrial Court — Section 146C of the *Industrial Relations Act* 1996 (NSW), inserted by the *Industrial Relations Amendment (Public Sector Conditions of Employment) Act* 2011 (NSW) ("Act"), effectively requires the NSW Industrial Commission, not Industrial Court, to give effect to executive policies — Whether the Act is invalid by reason that it undermines the institutional integrity of the NSW Industrial Relations Commission when constituted as Industrial Court — Whether imposition of a requirement upon judges of a State court to give effect to executive policy when exercising non-judicial functions as part of an arbitral tribunal undermines institutional integrity or appearance of independence and impartiality of that court — Whether requirement imposed upon judicial members to give effect to executive policy when sitting as the NSW Industrial Commission undermines institutional integrity of the Industrial Court.

Appealed from NSWIRComm (FB): [2011] NSWIRComm 143.

See also [Family Law](#): *Stanford v Stanford*

Consumer Law

Google Inc v Australian Competition and Consumer Commission
S103/2012: [\[2012\] HCATrans 160](#).

Date heard: 22 June 2012 — *Special leave granted*.

Catchwords:

Consumer law — Misleading and deceptive conduct — On-line advertising — Applicant operator of free internet search engine — Advertisers promoted their goods or services by means of sponsored links that appeared on search result pages displayed by applicant's internet search engine — Advertisements displayed in response to user's search query — Whether in displaying the sponsored links the applicant engaged in conduct that was misleading and deceptive or likely to mislead or deceive for the purposes of section 52 of the *Trade Practices Act 1974* (Cth) (now s 18 *Australian Consumer Law*) — Whether in displaying the advertisements in response to a particular user's search query the applicant made the representations contained in the advertisements.

Appealed from FCA (FC): [\[2012\] FCAFC 49](#).

Corporations Law

Beck v Weinstock & Ors
S311/2011: [\[2012\] HCATrans 34](#); [\[2012\] HCATrans 148](#).

Date heard: 10 February 2012 — *Special leave granted*.

Catchwords:

Corporations law — Redeemable preference shares — Validity of issue — Rights attaching to shares — Eight C class shares were allotted in the third respondent ("the Company") — No other shares in the Company over which the C class shares conferred any priority or preference were ever issued — Directors of the Company resolved to redeem the eight C class shares for a nominal amount — Whether other shares, over which preference is enjoyed, must exist for redeemable preference shares to be valid — Whether eight

C class shares in the Company were redeemable preference shares for the purposes of the *Corporations Act 2011* (Cth) notwithstanding that there were never any other shares issued in the Company by reference to which the C class shares conferred preference.

Appealed from NSW SC (CA): (2011) 252 FLR 462, [2011] NSWCA 228.

Westfield Management Limited as Trustee for the Westart Trust v AMP Capital Property Nominees Limited as Nominee of Unisuper Limited in its Capacity as Trustee of the Complying Superannuation Fund Known as Unisuper & Anor

S15/2012: [\[2012\] HCATrans 166](#).

Date heard: 22 June 2012 — *Special leave granted*.

Catchwords:

Corporations law — Managed investment scheme — Proposed resolution to wind-up trust — Trust deed entered into for the establishment of the KSC Trust ("Trust") and the acquisition of a major shopping centre — Trust registered as managed investment scheme under Pt 5C of the *Corporations Act 2001* (Cth) ("the Act") — Unitholders in the Trust entered into a joint venture agreement ("the Agreement") to, *inter alia*, record the obligations relating the shopping centre — Clause 16.2 of the agreement provided that each of the unitholders agreed to exercise their voting rights under the trust deed in accordance with the Agreement — Applicant held one third of the units in the Trust — Applicant received notice from responsible entity proposing an extraordinary resolution pursuant to ss 601NB & 601NE of the Act to wind up the managed investment scheme — Whether a unitholder can by contract fetter or forgo the right to vote at a meeting under s 601NB of the Act — Whether the Agreement prevents a unitholder from voting for an extraordinary resolution to direct the winding up of the managed investment scheme.

