



HIGH COURT BULLETIN

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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	4
2: Cases Reserved	8
3: Original Jurisdiction	15
4: Special Leave Granted.....	16
5: Cases Not Proceeding or Vacated.....	24
6: Special Leave Refused.....	25

SUMMARY OF NEW ENTRIES

1: Cases Handed Down

Case	Title
<i>Paciocco & Anor v Australia and New Zealand Banking Group Limited</i>	Banking
<i>Crown Melbourne Limited v Cosmopolitan Hotel (Vic) Pty Ltd & Anor</i>	Contract
<i>Graham v The Queen</i>	Criminal
<i>Minister for Immigration and Border Protection & Anor v SZSSJ & Anor; Minister for Immigration and Border Protection & Ors v SZTZI</i>	Migration

2: Cases Reserved

Case	Title
<u>Australian Competition & Consumer Commission v Flight Centre Travel Group Limited</u>	Competition
<u>Simic & Ors v NSW Land and Housing Corporation & Ors</u>	Contract
<u>The Queen v Baden-Clay</u>	Criminal
<u>Lyons v State of Queensland</u>	Discrimination
<u>The Maritime Union of Australia & Anor v Minister for Immigration and Border Protection & Anor</u>	Migration
<u>Prince Alfred College Incorporated v ADC</u>	Torts

3: Original Jurisdiction

Case	Title
<u>Plaintiff S61 v Minister for Immigration and Border Protection</u>	Migration

4: Special Leave Granted

Case	Title
<u>Southern Han Breakfast Point Pty Ltd v Lewence Construction Pty Ltd & Ors</u>	Administrative Law
<u>RP v The Queen</u>	Criminal
<u>The Queen v Kilic</u>	Criminal
<u>Timbercorp Finance Pty Ltd (In Liquidation) v Collins & Anor</u>	Procedure
<u>Timbercorp Finance Pty Ltd (In Liquidation) v Tomes</u>	Procedure
<u>Elecnet (Aust) Pty Ltd (as Trustee for the Electrical Industry Severance Scheme) v Commissioner of Taxation of the Commonwealth of Australia</u>	Taxation

5: Cases Not Proceeding or Vacated

Case	Title
<u><i>Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland</i></u>	Native Title

1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the July 2016 sittings.

Banking

Paciocco & Anor v Australia and New Zealand Banking Group Limited

[M219/2015; M220/2015: \[2016\] HCA 28](#)

Judgment delivered: 27 July 2016.

Coram: French CJ, Kiefel, Gageler, Keane and Nettle JJ.

Catchwords:

Banker and customer – Rule against penalties – Consumer credit card accounts – Late payment fees – Where late payment fees were \$35 and \$20 – Where costs actually incurred by respondent upon failure by first appellant to make timeous payment of amounts owing were approximately \$3 – Where late payment fees not genuine pre-estimates of damage – Where respondent alleged it could conceivably have incurred loss provision costs, collection costs and regulatory capital costs as a result of first appellant's default – Whether late payment fees penalties – Whether late payment fees extravagant, exorbitant or unconscionable – Whether late payment fees out of all proportion to interests damaged – Whether respondent's legitimate interests confined to reimbursement of expenses directly occasioned by first appellant's default.

Contract – Rule against penalties – Essential characteristics of a penalty – Whether sum disproportionate to actual loss suffered amounts to a penalty – Whether sum incorporating loss too remote to be recoverable in action for damages amounts to a penalty – Relevance of *Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd* [1915] AC 79.

Trade practices – Consumer protection – Late payment fees – Unconscionable conduct – Unjust transactions – Unfair terms – Whether late payment fees unconscionable, unjust or unfair.

Precedent – Apex courts of foreign jurisdictions – Status of unwritten law of United Kingdom in Australia.

Words and phrases – "exorbitant", "extravagant", "genuine pre-estimate", "in terrorem", "late payment fees", "liquidated

damages", "out of all proportion", "penalty", "unconscionable", "unconscionable conduct", "unfair terms", "unjust transactions".

Australian Securities and Investments Commission Act 2001 (Cth) – ss 12BF, 12BG, 12CB, 12CC.

National Consumer Credit Protection Act 2009 (Cth) – Sched 1 s 76.

Fair Trading Act 1999 (Vic) – ss 8, 8A, 32W, 32X.

Appealed from FCA (FC): [\[2015\] FCAFC 50](#).

Held: Appeals dismissed with costs.

[Return to Top](#)

Contract Law

Crown Melbourne Limited v Cosmopolitan Hotel (Vic) Pty Ltd & Anor

M253/2015: [\[2016\] HCA 26](#)

Judgment delivered: 20 July 2016

Coram: French CJ, Kiefel, Bell, Gageler, Keane, Nettle and Gordon JJ.

