

SHORT PARTICULARS OF CASES
APPEALS

SEPTEMBER 2026

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This document is intended as a brief summary of the matters heard before the Full Court and is not a substitute for the submissions or ultimate reasons of the Court.

WHITE AUSTRALIA PARTY INC. & ANOR v THE COMMONWEALTH OF AUSTRALIA & ANOR (M50/2026)

Date special case referred to Full Court: 27 July 2026

Factual background

This case concerns the validity of Pt 5.3B of the *Criminal Code Act 1995* (Cth) ('the *Criminal Code*') which commenced on 22 January 2026 and was inserted by the *Combatting Antisemitism, Hate and Extremism (Criminal and Migration Laws) Act 2026* (Cth). Pt 5.3B allows the listing of certain organisations as 'prohibited hate groups'. Once listed as a prohibited hate group, it becomes a crime to be a member of or otherwise engaged with one.

The second plaintiff is the national president of the first plaintiff, a voluntary incorporated association registered on 20 December 2025 ('the Association'). On 25 April 2026, the Association applied to register as a political party with the Australian Electoral Commission.

On 15 May 2026, the Governor-General made the *Criminal Code (Prohibited Hate Group—White Australia) Regulations 2026* (Cth) specifying 'White Australia', including the Association, as a prohibited hate group.

The plaintiffs have filed a notice of a constitutional matter and the Attorneys-General for New South Wales, South Australia, Tasmania, Victoria and Western Australia intervene in support of the defendants, whilst the Attorney-General of Queensland intervenes in support of no party. Camp Sovereignty and the Free Speech Union were granted leave to intervene and appear as *amicus curiae* respectively based on their written submissions.

Special case

Chief Justice Gageler ordered the following questions in the form of a Special Case be referred for the opinion of the Full Court:

1. Is Pt 5.3B of the *Criminal Code* invalid on the basis that it is not a law with respect to any head of Commonwealth legislative power?
2. Is Pt 5.3B of the *Criminal Code* invalid on the basis that it impermissibly burdens the implied freedom of political communication?
3. Is Pt 5.3B of the *Criminal Code* invalid on the basis that it infringes Ch III of the Constitution?
4. What, if any, relief should be granted to the Plaintiffs?
5. Who should pay the costs of this Special Case?

PRESIDENT OF THE LEGISLATIVE COUNCIL OF NEW SOUTH WALES v CULLEN & ORS (S17/2026)

Court appealed from: Court of Appeal of the Supreme Court of New South Wales
[2025] NSWCA 278

Date of judgment: 23 December 2025

Special leave granted: 12 March 2026

Factual background

At issue in this appeal is the validity of certain provisions of the *Parliamentary Evidence Act 1901* (NSW) ('the Act') that prescribe a procedure available to the office of the Appellant (and to the Speaker of the Legislative Assembly of New South Wales) where a person has failed to comply with a summons to attend and give evidence before a committee of the Legislative Council (or the Legislative Assembly) of New South Wales.

The First Respondent successfully challenged the validity of ss 7, 8 and 9 of the Act after he had failed to comply with a summons issued by the Privileges Committee of the Legislative Council. Those sections relevantly provide that the President may certify, to a Supreme Court judge, facts of a summoned person's non-attendance (s 7), that the judge shall issue a warrant for the person's apprehension and bringing before the committee to give evidence (s 8) and that all persons acting under the warrant are authorised to retain the person in custody for producing the person to give evidence and finally be discharged from custody pursuant to any order issued by the Appellant (s 9).

Procedural background

The Appellant seeks to overturn a declaration made by the Court of Appeal (Bell CJ, Leeming and Free JJA) that ss 7, 8 and 9 were invalid. That declaration was made upon the Court of Appeal finding that the regime provided by those sections substantially impaired the institutional integrity of the Supreme Court, as there was a lending of an appearance of judicial authority to decisions of the President (or of the Speaker) for a person's indefinite detention.

The Attorney-General for New South Wales and the Speaker of the Legislative Assembly intervened in the proceeding in the Court of Appeal. They are the Second Respondent and Third Respondent respectively in this Court. The Third Respondent has filed a submitting appearance, while the Second Respondent, like the First Respondent, resists the Appellant's appeal.