Appealed from NSW SC (CA): [2011] NSWCA 386.

Criminal Law

Baini v The Queen

M145/2011: [\[2012\] HCATrans 197](#).

Date heard: 17 August 2012 — *Special leave granted*.

Catchwords:

Criminal law — Appeal — Application of 'proviso' — Criminal charges improperly joined — Blackmail — Applicant convicted of 35 counts of blackmail — Most counts referable to one complainant — Trial judge refused applicant's application to sever a single count ('count 50') relating to a second complainant pursuant to ss 371 and 372 of the *Crimes Act* 1958 (Vic) — Prejudice to applicant — Court of Appeal ordered retrial with respect to count 50 only, but not the other 49 counts — Whether the Court of Appeal erred, having determined that the trial judge was in error regarding non-severance of count 50, by failing to order a retrial on the other counts — Whether the Court of Appeal erred in deciding that there was a substantial miscarriage of justice by adopting the approach dictated in *Weiss v The Queen* (2005) 224 CLR 300 and thereby failing to properly apply s 276 of the *Criminal Procedure Act* 2009 (Vic).

Appealed from Vic SC (CA): [2011] VSCA 298.

Family Law

Stanford v Stanford

P3/2012: [\[2012\] HCATrans 154](#).

Date heard: 22 June 2012 — *Special leave granted*.

Catchwords:

Family law — Property settlement — Property proceedings conducted by case guardians of H (aged 87) and W (aged 89) — Marriage still intact although W's declining health required that the parties be physically separated — Full Court made orders under s 79 of the *Family Law Act* 1975 (Cth) that required H upon his death or such earlier time as may be determined by his case guardian to pay a judgment sum to W — Order could only be satisfied by H selling matrimonial home where he was still living — Whether Full Court empowered to make a property settlement order under s 79 of the Act.

Constitutional law — Powers of Commonwealth Parliament — Section 51(xxi) — Whether orders made by the Full Court beyond the power conferred on Family Court of Australia in that it was not a

matrimonial cause as specified in s 4(1)(ca) of the Act — Whether s 79 of the Act as applied in this case invalid.

Appealed from FamCA (FC): 46 Fam LR 240; [2011] FLC 93-483; [2011] FamCAFC 208.

Jurisdiction

Commissioner of Police v Eaton and Anor
S86/2012: [\[2012\] HCATrans 189](#).

Date heard: 17 August 2012 — *Special leave granted*.

Catchwords:

Jurisdiction — Subject matter jurisdiction — Industrial Relations Commission NSW ('IRC') — Probationary police officer employed and dismissed by Commissioner of Police ('Commissioner') under s 80(3) of the *Police Act* 1990 ('Police Act') — Probationary officer made an application to the IRC claiming dismissal was harsh, unreasonable or unjust under s 84(1) of the *Industrial Relations Act* 1996 (NSW) ('IR Act') — Whether the Industrial Relations Commission of NSW has the jurisdiction to hear and determine a claim alleging unfair dismissal under Part 6 of Chapter 2 of the IR Act brought by a probationary police officer employed and dismissed under s 80(3) of the Police Act 1990 — Whether Police Act contains an exhaustive regime for the appointment and termination of probationary police officers.

Statutes — Implied repeal — Inconsistency or incongruity between the provisions of Police Act and IR Act — Whether Parliament intended the specific regime for apportionment and termination of probationary police officers contained in the Police Act to be affected by the general provisions of the IR Act.

Appealed from NSW SC (CA): [2012] NSWCA 30.

Statutes

See also [Jurisdiction](#): *Commissioner of Police v Eaton and Anor*

Taxation

Commissioner of Taxation v Consolidated Media Holdings Ltd

S98/2012 [2012] HCATrans 186.

