



HIGH COURT OF AUSTRALIA

17 June 2026

AUSTRAL v NORTHERN TERRITORY OF AUSTRALIA
BINSARIS v NORTHERN TERRITORY OF AUSTRALIA
O'SHEA v NORTHERN TERRITORY OF AUSTRALIA
WEBSTER v NORTHERN TERRITORY OF AUSTRALIA
[2026] HCA 20

Today, the High Court by majority allowed four appeals and allowed in part four cross-appeals from a judgment of the Court of Appeal of the Supreme Court of the Northern Territory. The appeals and the cross-appeals centrally concerned the award of exemplary damages against the respondent, the Northern Territory.

The appellants brought claims against the Northern Territory for the tort of battery as a result of being intentionally and unlawfully exposed to CS gas (a type of tear gas) at Don Dale Youth Detention Centre ("Don Dale"). Those claims, and subsequent appeals to the Court of Appeal, were dismissed. In 2020, the High Court in *Binsaris v Northern Territory* (2020) 270 CLR 549 allowed appeals by the appellants and held that the spraying of CS gas at Don Dale constituted an unlawful battery of the appellants. In consequence, the High Court relevantly ordered that "the matter be remitted to another judge of the Supreme Court of the Northern Territory for assessment of damages".

On remitter, the assessing judge awarded general damages to each appellant, aggravated damages to three of the four appellants, and exemplary damages of \$200,000 to each appellant. Having regard to the size of the award of exemplary damages, the assessing judge declined in the exercise of her discretion to award pre-judgment interest on the general damages. On appeal, the Court of Appeal held that the assessing judge was wrong to have awarded exemplary damages. The Court of Appeal set aside the awards of exemplary damages and exercised its discretion to award pre-judgment interest on the general damages.

Pursuant to grants of special leave, the appellants contended that the Court of Appeal erred in that it: (1) overturned the assessing judge's assessment of exemplary damages on a basis that was inconsistent with the High Court's judgment in *Binsaris*, and thus failed to execute the judgment of the High Court in accordance with s 37 of the *Judiciary Act 1903* (Cth); (2) held that the relevant state of mind inquiry for exemplary damages was whether the individuals who authorised the unlawful conduct that founded the battery claim knew that their conduct was unlawful; and (3) held that it was not open to the assessing judge to award exemplary damages on a direct liability basis.

In the event that the appeals were allowed, and an award of exemplary damages reinstated, the Northern Territory sought special leave to cross-appeal on two grounds: (1) that the award of \$200,000 to each appellant (to a total of \$800,000) for exemplary damages was manifestly excessive; and (2) that the reinstatement of the award of exemplary damages to each appellant meant that it was open in the exercise of discretion to decline to award pre-judgment interest on the general damages.

The High Court by majority held that the appeals should be allowed on all three grounds. The majority held that this was a case where the conduct attributed to the body politic called for an award of exemplary damages as moral retribution and denunciation and to deter against its repetition. Further, the majority held that the first ground of the cross-appeals should be allowed, finding that the award of \$200,000 to each appellant was manifestly excessive, and that the second ground should be dismissed.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.