Catchwords:

Contract – Collateral contract – Where tenants held five year leases under which they operated two restaurants – Where clause of leases required landlord to give notice that leases were to be renewed or continued or the premises were to be vacated – Where in course of negotiations for further leases landlord made statement to tenants that they would be "looked after at renewal time" – Where landlord required tenants to vacate premises on expiration of leases – Whether statement gave rise to collateral contract – Whether statement promissory in nature – Whether obligation uncertain.

Estoppel – Whether statement to tenants that they would be "looked after at renewal time" could give rise to estoppel – Whether statement capable of conveying to reasonable person that tenants would be offered further lease – Whether expectation acted upon by tenants.

Appeals – Procedure – Where question whether statement amounted to binding contractual promise – Whether question of fact or question of law.

Words and phrases – "certainty", "collateral contract", "oral

contract", "promissory estoppel", "proprietary estoppel", "question of fact", "question of law", "reasonable correspondence", "remittal".

Victorian Civil and Administrative Tribunal Act 1998 (Vic) – s 148.

Appealed from VSC (CA): [\[2014\] VSCA 353](#).

Held: Appeal allowed with costs.

[Return to Top](#)

Criminal Law

Graham v The Queen

B14/2016: [\[2016\] HCA 27](#)

Judgment delivered: 20 July 2016.

Coram: French CJ, Kiefel, Bell, Nettle and Gordon JJ

Catchwords:

Criminal law – Appeal – Directions to jury – Where appellant convicted of attempted murder after firing shots during confrontation with man with knife – Where appellant relied on defence of self-defence under ss 271(1), 271(2) and 272(1) of Criminal Code (Q) – Where prosecutor suggested in closing address existence of "consensual confrontation" negated self-defence – Where trial judge did not direct jury that no evidence of consent – Where no redirection sought by defence counsel on this issue – Whether trial judge failed to properly direct jury as to self-defence – Whether trial judge erred in failing to direct jury as to defence of mistake under s 24 of Criminal Code.

Words and phrases – "assault", "consensual confrontation", "consent to assault", "mistaken belief", "self-defence".

Criminal Code (Q) – ss 24, 245, 271, 272.

Appealed from QSC (CA): [\[2015\] QCA 137](#).

Held: Appeal dismissed.

[Return to Top](#)

Migration

Minister for Immigration and Border Protection & Anor v SZSSJ & Anor; Minister for Immigration and Border Protection & Ors v SZTZI

[S75/2016](#); [S76/2016](#): [\[2016\] HCA 29](#)

Judgment delivered: 27 July 2016

Coram: French CJ, Kiefel, Bell, Gageler, Keane, Nettle and Gordon JJ

Catchwords:

Migration – Refugees – Protection visas – Procedural fairness – Where SZSSJ and SZTZI ("respondents") applied for protection visas – Where respondents' personal information published on Department of Immigration and Border Protection website and accessed from 104 unique IP addresses – Where IP addresses known to Department – Where Department conducted International Treaties Obligations Assessments ("ITOA") to determine impact of publication on non-refoulement obligations – Where ITOAs conducted in accordance with publicly available "Procedures Advice Manual" – Where Department notified respondents of ITOAs and instructed officers conducting ITOAs to assume personal information may have been accessed by authorities in countries where respondents feared persecution or other relevant harm – Where Department neither disclosed IP addresses nor provided unabridged report relating to disclosure of personal information – Whether obligation to afford procedural fairness applied to ITOA processes – Whether ITOA processes procedurally fair.

Courts and judges – Jurisdiction – Federal Circuit Court of Australia – Whether respondents' claims to relief engaged jurisdiction of Court – Whether jurisdiction excluded by s 476(2)(d) of Migration Act 1958 (Cth).

Words and phrases – "conduct preparatory to the making of a decision", "International Treaties Obligations Assessment", "privative clause decision", "procedural decision to consider whether to grant a visa or to lift the bar", "substantive decision to grant a visa or to lift the bar".

Migration Act 1958 (Cth) – ss 48B, 195A, 417, 474, 476.

Appealed from FCA (FC): [\[2015\] FCAFC 125](#).

Held: Appeals allowed.

[Return to Top](#)

2: CASES RESERVED

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

Competition

Australian Competition & Consumer Commission v Flight Centre Travel Group Limited

B15/2016: [\[2016\] HCATrans 167](#)

Date heard: 27 July 2016

Coram: French CJ, Kiefel, Gageler, Nettle & Gordon JJ

Catchwords:

Competition – Whether appellant travel agent attempted to induce specific airlines to make a contract, arrangement or arrive at an understanding which had the purpose or effect of substantially lessening competition in a market – Consideration of relevant market – Characterisation of relevant services supplied by airlines and travel agents – Whether airlines and travel agents competed in a market for booking and distribution services, or whether the only relevant market was the market for international passenger air travel services – Whether travel agents competed with airlines in that market given they were the agent of the airlines when supplying such services – Application of ss 45 and 45A of the *Trade Practices Act 1974* (Cth).