Date heard: 17 August 2012 — *Special leave granted.*

Catchwords:

Taxation — Income tax — Company share buy-back — Off-market purchase — Respondent at relevant time held 100% of issued shares in Crown Melbourne Ltd ('Crown') — Crown resolved to undertake a partial share buy-back — Agreement for off-market share buy-back subsequently entered into — Transfer of shares in Crown by the Respondent was executed for consideration of \$1 billion — Whether consideration constituted a dividend within the meaning of s 159GZZP of the Income Tax Assessment Act 1936 (Cth) or a net capital gain treated as assessable income pursuant to Pt 3-1 of Income Tax Assessment Act 1997 (Cth) — Meaning of 'share capital account' in s 6D(1) of the Income Tax Assessment Act 1936 (Cth) — Income Tax Assessment Act 1936 (Cth), ss 6D, 159GZZP, 159GZZQ

Appealed from FCA (FC): (2012) 201 FCR 470; 87 ACSR 512; 2012 ATC 20-308; [2012] FCAFC 36.

Mills v Commissioner of Taxation

S9/2012 [\[2012\] HCATrans 185](#).

Date heard: 17 August 2012 — *Special leave granted.*

Catchwords:

Taxation — Income tax — Anti-avoidance provisions — Imputation benefits — Scope of *Income Tax Assessment Act 1936* (Cth), s 177EA — Bank issued securities comprising a non-redeemable preference share 'stapled' to a subordinate note issued by Bank from its New Zealand branch ('Securities'), so that it enjoyed both tax deductions on the distributions in New Zealand as well as a cost advantage in offering Australian residents an imputation benefit (or an equivalent adjustment) — Securities 'equity' and not 'debt' for income taxation purposes — Holders of the Securities may receive discretionary, non-cumulative, preferential franked distributions at a specified rate, payable as interest on the note unless an 'assignment event' occurs in which case the distribution is payable

as a dividend on the preference share — Subsequent determination by Commissioner of Taxation denying franking credits to security-holders upon distribution — Whether bank entered into or carried out a scheme for disposition of membership interests for the purpose (not being an incidental purpose) of allowing security-holders to obtain an imputation benefit.

Appealed from FCA (FC): (2011) 198 FCR 89; [2011] FCAFC 158; 2011 ATC 20-295.

Trusts

Montevento Holdings Pty Ltd & Anor v Scaffidi & Anor
P35/2011: [\[2012\] HCATrans 150](#)

Date heard: 22 June 2012 — *Special leave granted.*

Catchwords:

Trusts – Trustees – Eligibility for appointment as trustee – Construction of power of appointment in trust deed – Trust deed provides "[i]f, and so long as any individual Appointer is a Beneficiary, that individual shall not be eligible to be appointed as Trustee" – Second applicant ("E") beneficiary and appointer under trust deed – E sole shareholder and director of Montevento Holdings Pty Ltd ("the Company") – E in his capacity as appointer under trust deed sought to appoint the Company as trustee – Whether the Company eligible for appointment as trustee.

Appealed from WA SC (CA):[2011] WASCA 146.

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* 7 [2012] HCAB 07.

6: SPECIAL LEAVE REFUSED

Canberra: 15 August 2012

(Publication of reasons)

