HIGH COURT OF AUSTRALIA

GAGELER CJ,
GORDON, EDELMAN, JAGOT AND BEECH-JONES JJ

Matter No S20/2025

HUNT LEATHER PTY LTD & ANOR — APPELLANTS

AND

TRANSPORT FOR NSW — RESPONDENT

Matter No S21/2025

HUNT LEATHER PTY LTD & ORS — APPELLANTS

AND

TRANSPORT FOR NSW — RESPONDENT

Hunt Leather Pty Ltd v Transport for NSW [No 2]
Hunt Leather Pty Ltd v Transport for NSW [No 2]
[2026] HCA 4
Date of Judgment: 11 March 2026
S20/2025 & S21/2025

ORDER

In Matter No S20/2025:

1. *Application allowed.*

2. *The orders of this Court made on 17 December 2025 be varied as follows:*

    1. *Appeal allowed in part.*

2. *The orders of the Court of Appeal of the Supreme Court of New South Wales made on 18 September 2024 be set aside and, in their place, it be ordered that the appeal and cross-appeal be dismissed with costs, save for that aspect of the cross-appeal dealing with the costs of the proceedings below.*

3. *The respondent pay the appellants' costs of the appeal.*

4. *The proceedings be remitted to the Court of Appeal of the Supreme Court of New South Wales for determination of that aspect of the cross-appeal dealing with the costs of the proceedings below (being the application for leave to appeal in proceedings 2024/253975).*

In Matter No S21/2025:

1. *Application allowed.*

2. *The orders of this Court made on 17 December 2025 be varied as follows:*

    1. *Appeal allowed in part.*

    2. *The orders of the Court of Appeal of the Supreme Court of New South Wales made on 18 September 2024 be set aside and, in their place, it be ordered that the appeal and cross-appeal be dismissed with costs, save for that aspect of the cross-appeal dealing with the costs of the proceedings below.*

    3. *The respondent pay the appellants' costs of the appeal.*

    4. *The proceedings be remitted to the Court of Appeal of the Supreme Court of New South Wales for determination of that aspect of the cross-appeal dealing with the costs of the proceedings below (being the application for leave to appeal in proceedings 2024/253975).*

On appeal from the Supreme Court of New South Wales

Representation

The appellants in each matter are represented by Banton Group

The respondent in each matter is represented by Lander & Rogers

CATCHWORDS

Hunt Leather Pty Ltd v Transport for NSW [No 2]
Hunt Leather Pty Ltd v Transport for NSW [No 2]

Practice and procedure – Judgments and orders – Application to recall and amend orders – Where party did not seek orders for remittal of costs issue in notice of appeal – Where party maintained remittal sought in written submissions – Where justification for remittal overlooked – Where error or omission obvious – Whether discretionary power to correct error or omission should be exercised.

Words and phrases – "accidental slip or omission", "applications to recall and amend orders", "discretionary power to correct an error or omission", "error or omission is plain or obvious", "incidental and necessary to the exercise of jurisdiction", "interests of justice", "no relevant disadvantage", "recall and amend orders", "source of power".

High Court Rules 2004 (Cth), r 3.01.2.

1 GAGELER CJ, GORDON, EDELMAN, JAGOT AND BEECH-JONES JJ. These appeals were decided on 17 December 2025. Part of the orders made in each appeal included the dismissal with costs of the appeal and cross-appeal in the Court of Appeal of the Supreme Court of New South Wales. The result reached by the trial judge was upheld. This Court, like the Court of Appeal, also upheld the trial judge's rejection of the claims by the appellants (collectively referred to as "Hunt Leather and Ancio Investments") concerning recovery of litigation funding costs. This Court held that there was no basis to disturb the apportionment of costs made by the trial judge.[1]

2 In their notices of appeal, and in the section of their written submissions in this Court dealing with those orders sought, Hunt Leather and Ancio Investments did not seek any orders for remittal to the Court of Appeal of the costs of the trial in the event that the trial judge's other orders were upheld. In a footnote in their written submissions, however, Hunt Leather and Ancio Investments noted that a separate appeal had been brought to the Court of Appeal from the costs orders made by the trial judge. Based upon an affidavit filed in this application it appears that this footnote may have been incorrect: an application for leave to appeal from the trial judge's costs orders had been brought but there is no evidence that leave had been granted.

3 Regardless of the accuracy of the footnote in the submissions by Hunt Leather and Ancio Investments, it appears that Hunt Leather and Ancio Investments maintained the position in written submissions that if the trial judge's substantive orders were reinstated then "[t]he outstanding costs of the trial issue should be referred to the Court of Appeal". In circumstances in which the "focus of submissions was, naturally enough, upon the substance of the contest",[2] this costs issue was not repeated in oral submissions, was not the subject of an application by Hunt Leather and Ancio Investments to amend their notices of appeal, and was not addressed by the respondent, Transport for NSW.