Appealed from FCA (FC): [\[2015\] FCAFC 104](#).

[Return to Top](#)

Constitutional Law

Murphy & Anor v Electoral Commissioner & Anor

M247/2015: [\[2016\] HCATrans 108](#); [\[2016\] HCATrans 111](#).

Date heard: 11 May 2016; 12 May 2016.

Coram: French CJ, Kiefel, Bell, Gageler, Keane, Nettle and Gordon JJ

Catchwords:

Constitutional law – Legislative power – Franchise – Constitutional limitations upon power of Parliament to regulate exercise of entitlement to enrol to vote – Date for close of Electoral Rolls in *Commonwealth Electoral Act 1918* (Cth) – Where Act suspends the enrolment or transfer of enrolment of electors in the period between the close of the Rolls and the close of the poll – Whether denial of enrolment effected by Act contravenes constitutional requirement that representatives be "directly chosen by the people" – Whether amendments operated as disqualification from entitlement to vote and, if so, whether disqualification for substantial reason – Relevance of *Roach v Electoral Commissioner* (2007) 233 CLR 162 – Relevance of *Rowe v Electoral Commissioner* (2010) 243 CLR 1.

Questions answered on 12 May 2016. Written reasons of the Court to be published at a future date.

[Return to Top](#)

Cunningham & Ors v Commonwealth of Australia & Anor

S140/2015: [\[2016\] HCATrans 140](#)

Date heard: 16 June 2016

Coram: French CJ, Kiefel, Bell, Gageler, Keane, Nettle and Gordon JJ.

Catchwords:

Constitution – s 51(xxxi) – *Remuneration and Other Legislation Amendment Act 2011* (Cth) – *Members of Parliament (Life Gold Pass) and Other Legislation Amendment Act 2012* (Cth) – Acquisition of property on just terms – Where applicants are former members of the House of Representatives – Where applicants occupied positions as Ministers of State or where officeholders of the Parliament or of a House of Parliament – Where Parliament reduced the 'retiring allowance' of past members – Where Parliament restricted the number of return trips per year using the 'Gold Pass'.

[Return to Top](#)

Contract Law

Simic & Ors v NSW Land and Housing Corporation & Ors
[S136/2016](#); [\[2016\] HCATrans 160](#)

Date heard: 20 July 2016

Coram: French CJ, Kiefel, Gageler, Nettle and Gordon JJ.

Catchwords:

Contract – Letters of credit – Whether a misdescription of the beneficiary of a bank guarantee entitled the bank to refuse to pay out the credit – Whether regard could be had to the underlying contract to confirm the correct description of the beneficiary – Autonomy principle – Principle of strict compliance

Appealed from NSWSC (CA): [\[2015\] NSWCA 413](#)

[Return to Top](#)

Criminal Law

Miller v The Queen; Smith v The Queen; Presley v The Director of Public Prosecutions for the State of South Australia
[A28/2015](#); [A22/2015](#); [A17/2015](#); [\[2016\] HCATrans 106](#); [\[2016\] HCATrans 107](#).

Date heard: 10 May 2016; 11 May 2016

Coram: French CJ, Kiefel, Bell, Gageler, Keane, Nettle and Gordon JJ.

Catchwords:

Criminal law – *Criminal Law Consolidation Act 1935* (SA) ss 11, 24(1), 269 - Murder – Intention – Where appellant was convicted of one count of murder and one count of aggravated causing of harm with two others – Where appellant was convicted on the basis of joint criminal enterprise or extended joint criminal enterprise - Where appellant was highly intoxicated – Where evidence was given that this intoxication significantly impaired appellant’s decision-making – Whether appellant was too intoxicated to form the relevant intention for a conviction of murder.

Appealed from SASC (FC): [\[2015\] SASCF 53](#).

[Return to Top](#)

Zefi v The Director of Public Prosecutions; Jakaj v The Director of Public Prosecutions; Stakaj v The Director of Public Prosecutions; NH v The Director of Public Prosecutions
[A16/2016](#); [A15/2016](#); [A19/2016](#); [A14/2016](#): [\[2016\] HCATrans 136](#)

Date heard: 9 June 2016

Coram: French CJ, Kiefel, Bell, Nettle and Gordon JJ.

Catchwords:

Criminal law – procedure – jury – verdict – alternative verdict – exercise of jurisdiction – whether the Supreme Court of a State has an inherent jurisdiction to set aside perfected orders that there be a conviction or acquittal – whether open to the court to admit evidence of the 12 (former) jurors in relation to whether the jury had determined to return a verdict of not guilty of the charge of murder.