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Kowalski	Mitsubishi Motors Australia Ltd & Ors (A32/2011)	Full Court of the Federal Court of Australia [2011] FCAFC 159	Application Dismissed [2012] HCASL 103
Langmeil	Grange & Anor (A5/2012)	Full Court of the Family Court of Australia	Application Dismissed [2012] HCASL 104
ACN 115 722 248 Pty Ltd	Milligan (A6/2012)	Full Court of the Supreme Court of South Australia [2012] SASCF 26	Application Dismissed [2012] HCASL 105
SBKC	Minister for Immigration and Citizenship & Anor (A10/2012)	Federal Court of Australia [2011] FCA 533	Application Dismissed [2012] HCASL 106
DZAAW	Minister for Immigration and Citizenship & Anor (D3/2012)	Federal Court of Australia [2012] FCA 443	Application Dismissed [2012] HCASL 107
Genovese	City of Perth (P15/2012)	Supreme Court of Western Australia (Court of Appeal) [2012] WASCA 89	Application Dismissed [2012] HCASL 108
Seggio	Durante & Ors (M25/2012)	Family Court of Australia	Application Dismissed [2012] HCASL 109
Pallett	The Queen (M34/2012)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application Dismissed [2012] HCASL 110
Pallett	The Queen (M35/2012)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application Dismissed [2012] HCASL 110
SZQKP & Ors	Minister for Immigration and Citizenship & Anor (S102/2012)	Federal Court of Australia [2012] FCA 284	Application Dismissed [2012] HCASL 111
Martin	State of New South Wales & Anor (S108/2012)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 46	Application Dismissed [2012] HCASL 112
Martin	State of New South Wales & Ors (S109/2012)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 46	Application Dismissed [2012] HCASL 112
Martin	State of New South Wales & Ors (S131/2012)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 46	Application Dismissed [2012] HCASL 112
Martin	State of New South Wales (S132/2012)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 47	Application Dismissed [2012] HCASL 113

Macatangay	State of New South Wales (S114/2012)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 108	Application Dismissed [2012] HCASL 114
SZOJV & Anor	Minister for Immigration and Citizenship & Anor (S130/2012)	Federal Court of Australia [2012] FCA 459	Application Dismissed [2012] HCASL 115
SZQID	Minister for Immigration and Citizenship & Anor (S139/2012)	Federal Court of Australia [2012] FCA 458	Application Dismissed [2012] HCASL 116
SZQIS	Minister for Immigration and Citizenship & Anor (S142/2012)	Federal Court of Australia [2012] FCA 457	Application Dismissed [2012] HCASL 117
Rhodium Australia Pty Ltd	Deputy Commissioner of Taxation (M16/2012)	Full Court of the Federal Court of Australia [2011] FCAFC 17	Application Dismissed with costs [2012] HCASL 118
Amritveer Singh by his next friend Jasbir Singh	Minister for Immigration and Citizenship (M27/2012)	Full Court of the Federal Court of Australia [2012] FCAFC 12	Application Dismissed with costs [2012] HCASL 119
Mansfield	The Queen (M137/2011)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 290	Application Dismissed [2012] HCASL 120
Vacic	Salter (B20/2012)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 53	Application Dismissed [2012] HCASL 121
Raftopoulos	Brisbane City Council (B21/2012)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 84	Application Dismissed [2012] HCASL 122
Bradshaw & Anor	Secure Funding Pty Ltd (B23/2012)	Supreme Court of Queensland (Court of Appeal) [2012] QCA 52	Application Dismissed [2012] HCASL 123
MZYLC	Minister for Immigration and Citizenship & Anor (M31/2012)	Federal Court of Australia [2012] FCA 213	Application Dismissed [2012] HCASL 124
Shaw	Fragapane Nominees Pty Ltd & Ors (M36/2012)	Supreme Court of Victoria (Court of Appeal) (no media neutral citation)	Application Dismissed [2012] HCASL 125
Altaranesi	Administrative Decisions Tribunal & Anor (S82/2012)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 19	Application Dismissed [2012] HCASL 126
Lui	Secretary, Department of Education, Employment and Workplace Relations (S99/2012)	Federal Court of Australia [2012] FCA 216	Application Dismissed [2012] HCASL 127
SZQCV	Minister for Immigration and	Federal Court of Australia [2012] FCA 441	Application Dismissed [2012] HCASL 128

