SHORT PARTICULARS OF CASES
APPEALS

JUNE 2026

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ESTATE OF THE LATE GEOFFREY CROFT v MTH & ORS (S155/2025)

Court appealed from: Supreme Court of New South Wales
Court of Appeal
[2025] NSWCA 122

Date of judgment: 6 June 2025

Special leave granted: 9 October 2025

The issues in this appeal concern the duties of a court to a self-represented litigant, the admissibility of criminal convictions as evidence in subsequent civil proceedings, particularly the evidentiary effect of a certificate of conviction, and the ability of an appellate court to reassess damages.

Background

The first respondent became a ward of the State in 1967 when she was four years old. For most of her childhood, she stayed with foster parents who had hoped to adopt her. In 1979, when she was 16 years old, the first respondent was placed by the State of New South Wales (the second respondent) into the temporary care of the late Geoffrey Croft (whose estate is the appellant in this appeal) and Mrs Croft (the third respondent). Mr Croft sexually assaulted the first respondent between 1979 and 1980.

In 2019, Mr Croft was convicted by a jury of five offences committed against the first respondent, two offences of rape contrary to s 63 of the *Crimes Act 1900* (NSW) and three offences of assaulting a female over the age of 16 years and committing an act of indecency against her contrary to s 76. Mr Croft was also convicted of four sexual assaults against another child, RS, who had been fostered by Mr Croft prior to the first respondent.

Mr Croft unsuccessfully appealed his convictions to the Court of Criminal Appeal and had sought special leave to appeal to this Court. However, in 2022 he died before his application for special leave was determined and the special leave application was dismissed.

The *Evidence Act 1995* (NSW)

Section 178 of the *Evidence Act 1995* (NSW) ('the Act') provides a procedural method to prove the existence of a past conviction, namely by way of a 'certificate of conviction'. However, s 91 of the Act prevents the use of a prior conviction as providing evidence of the truth of the facts on which the conviction was based. Section 92(2) creates an exception to this limitation in a civil proceeding, allowing a certificate of conviction to be used to prove a person was convicted, provided that the conviction is not under appeal.

Civil claim for damages

The first respondent brought a civil proceeding against Mr Croft (whose estate was later substituted as a defendant) from whom she claimed damages for the sexual and physical assaults he perpetrated against her, against the second respondent

in relation to her time as a ward of the State, and against the third respondent, alleging she was negligent in failing to prevent or report the abuse.

At trial, the primary judge found that none of the allegations of assault had been made out as he did not accept the first respondent's evidence as to the assaults, noting that the first respondent was unable to arrange the attendance of RS to give evidence. The primary judge also inferred that the first respondent was not seeking to rely on the convictions to prove that Mr Croft had committed the offences for which he was convicted and none of the first respondent's claims were successful.

The first respondent challenged the primary judge's decision in the Court of Appeal. The Court of Appeal (Mitchelmore and Adamson JJA, Price AJA) partly allowed the first respondent's appeal, entering judgment in her favour against the estate.

In allowing the appeal against the estate, the Court of Appeal found the primary judge had erroneously inferred that the first respondent was not seeking to rely on Mr Croft's convictions to prove that he had committed the offences for which he was convicted, and that this in turn significantly impacted the primary judge's assessment of the first respondent's reliability and credibility. The Court of Appeal considered that a certificate of conviction was admissible under the Act, would have provided prima facie evidence that the elements of the offending had occurred on the balance of probabilities, and therefore the first respondent's evidence would have been corroborated by the certificate.

The Court of Appeal held that the primary judge owed an obligation to the first respondent to ensure that she did not, due to lack of legal skill, fail to claim rights or put forward legal arguments and observed that the first respondent was clearly wanting to rely on the convictions to prove the offending had taken place. By not being alerted to the evidentiary pathway available under the Act, the Court of Appeal held that the first respondent had been denied procedural fairness.

In reassessing damages, the Court of Appeal approached the matter as if the certificate of conviction had been tendered, deciding that it was admissible under the Act and would not have created a forensic disadvantage against the estate. The first respondent was awarded damages against the estate in a substantially larger sum than the trial judge would have ordered.

This appeal

As the first respondent is self-represented, amici curiae were appointed by the Court to oppose the appeal and specifically address whether s 92 of the Act enabled the tender of any certificate of conviction against the estate.