Appealed from SASC (CCA): [\[2015\] SASCF 139](#).

[Return to Top](#)

Sio v The Queen
[S83/2016](#): [\[2016\] HCATrans 138](#)

Date Heard: 15 June 2016

Coram: French CJ, Bell, Gageler, Keane and Gordon JJ.

Catchwords:

Criminal law – conviction appeal – armed robbery – joint criminal enterprise – unreasonable verdict – where appellant was acquitted of constructive murder based on the appellant’s participation in a joint criminal enterprise to commit armed robbery – where appellant was convicted of armed robbery with wounding – whether appellant’s conviction on alternative count is inconsistent with acquittal on principle count.

Criminal law – evidence – hearsay rule – accomplice – made admission against interest in police interview – accomplice not available – whether the trial judge was required to take into account the “demonstrable unreliability” of individual representations to determine whether interview was “made in circumstance that made it likely the representation was reliable”.

Appealed from NSWSC (CCA): [\[2015\] NSWCCA 42](#).

[Return to Top](#)

The Queen v Baden-Clay

B33/2016: [\[2016\] HCATrans 166](#)

Date heard: 26 July 2016

Coram: French CJ, Kiefel, Bell, Keane & Gordon JJ

Catchwords:

Criminal law – Where the respondent was convicted at trial of murdering his wife – Where the Court of Appeal set aside verdict of murder and substituted a verdict of manslaughter – Whether Court of Appeal decision is inconsistent with *R v Ciantar* (2006) 16 VR 26 – Whether the evidence raised an inference that the respondent killed his wife with intent to do her grievous bodily harm or to kill her – Whether evidence was capable of establishing motive relevant to the intention to kill

Appealed from QSC (CA): [\[2015\] QCA 265](#)

[Return to Top](#)

Discrimination

Lyons v State of Queensland

B16/2016: [\[2016\] HCATrans 165](#)

Date heard: 25 July 2016.

Coram: French CJ, Bell, Gageler, Keane and Nettle JJ

Catchwords:

Discrimination – direct discrimination – where the appellant, who was deaf, was excluded from jury service by a Deputy Registrar – where the appellant made a complaint of direct discrimination – construction of s 11 of the *Anti-Discrimination Act 1991* (Qld) – where the appellant argues that her impairment was inextricably linked to her requirement of an Auslan interpreter – construction of *Jury Act 1995* (Qld).

Appealed from QSC (CA): [\[2015\] QCA 159](#).

[Return to Top](#)

Migration

The Maritime Union of Australia & Anor v Minister for Immigration and Border Protection & Anor

S136/2015: [\[2016\] HCATrans 158](#)

Date heard: 19 July 2016

Coram: French CJ, Bell, Gageler, Keane & Nettle JJ

Catchwords:

Migration – Categories of visas – *Migration Act 1958* (Cth) (“Act”) – Where Act contains a regime under which non-citizens working in the offshore resources industries must hold permanent or prescribed temporary visas – Where Minister made two Determinations which excluded some off-shore activities from the regime – Whether Determinations IMMI 14/073 and IMMI 14/074 made pursuant to s 9A(6) of the Act by the Minister are valid.

[Return to Top](#)

Torts

Prince Alfred College Incorporated v ADC

A20/2016: [\[2016\] HCATrans 163](#)

Date heard: 21 July 2016

Coram: French CJ, Kiefel, Bell, Gageler, Keane, Nettle and Gordon JJ.

Catchwords:

Torts – Negligence – Negligence of school authorities or teachers – Liability of employer – Limitation of actions – Extension of time in personal injuries matters – Knowledge of material facts of decisive character – Principles upon which discretion to grant extension of time – Whether Full Court erred in granting extension of time.

Appeal from SASC (FC): [\[2015\] SASCF 161](#)

[Return to Top](#)

Workers Compensation

Deal v Kodakkathanath

M252/2015: [\[2016\] HCATrans 135](#)

Date heard: 8 June 2016

Coram: French CJ, Kiefel, Bell, Gageler and Nettle JJ

Catchwords:

Workers compensation – Accident compensation – Occupational Health and Safety Regulations 2007 (Vic) r 3.1.2 (“regulations”) – Where appellant fell off a step ladder whilst attempting to remove large displays from a wall and suffered a knee injury – Whether “associated with” in the phrase “associated with a hazardous manual handling task affecting an employee” requires a close connection between the manual handling task and the anticipated risk – Whether injury is the kind that the regulations are designed to prevent – Whether regulations should be interpreted to apply to an injury occasioned by the stresses or forces involved in the activity.