4 In making the orders, this Court overlooked the footnote which provided the justification for remittal to the Court of Appeal of the costs of the trial in the event that the trial judge's other orders were upheld. On 24 December 2025, Hunt Leather and Ancio Investments brought this application to recall the orders of this

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1 *Hunt Leather Pty Ltd v Transport for NSW* (2025) 100 ALJR 89 at 130-131 [172]. See also 97 [10], 148-149 [257], 149 [262].

2 *De L v Director-General, New South Wales Department of Community Services [No 2]* (1997) 190 CLR 207 at 216.

Court and for amended orders to be made with the effect that the aspect of the cross-appeal regarding the trial judge's costs orders would be remitted for determination by the Court of Appeal.

5 It is unnecessary on this application to address the precise source of power by which applications to recall and amend orders of this Court are made. One source is r 3.01.2 of the *High Court Rules 2004* (Cth), which provides that "[t]he Court or a Justice may, at any time, correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission". A broader source may be the powers of this Court which are incidental and necessary to the exercise of its jurisdiction.[3] Whatever the source of power, the authorities have recognised that this Court has, at least, a discretionary power to correct an error or omission in a judgment or order where "the interests of justice so require".[4] Nevertheless, the discretionary power to correct an error or omission is to be exercised "sparingly" due to the interests of finality,[5] with a "heavy burden ... cast upon the applicant".[6]

6 Some of the strongest factors that support the exercise of the discretionary power to correct an error or omission include: where the error or omission is plain or obvious, such as where a matter has been overlooked;[7] where the application is promptly made and any relevant orders, "although publicly announced, [have not

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3 See *Batistatos v Roads and Traffic Authority (NSW)* (2006) 226 CLR 256 at 263-264 [5], quoting *Australian Securities and Investments Commission v Edensor Nominees Pty Ltd* (2001) 204 CLR 559 at 590 [64].

4 *De L v Director-General, New South Wales Department of Community Services [No 2]* (1997) 190 CLR 207 at 215, quoting *Autodesk Inc v Dyason [No 2]* (1993) 176 CLR 300 at 322.

5 *Achurch v The Queen* (2014) 253 CLR 141 at 154 [18], quoting *Gould v Vaggelas* (1985) 157 CLR 215 at 275. See also *Certain Lloyd's Underwriters Subscribing to Contract No IH00AAQS v Cross* (2015) 90 ALJR 224 at 226 [8]; 327 ALR 41 at 44.

6 *De L v Director-General, New South Wales Department of Community Services [No 2]* (1997) 190 CLR 207 at 215.

7 *Tuberi v Federal Court of Australia* [2025] HCASJ 46 at [6]. See also *Raybos Australia Pty Ltd v Tectran Corporation Pty Ltd [No 2]* (1988) 62 ALJR 151 at 152; 77 ALR 190 at 191.

been] perfected" by formal entry;[8] where the application is not brought for the purpose of "re-agitating arguments already considered by the Court";[9] and where there is no relevant disadvantage to the respondent in correcting the error or omission.[10] In this case, all of these factors support the making of the order sought by Hunt Leather and Ancio Investments in this application. This Court did not have, and does not have, the benefit of the submissions on costs that were, or might be, before the Court of Appeal on the costs appeal if leave is granted. If this Court had adverted to the footnote in the written submissions of Hunt Leather and Ancio Investments, then the issue of the costs before the trial judge, which is the subject of the application for leave to appeal by Hunt Leather and Ancio Investments, would have been remitted to be dealt with by the Court of Appeal.

7 In circumstances in which neither the notices of appeal nor the oral submissions by Hunt Leather and Ancio Investments referred to the order now sought in this application there should be no order as to the costs of this application. The orders that should be made are:

1. Application allowed.

2. The orders of this Court made on 17 December 2025 in each of S20 and S21 of 2025 be varied as follows:

    1. Appeal allowed in part.

    2. The orders of the Court of Appeal of the Supreme Court of New South Wales made on 18 September 2024 be set aside and, in their place, it be ordered that the appeal and cross-appeal be dismissed with costs, save for that aspect of the cross-appeal dealing with the costs of the proceedings below.

    3. The respondent pay the appellants' costs of the appeal.

    4. The proceedings be remitted to the Court of Appeal of the Supreme Court of New South Wales for determination of that

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8 *De L v Director-General, New South Wales Department of Community Services [No 2]* (1997) 190 CLR 207 at 216.

9 *Autodesk Inc v Dyason [No 2]* (1993) 176 CLR 300 at 303.

10 *De L v Director-General, New South Wales Department of Community Services [No 2]* (1997) 190 CLR 207 at 217.

aspect of the cross-appeal dealing with the costs of the proceedings below (being the application for leave to appeal in proceedings 2024/253975).