The second and third respondents have filed submitting appearances.

The estate's grounds of appeal are:

1. The Court of Appeal erred in holding that the trial judge had an obligation to ensure that the appellant did not, because of a lack of legal skill, fail to claim rights or put forward legal arguments.

2. The Court of Appeal erred in holding that it was appropriate for the Court of Appeal to decide the appeal as if a certificate of conviction had been tendered

pursuant to s 178 of the Act it not being in dispute that such certificate had not been served or tendered prior to or during the proceedings.

3. The Court of Appeal erred in holding that the trial judge had disregarded the probative weight of a conviction to prove the elements of an offence when a certificate pursuant to s 178 of the Act had not been tendered.

4. The Court of Appeal erred in holding that it could reassess damages in the absence of a finding that the trial judge's credit findings were glaringly improbable or contrary to compelling inferences.

ZONIA HOLDINGS PTY LTD (ACN 008 565 286) v COMMONWEALTH BANK OF AUSTRALIA (ACN 123 123 124) (S12/2026); BARON & ANOR v COMMONWEALTH BANK OF AUSTRALIA (ACN 123 123 124) (S13/2026)

Court appealed from:	Full Court of the Federal Court of Australia [2025] FCAFC 63; [2025] FCAFC 123
Date of judgment:	7 May 2025; 4 September 2025
Special leave granted:	13 February 2026

Factual background

On 3 August 2017, AUSTRAC announced that it had commenced regulatory action against the respondent ('the CBA') for noncompliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) for failing to submit transaction reports, carry out risk assessments and monitor accounts following the introduction of its 'intelligent deposit machines' in 2012. After the announcement, the CBA's share price fell by $3.29 per share. The CBA ultimately paid $700 million in penalties for its contraventions.

Procedural background

In 2017, the appellants ('the shareholders') each commenced separate shareholder class actions against the CBA seeking compensation for what they alleged to be the inflated price of their shares, which they argued was attributable to the CBA's failure to inform the market of its contraventions. The two class actions have been managed together but not consolidated. The shareholders alleged that between 2015 and 2017, the CBA breached its continuous disclosure obligations under the *Corporations Act 2001* (Cth) ('the Act') and the Australian Securities Exchange Listing Rules by failing to disclose information about its contraventions to the ASX. The continuous disclosure obligations require an entity, once it becomes aware, to disclose to the ASX any information concerning it that a reasonable person would expect to have a material effect on its share price or value. The shareholders argued that if they had known earlier, the shares would have been worth less and they would not have paid such a high price for them.

At first instance, the primary judge dismissed the proceedings, finding that there was no breach of the continuous disclosure laws as the information was not information that would have a material effect on the price or value of the CBA's shares and the shareholders had not established that the share price was inflated or that they had suffered any loss from the alleged non-disclosure.

The shareholders appealed to the Full Court (Murphy, Moshinsky and Button JJ) who partly overturned the primary judge's decision. The Full Court found that some of the undisclosed information was material to the share price and the CBA had contravened its continuous disclosure obligations. However, the Full Court ultimately found that the shareholders had failed to quantify their loss and were not able to prove that the share price drop of $3.29 was wholly attributable to the

non-disclosure, rather than other negative information that was released at the same time. The Full Court dismissed the shareholders' claim for damages.

These appeals

The issues in these appeals are how causation and loss are established in relation to a share price drop, what kind of evidence is sufficient to prove causation and quantify loss, where the onus lies, and the application of the facilitation principle (when the onus shifts) where precise quantification of loss is difficult or impossible due to a defendant's conduct.

The shareholders contend that the Full Court should have first considered whether the non-disclosure caused shareholders to lose money, rather than jump to whether it was possible to precisely quantify the loss, and argue that the fact that the share price dropped after the announcement should be enough to prove causation of some loss. They further contend that in such circumstances where it is unrealistic to precisely quantify loss, a reasonable estimate would suffice, and the CBA should not benefit from the uncertainty about the exact amount of loss because it was their own conduct that created that uncertainty.