Appealed from VSC (CA): [\[2015\] VSCA 191](#)

[Return to Top](#)

3: ORIGINAL JURISDICTION

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

Migration

Plaintiff S61 v Minister for Immigration and Border Protection

[S61/2016](#): *Special case.*

Catchwords:

Migration – Family Stream – Direction by Minister – Where Minister gave written Direction 62 – order for considering and disposing of Family Stream visa applications, under s 499 of the *Migration Act 1958* (Cth) – Where direction provides an order of priority for the processing of Family Stream visa applications – Whether the Direction is a legislative instrument per *Legislation Act 2003* (Cth) – Whether Direction obliged delegates of the Minister to follow the order of priority set out in s 8 of the Direction in every case – Whether Direction is inconsistent with the Minister’s obligation under the *Migration Act* to consider and determine each Family Stream visa application within a reasonable time - Whether Direction is inconsistent with s 51(1) of the *Migration Act*.

[Return to Top](#)

4: SPECIAL LEAVE GRANTED

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

Administrative Law

Southern Han Breakfast Point Pty Ltd v Lewence Construction Pty Ltd & Ors

S222/2015: [\[2016\] HCATrans 173](#)

Date heard: 28 July 2016 – *Special leave granted on limited grounds.*

Catchwords:

Administrative law – Jurisdictional error – Reference date – Whether the existence of a reference date in s 8 of the *Building and Construction Industry Security of Payment Act 1999* (NSW) to support a payment claim is a jurisdictional fact.

Appealed from NSWSC (CA): [\[2015\] NSWCA 288](#)

[Return to Top](#)

Criminal Law

Bucca v The Queen

A26/2016: [2016 HCATrans 121](#).

Date heard: 25 May 2016 – *Special leave granted.*

Catchwords:

Criminal law – Evidence – Confessions and admissions – Application of proviso – Where statement was incorrectly admitted – Misdirection and non-direction

Criminal law – Evidence – Propensity evidence – Possession of firearms – Whether court of appeal erred in holding that evidence regarding the possession of firearms was correctly admitted.

Appealed from SASC (CCA): [\[2015\] SASCF 180](#)

[Return to Top](#)

Castle v The Queen

A24/2016: [2016 HCATrans 121](#).

Date heard: 25 May 2016 – *Special leave granted*.

Catchwords:

Criminal law – Evidence – Confession and admissions – Application of proviso – Whether possibility jury relied on inadmissible statement made by the co-accused to reject oral evidence could be excluded.

Criminal law – Extended joint enterprise – Application of *McAuliffe v The Queen* (1995) 183 CLR 108.

Appealed from SASC (CCA): [\[2015\] SASCF 180](#)

[Return to Top](#)

RP v The Queen

S193/2016: [\[2016\] HCATrans 162](#)

Date heard: 21 July 2016 – *Special leave granted*.

Catchwords

Criminal law – Sexual intercourse with a child under 10 years – Where accused was aged between 11 and 13 years – *Doli incapax* – Whether presumption rebutted – Test for establishing whether *doli incapax* presumption rebutted.

Appealed from NSWSC (CCA): [\[2015\] NSWCCA 215](#)

[Return to Top](#)

The Queen v Kilic

M2/2016: [\[2016\] HCATrans 169](#)

Date heard: 28 July 2016 – *Special leave granted*.

Catchwords:

Criminal law – Sentencing – Where respondent doused victim with petrol and set her alight – Where respondent pleaded guilty to intentionally causing serious injury – Where offence carries a maximum of 20 years imprisonment – Where respondent was sentenced to 14 years for primary offence – Where Court of Appeal found that the sentence was manifestly excessive – Where Court of

Appeal reduced sentence – Principles regarding the review of sentencing.

Appealed from VSC(CA): [\[2015\] VSCA 331](#)

[Return to Top](#)

Land

New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act
S168/2016: [\[2016\] HCATrans 144](#).

Date heard: 17 June 2016 – *Special leave granted on limited grounds.*

Catchwords:

Land – Aboriginal land rights – *Aboriginal Land Rights Act 1983* (NSW) – Claim to Crown Land – Where land had been dedicated to gaol – Where gaol decommissioned but dedications not revoked – Whether land was lawfully occupied within the meaning of s 36(1)(b) of Act.

Appealed from NSWSC (CA): [\[2015\] NSWCA 349](#)

[Return to Top](#)

Negligence

Kendirjian v Lepore & Anor
S170/2015: [\[2016\] HCATrans 141](#); [\[2016\] HCASL 140](#).

Date heard: 17 June 2016 – *Special leave granted.*

Catchwords:

Negligence – Professional negligence – Lawyers – Advocates immunity – Duties and liabilities – Settlement of proceedings – Whether alleged failure to advice in relation to settlement offer was a decision affecting the conduct of the case in Court – application of test in *D’Orta-Ekenaike v Victorian Legal Aid* (2005) 223 CLR 1.