	Citizenship & Anor (S101/2012)		
Altaranesi	Administrative Decisions Tribunal & Anor (105/2012)	Supreme Court of New South Wales (Court of Appeal) [2012] NSWCA 69	Application Dismissed [2012] HCASL 129
MZYMV	Minister for Immigration and Citizenship & Anor (M28/2012)	Federal Court of Australia [2012] FCA 171	Application Dismissed [2012] HCASL 130
Tey	Plotz (P46/2011; P47/2011)	Supreme Court of Western Australia (Court of Appeal) [2011] WASCA 194	Applications Dismissed [2012] HCASL 131
Gallagher	Boylan (B56/2011)	Supreme Court of Queensland (Court of Appeal) [2011] QCA 240	Application Dismissed with Costs [2012] HCASL 132
Finlay Stonemasonry Pty Ltd	JD & Sons Nominees Pty Ltd as Trustee for the Jenkins Family Trust No 2 (D4/2011)	Supreme Court of the Northern Territory (Court of Appeal) [2011] NTCA 7	Application Dismissed with Costs [2012] HCASL 133
Chitty	McGee (P37/2011)	Supreme Court of Western Australia (Court of Appeal) [2011] WASCA 125	Application Dismissed with Costs [2012] HCASL 134
Conduit Advertising Pty Ltd & Anor	Anderson & Anor (P42/2011)	Federal Court of Australia [2011] FCA 978	Application Dismissed with Costs [2012] HCASL 135
Wright	Foresight Constructions Pty Ltd (S404/2011)	Supreme Court of New South Wales (Court of Appeal) [2011] NSWCA 327	Application Dismissed with Costs [2012] HCASL 137
Sharples	Director of Public Prosecutions (B68/2011)	Supreme Court of Queensland (Court of Appeal) [2011] QCA 249	Application Dismissed [2012] HCASL 138

Melbourne: 17 August 2012

Criminal

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Sibanda	The Queen (M144/2011)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 285	Special leave refused [2012] HCATrans 195
Tsang	The Queen (M163/2011)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 336	Special leave refused [2012] HCATrans 198

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Ho	The Queen (M166/2011; M167/2011)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 344	Special leave refused [2012] HCATrans 199
Sleiman	The Queen (M175/2011)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 401	Special leave refused
Ho	The Queen (M177/2011)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 344	Special leave refused [2012] HCATrans 196
The Queen	Butler (M8/2012)	Supreme Court of Victoria (Court of Appeal) [2011] VSCA 417	Special leave refused with costs
The Director of Public Prosecutions for Victoria	Lemoussu (M20/2012)	Supreme Court of Victoria (Court of Appeal) [2012] VSCA 20	Special leave refused with costs [2012] HCATrans 201
Cornish	Director of Public Prosecutions (Cth) (M37/2012)	Supreme Court of Victoria (Court of Appeal) [2012] VSCA 45	Special leave refused [2012] HCATrans 202

Civil

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
British American Tobacco Australia Ltd	Secretary, Department of Health & Ageing (M117/2011)	Full Court of the Federal Court of Australia [2011] FCAFC 107	Special leave refused with costs
Eso Australia Resources Pty Ltd	The Commissioner of Taxation of the Commonwealth of Australia (M18/2012; M19/2012)	Full Court of the Federal Court of Australia [2012] FCAFC 5	Special leave refused with costs [2012] HCATrans 194

Sydney: 17 August 2012*Civil*

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Joanne Darcy by her tutor Dianne Aldridge	State of New South Wales (S23/2012)	Supreme Court of New South Wales (Court of Appeal) [2011] NSWCA 413	Special leave refused with costs [2012] HCATrans 191
Transport Workers Union of Australia	Qantas Airways Limited (S61/2012)	Full Court of the Federal Court of Australia [2012] FCAFC 10	Special leave refused [2012] HCATrans 192
Grimaldi	Chameleon Mining NL & Anor (S71/2012)	Full Court of the Federal Court of Australia [2012] FCAFC 6	Special leave refused with costs [2012] HCATrans 187

<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
Islam & Anor	Minister for Immigration and Citizenship & Anor (S84/2012)	Federal Court of Australia [2012] FCA 195	Special leave refused with costs [2012] HCATrans 188
SZOAU	Minister for Immigration and Citizenship & Anor (S93/2012)	Full Court of the Federal Court of Australia [2012] FCAFC 33	Special leave refused with costs [2012] HCATrans 190