The **grounds of appeal** in both appeals are:

1. The court committed the following serious methodological errors in its approach to causation, loss and quantum of damage:

    a. Assessing whether the appellants had established a precise quantification of their loss (damages) before making any finding on whether they had proven that CBA's wrongful conduct caused group members to sustain some loss (damage);

    b. Thereby foreclosing the application of the principles in *Cessnock City Council v 123 259 932 Pty Ltd* and *Placer (Granny Smith) Pty Ltd v Thiess Contractors Pty Ltd*, because the appellants' failure to establish precisely the quantum of their loss was conflated with a failure to provide any evidence of loss;

    c. Failing to find, as a matter of principle, that, in a non-disclosure case relying on market-based causation, where an event study has established an abnormal price movement by reason of the disclosure of matters which include the wrongfully withheld matters: (i) some loss is prima facie established; and (ii) the Court must then consider what proportion of that abnormal price movement reflects the quantum of that loss by reference to matters including whether the wrongdoer's conduct is the source of the difficulties in that assessment.

2. The court, having accepted that:

    a. as at April 2017, the 'September 2015 Late TTR Information' and 'September 2015 Account Monitoring Failure Information' (together, Undisclosed Information) were each 'material' for the purposes of ss 674 and 677 of the Act;

b. market based causation, established by reliance on an event study, was an available means of quantifying group members' loss arising from CBA's wrongful non-disclosure of the material information identified in (a) above; and

c. there was an abnormal decline in the price of CBA's shares over the two day 'event window' when the Undisclosed Information was revealed to the market, in the amount of $3.29 per share;

erred in failing to find that CBA's wrongful non-disclosure of the Undisclosed Information inevitably caused group members *some* loss, in the form of *some* decline in the price of their CBA shares equating to *some* portion of the abnormal decline of $3.29, and in failing to attempt a reasonable estimation of what that loss was on the basis of the evidence before it, taking into account that it was not possible to disentangle with any accuracy the abnormal decline attributable to the Undisclosed Information from the other 'bad news' and that CBA had not sought to do so.

CBA has filed a **notice of cross-appeal in both appeals**, subject to a grant of special leave of the hearing. The grounds of cross-appeal are:

1. The Full Court, in considering the appellants' case that the respondent was required to disclose the pleaded 'information' to the ASX and by not doing so, contravened s 674(2) and Listing Rule 3.1, erred in not dismissing the appeal on the additional basis that the pleaded 'information' was incomplete and misleading, and, further, erred:

   a. in finding that the appellants were not required to plead a form of information that was not misleading and incomplete and therefore capable of disclosure under the ASX Listing Rules, as part of a complete cause of action;

   b. in finding that the respondent was required to plead that the pleaded information was misleading and/or incomplete:

      i. pursuant to r 16.08 of the Federal Court Rules 2011 (Cth); and/or

      ii. in circumstances where: the respondent denied that the information was required to be disclosed; the case was conducted on the basis that the respondent's position was that, as a threshold matter, the pleaded information was misleading and incomplete, and therefore not in a form that was appropriate for disclosure, due to unchallenged factual matters that were part of the evidence in the proceeding; and the appellants did not contend and there was no finding that they were taken by surprise or otherwise prejudiced;

   c. in finding that the completeness and accuracy of the pleaded information should not be dealt with as a threshold issue under s 674 of the Act and ASX Listing Rule 3.1 and should instead be dealt with at the materiality stage of analysis.

2. In relation to the September 2015 Late TTR Information and the September 2015 Account Monitoring Failure Information ('the Information'), the Full Court erred in finding that the Information was material as at 24 April 2017, and that

the respondent contravened ASX Listing Rule 3.1 and s 674 of the Act by not disclosing the Information, in circumstances where:

a. the Full Court failed to properly consider and apply the correct statutory test, namely, to consider the extent to which the Information would have, or would be likely to have, borne upon any investment decision by an investor, and thereby have influenced that investor in their decision to acquire or dispose of CBA securities;

b. the Full Court discounted the advantages enjoyed by the primary judge in observing the evidence directed at the questions raised by the statutory test, and in finding that the primary judge erroneously assessed materiality, particularly in circumstances where it was found that there was no error in the primary judge's assessment of the evidence as relevant to the statutory test;

c. the Full Court erred in finding that the contraventions the basis of the Information were strict liability offences and that there was no apparent defence to such contraventions in circumstances where s 236 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) provided such a defence.