Appealed from NSWSC (CA): [\[2015\] NSWCA 132](#)

[Return to Top](#)

Procedure

Ainsworth & Ors v Albrecht & Anor

B37/2016: [\[2016\] HCATrans 122.](#)

Date heard: 25 May 2016 – *Special leave granted.*

Catchwords:

Procedure – *Body Corporate and Community Management Act 1997* (QLD) – Where applicants opposed the first respondent’s application to extend balcony – Whether Court of Appeal erred in holding that adjudicator was required to reach conclusion on whether the motion should have passed – Whether QCAT was correct in upholding that adjudicator should have determined whether the ‘motion was objectively unreasonable’.

Appealed from QSC (CA): [\[2015\] QCA 220](#)

[Return to Top](#)

Timbercorp Finance Pty Ltd (In Liquidation) v Collins & Anor

M98/2016: [\[2016\] HCATrans 159](#)

Date heard: 20 July 2016 – *Special leave granted.*

Catchwords:

Procedure – Group proceedings – Part 4A of the *Supreme Court Act 1986* (Vic) – Managed investment schemes – Collapse of schemes – Group proceeding on behalf of investors in schemes – Defendants include lender to investors – Dismissal of group proceeding – opt out provisions – Subsequent recovery proceedings by lender against group members – Group members had not opted out of group proceeding – Group members raised individual claims and defences in recovery proceedings – Whether failure to opt out of group proceeding precluded group members from raising individual claims and defences in recovery proceedings.

Procedure – Group proceedings – *Anshun* estoppel – Test – Whether unreasonable of group members not to have raised individual claims and defences during group proceeding – Whether group members estopped from raising individual claims and defences in subsequent proceedings by a reason of failure to raise individual claims and defences in the group proceedings – *Port of Melbourne Authority v Anshun Pty Ltd* (1981) 147 CLR 589.

Procedure – Group proceedings – Abuse of process – Failure of plaintiff of group members to raise individual claims in group

proceedings – Whether raising individual claims and defences by group members in subsequent proceedings is oppressive or brings administration of justice into disrepute.

Appealed from VSC (CA): [\[2016\] VSCA 128](#)

[Return to Top](#)

Timbercorp Finance Pty Ltd (In Liquidation) v Tomes

M101/2016: [\[2016\] HCATrans 168](#)

Date heard: 28 July 2016 – *Special leave granted.*

Catchwords:

Procedure – Group proceedings – Part 4A of the *Supreme Court Act 1986* (Vic) – Managed investment schemes – Collapse of schemes – Group proceeding on behalf of investors in schemes – Defendants include lender to investors – Dismissal of group proceeding – opt out provisions – Subsequent recovery proceedings by lender against group members – Group members had not opted out of group proceeding – Group members raised individual claims and defences in recovery proceedings – Whether failure to opt out of group proceeding precluded group members from raising individual claims and defences in recovery proceedings.

Procedure – Group proceedings – *Anshun* estoppel – Test – Whether unreasonable of group members not to have raised individual claims and defences during group proceeding – Whether group members estopped from raising individual claims and defences in subsequent proceedings by a reason of failure to raise individual claims and defences in the group proceedings – *Port of Melbourne Authority v Anshun Pty Ltd* (1981) 147 CLR 589.

Procedure – Group proceedings – Abuse of process – Failure of plaintiff of group members to raise individual claims in group proceedings – Whether raising individual claims and defences by group members in subsequent proceedings is oppressive or brings administration of justice into disrepute.

Appealed from VSC (CA): [\[2016\] VSCA 128](#)

[Return to Top](#)

Taxation

Hua Wang Bank Berhad v Commissioner of Taxation

[S135/2016](#): [\[2016\] HCATrans 101](#)

Date heard: 5 May 2016 – *Special leave granted.*

Catchwords:

Income Tax – Whether company is resident of Australia – Place of central management and control – Real business – Relevant principles in determining place of central management and control – Profits from sale of shares – Trading stock – Construction of s 70-40(2) of the *Income Tax Assessment Act 1997* (Cth).

Appealed from FCA (FC): [\[2015\] FCAFC 176](#)

[Return to Top](#)

Bywater Investments Limited & Ors v Commissioner of Taxation

[S134/2016](#): [\[2016\] HCATrans 100](#)

Date heard: 5 May 2016 – *Special leave granted.*

Catchwords:

Income Tax – Whether company is resident of Australia – Place of central management and control – Real business – Relevant principles in determining place of central management and control – Construction of s 70-40(2) of the *Income Tax Assessment Act 1997* (Cth).

Appealed from FCA (FC): [\[2015\] FCAFC 176](#)

[Return to Top](#)

Blank v Commissioner of Taxation

[S144/2016](#): [\[2016\] HCATrans 115](#)

Date heard: 16 May 2016 – *Special leave granted.*

Catchwords:

Income tax – Where appellant participated in profit participation schemes as an employee of company group in foreign countries and in Australia – Where employee allocated ‘profit participation units’ and equal number of shares in holding company – Whether amount assessable as ordinary income or as a capital gain.