This appeal

The sole ground of appeal is:

1. The Court of Appeal wrongly concluded that ss 7, 8 and 9 of the Act contravene the limitation on State legislative power identified in *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 and are therefore invalid.

Notices of a constitutional matter were filed by the Appellant. The Attorneys-General of the Commonwealth, South Australia and the Northern Territory are intervening in the appeal. The Honourable Damien Tudehope MLC has been granted leave to appear as *amicus curiae* in the appeal.

EDMUNDS v THE KING (M52/2026)

Court appealed from: Supreme Court of Victoria Court of Appeal
[2025] VSCA 31

Date of judgment: 11 March 2025

Special leave granted: 7 May 2026

Factual background

The appellant was convicted of murder on the basis that she was complicit in the murder of Michael Caposiena ('MC') which was carried out by her late husband Glen Cassidy ('GC') who died in the same event.

Procedural background

Because the prosecution was predicated on her complicity in GC's actions it was necessary, in order to convict the appellant, to show that GC committed murder. The appellant sought to raise the possibility that the principal offender may have been acting in self-defence, but she was not permitted to raise the point before the jury.

The Court of Appeal found that GC could not have availed himself of self-defence because the 'evidence never suggested a reasonable possibility' that he believed it was necessary to shoot MC.

This appeal

The grounds of appeal are:

1. The Court of Appeal erred in holding or assuming that the 'original aggressor rule' survived the reduction of self-defence in Victoria to statute;
2. The Court of Appeal erred in holding or finding, at least implicitly, that a person apparently committed to a criminal purpose cannot also act in self-defence; and
3. The Court of Appeal erred in its assessment that there was no evidence to suggest even the reasonable possibility that the person who caused the death of the deceased, with whom the accused was alleged to be complicit, believed he needed to act in self-defence.

The respondent has filed a notice of contention containing the following ground:

1. The Court of Appeal erred in concluding that the evidence led at trial disclosed a reasonable possibility that the conduct of MC was not 'lawful conduct' for the purposes of s 322L(a) of the *Crimes Act 1958* (Vic).

SMITH v CHIEF EXECUTIVE, QUEENSLAND CORRECTIVE SERVICES & ORS (B58/2026)

Court appealed from: Court of Appeal of the Supreme Court of
Queensland
[2026] QCA 99

Date of judgment: 29 May 2026

Special leave granted: 6 August 2026

Factual background

This appeal concerns the statutory interpretation of certain provisions of the *Corrective Services Act 2006* (Qld) ('the CSA') and the role of the *Human Rights Act 2019* (Qld) ('the HRA') in that interpretation.

The appellant is a prisoner who will be 39 years of age when she is eligible for parole and 41 years of age on release. To reduce the risk of age-related infertility, the appellant applied for approval under s 22 of the CSA to undergo a process known as OÖCYTE cryopreservation, more commonly referred to as egg freezing. The appellant's application was refused by the Chief Executive of Queensland Corrective Services on the basis that s 22(2) of the CSA prohibits a prisoner from participating in 'assisted reproductive technology'.

Procedural background

The Court of Appeal of the Supreme Court of Queensland (Mullins P, Brown and Bradley JJA) unanimously agreed with the primary judge (Sullivan J) and found that the process of egg extraction and freezing is within the meaning of 'assisted reproductive technology' on the proper construction of s 22(2) of the CSA. Their Honours also found that there is no alternative choice for construction having regard to the ordinary meaning of the words in s 22(2), read together with the broader provisions of the CSA and the purpose of the provision with reference to extrinsic materials, and therefore unnecessary to undertake construction of s 22(2) to be more compatible with human rights pursuant to s 48 of the HRA.

This appeal

The grounds of appeal are:

1. The Court of Appeal erred in holding that s 22(2) of the CSA operates to prohibit women prisoners from freezing their eggs during their custodial term.
2. The Court of Appeal erred in holding that s 48(1) of the HRA has no role to play in the interpretation of a statutory provision unless, when the provision is construed without reference to human rights, its language admits of at least two constructional choices.