CBA has also filed a **notice of contention in S13/2026** contending:

1. The Full Court, in considering the appellants' case that the respondent was required to disclose the pleaded 'information' to the ASX and by not doing so, contravened s 674(2) and Listing Rule 3.1, erred in not dismissing the appeal on the additional basis that the pleaded 'information' was incomplete and misleading, and, further, erred:

    a. in finding that the appellants were not required to plead a form of information that was not misleading and incomplete and therefore capable of disclosure under the ASX Listing Rules, as part of a complete cause of action;

    b. in finding that the respondent was required to plead that the pleaded information was misleading and/or incomplete:

        i. pursuant to r 16.08 of the Federal Court Rules 2011 (Cth); and/or

        ii. in circumstances where: the respondent denied that the information was required to be disclosed; the case was conducted on the basis that the respondent's position was that, as a threshold matter, the pleaded information was misleading and incomplete, and therefore not in a form that was appropriate for disclosure, due to unchallenged factual matters that were part of the evidence in the proceeding; and the appellants did not contend and there was no finding that they were taken by surprise or otherwise prejudiced;

    c. in finding that the completeness and accuracy of the pleaded information should not be dealt with as a threshold issue under s 674 of the Act and ASX Listing Rule 3.1 and should instead be dealt with at the materiality stage of analysis.

2. In relation to the September 2015 Late TTR Information and the September 2015 Account Monitoring Failure Information, the Full Court erred in finding that the Information was material as at 24 April 2017, and that the respondent contravened ASX Listing Rule 3.1 and s 674 of the Act by not disclosing the Information, in circumstances where:

    a. the Full Court failed to properly consider and apply the correct statutory test, namely, to consider the extent to which the Information would have, or would be likely to have, borne upon any investment decision by an investor, and thereby have influenced that investor in their decision to acquire or dispose of CBA securities;

    b. the Full Court discounted the advantages enjoyed by the primary judge in observing the evidence directed at the questions raised by the statutory test, and in finding that the primary judge erroneously assessed materiality, particularly in circumstances where it was found that there was no error in the primary judge's assessment of the evidence as relevant to the statutory test;

    c. the Full Court erred in finding that the contraventions the basis of the Information were strict liability offences and that there was no apparent defence to such contraventions in circumstances where s 236 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) provided such a defence.

OTSUKA PHARMACEUTICAL CO., LTD & ORS v SUN PHARMA ANZ PTY LTD (S20/2026)

Court appealed from: Full Court of the Federal Court of Australia [2025] FCAFC 161

Date of judgment: 1 December 2025

Special leave granted: 12 March 2026

Factual background

The first appellant is the patentee of Australian Patent No. 2004285448 entitled 'Controlled release sterile injectable aripiprazole[1] formulation and method' which has a priority date of 23 October 2003 ('the Patent'). The Patent was filed on 18 October 2004 on a standard 20-year term and expired on 18 October 2024. The second appellant is an exclusive licensee and the third and fourth appellants are sub-licensees pursuant to a deed dated 7 May 2004. The respondent has standing to seek rectification of the Register by removal of the extension under s 192 of the *Patents Act 1990* (Cth) ('the Act') as a 'person aggrieved'.

On 13 August 2014, the first appellant sought an extension of the term of the Patent. The extension request was based on a single alleged 'pharmaceutical substance' predicated on Claim 16 of the Patent and two products listed on the Australian Register of Therapeutic Goods ('the ARTG'). The two ARTG products are kits comprising of a vial of freeze-dried powder (aripiprazole and vehicle) and another vial containing a solvent for an injection named ABILIFY MAINTENA.

On 30 September 2014, IP Australia initially rejected the extension request stating that the substance found within the ARTG Goods was aripiprazole itself. After further correspondence, the extension was granted to the first appellant. The Patent will presently expire on 25 July 2029.

Procedural background

The respondent commenced proceedings in the Federal Court contending that the extension was wrongly granted and/or was wrongly existing in the Register of Patents and should be removed. In response, the appellants relied on eight claims of the Patent that were exemplified by:

1. claims concerning controlled release liquid (that is ready to use) injectable formulations; and

2. claims that involve freeze-dried controlled release formulations

(together, 'the PTE Claims') to substantiate the extension request, and also relied on 10 pharmaceutical substances per se.