Appeal from FCA (FC): [\[2015\] FCAFC 154](#)

[Return to Top](#)

Commissioner of State Revenue v ACN 005 057 349 Pty Ltd
M88/2016; M89/2016: [\[2016\] HCATrans 146](#).

Date heard: 17 June 2016 – *Special leave granted*.

Catchwords:

Taxation – Land tax – Where Commissioner of State Revenue raised a land tax liability under the *Land Tax Act 1958* (Vic) – Duplication error – Discretionary power of the Commissioner to amend assessments – Where the Commissioner refuses to amend assessments – Whether the issue of a tax assessment creates a tax debt.

Appealed from the VSC (CA): [\[2015\] VSCA 332](#)

[Return to Top](#)

Elecnet (Aust) Pty Ltd (as Trustee for the Electrical Industry Severance Scheme) v Commissioner of Taxation of the Commonwealth of Australia
M13/2016: [\[2016\] HCATrans 170](#)

Date heard: 28 July 2016 – *Special leave granted*.

Catchwords:

Taxation – Statutory construction – “Unit trust” – Meaning of a “unit trust” within Division 6C of *Income Tax Assessment Act 1936* (Cth) – Whether definition of “unit for the purposes of a “prescribed trust estate” can inform the meaning of a “unit trust” – Whether Electrical Industry Severance Scheme is a unit trust.

Appealed from FCA (FC): [\[2015\] FCAFC 178](#)

[Return to Top](#)

Workers Compensation

Comcare v Martin

S142/2016: [\[2016\] HCATrans 116](#)

Date heard: 16 May 2016 – *Special leave granted.*

Catchwords:

Workers compensation – The operation and exclusion in s 5A of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) – Causation of injury, disease or aggravation under the Act – Whether injury, disease or aggravation suffered ‘as a result of’ administrative action – Whether administrative action taken ‘in a reasonable manner.’

Appealed from FCA (FC): [\[2015\] FCAFC 169](#)

[Return to Top](#)

5: CASES NOT PROCEEDING OR VACATED

Native Title

Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland

[B26/2014](#): *Special case.*

Catchwords:

Native title – Indigenous Land Use Agreement (“ILUA”) – *North Stradbroke Island Protection and Sustainability Act 2011* (Qld) (“Principal Act”) – *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013* (Qld) (“Amendment Act”) – Amendment Act allowed for renewal of four mining leases for periods longer than those provided in Principal Act – Amendment Act replaced environmental authority provisions in Principal Act with new s 17 which no longer applied conditions to two mining leases – ILUA registered as area agreement under ss 24CA to 24CL of *Native Title Act 1993* (Cth) (“NTA”) – Whether ILUA binds defendant not to enact ss 9 and 12 of Amendment Act.

Constitutional law – Inconsistency – Commonwealth Constitution, s 109 – Whether Amendment Act is invalid under s 109 of Constitution by reason of inconsistency between Amendment Act and ss 24EA and 87 of NTA.

[Return to Top](#)

6: SPECIAL LEAVE REFUSED

Publication of Reasons: 20 July 2016

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Hines	Commissioner of Police (B17/2016)	Supreme Court of Queensland (Court of Appeal) [2016] QCA 3	Application dismissed [2016] HCASL 144
2.	Wales	Wales & Ors (M28/2016)	Supreme Court of Victoria (Court of Appeal) [2015] VSCA 365 [2015] VSCA 345	Application dismissed [2016] HCASL 145
3.	Ogbonna	CTI Logistics Ltd & Ors (P10/2016)	Federal Court of Australia [2016] FCA 239	Application dismissed [2016] HCASL 146
4.	Tanamerah Pty Limited	Estates Tibra Capital Pty Limited (S84/2016)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 23	Application dismissed [2016] HCASL 147
5.	Tanamerah Pty Limited & Anor	Estates Tibra Capital Pty Limited (S104/2016)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 42	Application dismissed [2016] HCASL 148
6.	SZUZN	Minister for Immigration and Border Protection & Anor (S88/2016)	Federal Court of Australia [2016] FCA 174	Application dismissed [2016] HCASL 149
7.	Singh & Ors	Minister for Immigration and Border Protection & Anor (S103/2016)	Federal Court of Australia [2016] FCA 272	Application dismissed [2016] HCASL 150
8.	AHV15	Minister for Immigration and Border Protection & Anor (S105/2016)	Federal Court of Australia [2016] FCA 237	Application dismissed [2016] HCASL 151
9.	Eather	Acting Director of Public Prosecutions (H2/2016)	Supreme Court of Tasmania (Court of Criminal Appeal) [2016] TASCCA 2	Application dismissed [2016] HCASL 152