[1] Aripiprazole is an antipsychotic agent which achieves a therapeutic effect (or mechanism of action) via the binding of aripiprazole molecules to receptors in the brain, which is useful for treating schizophrenia and Bipolar I disorder.

The appellants also cross-claimed for threatened infringement in respect of the respondent's proposed generic version of the product, and for contravention of s 18(1) of the Australian Consumer Law being Sch 2 to the *Competition and Consumer Act 2010* (Cth).

The primary judge (Downes J) found that the extension was invalid and upheld the respondent's claim. The primary judge revoked each of the PTE Claims and ordered that the Register of Patents be rectified so as to remove all reference to the term of the Patent being extended to 25 July 2029 and record that the term of the Patent expired on 18 October 2024. The primary judge also dismissed the cross-claim.

The appellants appealed to the Full Court and the respondent filed a notice of contention and cross-appealed. While the Full Court found in favour of the appellants on several grounds, it was redundant due to the respondent's success on its notice of contention. The Full Court held that formulations are not claims to a pharmaceutical substance per se but instead are claims to a new modified release dosage form of the active ingredient, aripiprazole, limited by method of delivery, dissolution and release time. The Full Court ultimately held that formulations should not qualify for an extension based on the Patent.

This appeal

The appellants appealed to this Court, where the principle issue concerns whether the expression 'pharmaceutical substance' as defined in s 70 of the Act includes both an active pharmaceutical ingredient ('an API') and a formulation consisting of an API, or should be defined to exclude anything 'comprised of anything other than active ingredients'.

The sole **ground of appeal** is that the Full Court erred in holding that:

a. the Formulations are not 'pharmaceutical substances *per se*' for the purposes of s 70(2)(a) of the Act; and

b. for the Controlled Release Injectable Formulations only, s 70(3)(a) of the Act was not satisfied,

such that the Extension of the term of the Patent was invalid and the respondent's product did not infringe the PTE Claims.

By **notice of contention**, the respondent seeks to raise the following issues:

1. Having correctly found that the relevant version of the Act which governed the First Appellant's claimed right to extend the Patent was the Act in force at the date of the Request to extend the term of the Patent (13 August 2014) or, alternatively, was such later version of the Act relevant to the matters in dispute that was materially the same, the Full Court ought to have begun by considering the statutory text of that Act.

2. Consistently with the above, the Full Court ought to have found that:

    a. the amendments made to the Act by the 2006 Amendment Act, which included the repeal of s 78(2) and the insertion of s 119A, formed part of the Act and provide contextual support for the conclusion

which the Full Court otherwise correctly reached on the meaning of 'pharmaceutical substance'; and

b. the EM 2006 was relevant under s 15AB of the *Acts Interpretation Act 1901* (Cth) as part of the exercise of the construction of the Act as in force at the time of the right in suit and supported the conclusion which the Full Court otherwise correctly reached on the meaning of 'pharmaceutical substance'.

Subject to the grant of special leave to appeal, the respondent **cross-appeals** on the following grounds:

1. The Full Court erred in holding that the primary judge erred in adopting a test for lack of definition within s 40(2)(b) and/or lack of clarity within s 40(3) of the Act in relation to a claim incorporating a limitation by result that 'places the bar too high'.

2. The Full Court erred:

   a. in holding that the primary judge erred in failing to find as a matter of construction of the Patent that blood plasma concentration was a surrogate for the 'release of aripiprazole' as set out in the PTE Claims;

   b. in holding that the primary judge erred in finding that the Patent fails to provide a 'workable standard' for measuring release by blood plasma concentration or that the respondent did not advance a case that formulations falling within the PTE Claims 'could not be considered by reference to a concentration vs time analyses as conducted in Example 3' of the Patent;

   c. generally, in departing from the primary judge's assessment of matters properly informed by expert evidence when the primary judge gave cogent reasons for preferring the evidence of Professor Winter to Professor Evans which reasons were untouched by the Full Court's analysis; and

   d. in finding error in the primary judge's reasoning without addressing, or finding error, in the primary judge's analysis of the appellants' confidential documents which confirmed that a person skilled in the art would not consider that blood plasma concentration data alone would be sufficient to determine if the limitation by result defined in terms of release in the claims has been met in relation to any given formulation.

The Generic and Biosimilar Medicines Association has been granted leave to appear at the hearing as amicus curiae.