[Return to Top](#)

Publication of Reasons: 21 July 2016

No.	Applicant	Respondent	Court appealed from	Result
1.	Neale & Anor	Commonwealth Bank of Australia & Ors (S215/2015)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 272	Application dismissed with costs [2016] HCASL 153
2.	Seymour & Anor	Commissioner of Taxation (S70/2016)	Full Court of the Federal Court of Australia [2016] FCAFC 18	Application dismissed with costs [2016] HCASL 154
3.	Khanna & Ors	Minister for Immigration and Border Protection & Anor (S81/2016)	Federal Court of Australia [2016] FCA 142	Application dismissed with costs [2016] HCASL 155
4.	Motor Vehicles Insurance Ltd	Breen & Ors (S96/2016)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 28	Application dismissed with costs [2016] HCASL 156
5.	Angel	The Queen (A8/2016)	Supreme Court of South Australia (Court of Criminal Appeal) [2016] SASCFC 2	Application dismissed [2016] HCASL 157
6.	Al Shakarji	The Queen (B20/2016)	Supreme Court of Queensland (Court of Appeal) [2016] QCA 29	Application dismissed [2016] HCASL 158
7.	Pancious	Searle (M39; M41/2016)	Family Court of Australia	Application dismissed [2016] HCASL 159
8.	Pancious	Searle & Anor (M40/2016)	Family Court of Australia	Application dismissed [2016] HCASL 159
9.	Love	KWS Capital Pty Ltd (P65/2015)	Supreme Court of Western Australia (Court of Appeal) [2015] WASCA 237	Application dismissed [2016] HCASL 160
10.	SZRAG	Minister for Immigration and Border Protection & Anor (S102/2016)	Federal Court of Australia [2016] FCA 189	Application dismissed [2016] HCASL 161
11.	Fan	South Eastern Sydney Local Health District (S113/2016)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 64	Application dismissed [2016] HCASL 162
12.	Ioannidis	The Queen (A30/2015)	Supreme Court of South Australia (Court of Criminal Appeal) [2015] SASCFC 158	Application dismissed [2016] HCASL 163
13.	Lowe	The Queen (M6/2016)	Supreme Court of Victoria (Court of Appeal) [2015] VSCA 327	Application dismissed [2016] HCASL 164
14.	SZTBJ	Minister for Immigration and Border Protection & Anor (S257/2015)	Federal Court of Australia [2015] FCA 1182	Application dismissed with costs [2016] HCASL 165
15.	BC	The Queen (S17; S18; S19/2016)	Supreme Court of New South Wales (Court of Criminal Appeal) [2015] NSWCCA 327	Application dismissed [2016] HCASL 166

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
16.	Gazis	South Sydney Junior Rugby League Club Ltd & Ors (S55/2016)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 8	Application dismissed with costs [2016] HCASL 167

[Return to Top](#)

Publication of Reasons: 27 July 2016

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Mentink	Secretary, Department of Social Services (B18/2016)	Full Court of the Federal Court of Australia [2016] FCAFC 39	Application dismissed [2016] HCASL 168
2.	MZZUQ	Minister for Immigration and Border Protection & Anor (M49/2016)	Federal Court of Australia [2015] FCA 157	Application dismissed [2016] HCASL 169
3.	Rankilor	City of South Perth (P6/2016 & P12/2016)	Supreme Court of Western Australia (Court of Appeal) [2016] WASCA 28 [2016] WASCA 29	Applications dismissed [2016] HCASL 170
4.	Luo	Liew (S71/2016)	Family Court of Australia	Application dismissed [2016] HCASL 171
5.	SZUYK	Minister for Immigration and Border Protection & Anor (S92/2016)	Federal Court of Australia [2016] FCA 216	Application dismissed [2016] HCASL 172

[Return to Top](#)

28 July 2016: Brisbane

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Baiada Poultry Pty Ltd	Glenister & Anor (M16/2016)	Supreme Court of Victoria (Court of Appeal) [2015] VSCA 344	Application dismissed with costs [2016] HCATrans 171
2.	State of Western Australia	Banjima People & Ors (P2/2016)	Full Court of the Federal Court of Australia [2015] FCAFC 171	Application dismissed with costs [2016] HCATrans 172
3.	Perilya Broken Hill Limited	Valuer-General of New South Wales (S13/2016)	Supreme Court of New South Wales (Court of Appeal) [2015] NSWCA 400	Application dismissed with costs [2016] HCATrans 174
4.	Saleh	The Queen (S45/2016)	Supreme Court of New South Wales (Court of Criminal Appeal) [2015] NSWCCA 299	Application dismissed [2016] HCATrans 175

[Return to Top](#)