



# 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

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## SUMMARY OF NEW ENTRIES

### [1: Cases Handed Down](#)

<b>Case</b>	<b>Title</b>
<u><a href="#">Argos Pty Ltd &amp; Ors v Simon Corbell, Minister for the Environment and Sustainable Development &amp; Ors</a></u>	Administrative Law
<u><a href="#">Henderson v State of Queensland</a></u>	Criminal Law
<u><a href="#">Cantarella Bros Pty Limited v Modena Trading Pty Ltd</a></u>	Intellectual Property
<u><a href="#">Commissioner of State Revenue v Lend Lease Development Pty Ltd; Commissioner of State Revenue v Lend Lease Real Estate Investments Limited; Commissioner of State Revenue v Lend Lease IMT 2 (HP) Pty Ltd</a></u>	Stamp Duty
<u><a href="#">Commissioner of Taxation v MBI Properties Pty Ltd</a></u>	Taxation

## 2: Cases Reserved

<b>Case</b>	<b>Title</b>
<a href="#">Fortress Credit Corporation (Australia) II &amp; Anor v William John Fletcher and Katherine Elizabeth Barnet as Liquidators of Octaviar Limited (Receivers and Managers Appointed) (In Liquidation) and Octaviar Administration Pty Ltd &amp; Ors</a>	Corporations Law
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<a href="#">Lavin &amp; Anor v Toppi &amp; Ors</a>	Equity
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## 3: Original Jurisdiction

<b>Case</b>	<b>Title</b>
<a href="#">Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland</a>	Native Title

## 4: Special Leave Granted

<b>Case</b>	<b>Title</b>
<a href="#">Tomlinson v Ramsey Food Processing Pty Limited</a>	Estoppel
<a href="#">Independent Commission Against Corruption v Cunneen &amp; Ors</a>	Statutes
<a href="#">Ausnet Transmission Group Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia</a>	Taxation

# 1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the December 2014 sittings.

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## Administrative Law

*Argos Pty Ltd & Ors v Simon Corbell, Minister for the Environment and Sustainable Development & Ors*

**C3/2014:** [\[2014\] HCA 50](#).

**Judgment delivered:** 10 December 2014.

**Coram:** French CJ, Hayne, Bell, Gageler and Keane JJ.

**Catchwords:**

Administrative law – Judicial review – Standing – Minister approved development application for commercial development – Appellants conducted businesses near site of proposed development – Appellants alleged development would adversely affect their economic interests – Whether appellants are persons aggrieved by the Minister's decision.

Words and phrases – “person aggrieved”, “person whose interests are adversely affected”.

**Appealed from ACTSC (CA):** [\[2013\] ACTCA 51](#).

**Held:** Appeal of the second and third appellants allowed. Appeal of the first appellant dismissed.

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## Criminal Law

*Henderson v State of Queensland*

**B22/2014:** [\[2014\] HCA 52](#).

**Judgment delivered:** 16 December 2014.

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

**Catchwords:**

Criminal law – Confiscation of property – Exclusion order – Where State sought forfeiture of proceeds of sale of jewellery given to

appellant by deceased father – Where appellant sought exclusion from forfeiture under s 68(2) of *Criminal Proceeds Confiscation Act 2002 (Q)* (“Act”) on ground money not “illegally acquired property” – Where “illegally acquired property” defined by s 22(2)(a) of Act to include “proceeds of dealing with illegally acquired property” – Whether sufficient for appellant to prove money was not proceeds of illegal activity on his part – Whether appellant discharged onus placed upon him by s 68(2)(b) to prove jewellery not illegally acquired by father.

Words and phrases – “burden of proof”, “civil standard of proof”, “exclusion order”, “forfeiture order”, “illegally acquired property”.

**Appealed from SCQ (CA):** [\[2013\] QCA 82](#).

**Held:** Appeal dismissed.

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## Intellectual Property

*Cantarella Bros Pty Limited v Modena Trading Pty Ltd*  
**S67/2014:** [\[2014\] HCA 48](#).

**Judgment delivered:** 3 December 2014.

**Coram:** French CJ, Hayne, Crennan, Kiefel and Gageler JJ.

### Catchwords:

Intellectual property – Trade marks – Foreign words – Appellant was registered owner of trade marks “ORO” and “CINQUE STELLE” in respect of products including coffee – Respondent sought cancellation of appellant's trade marks – Whether trade marks inherently adapted to distinguish appellant's goods from goods of other persons.

Words and phrases – “covert and skilful allusion”, “directly descriptive”, “inherently adapted to distinguish”, “ordinary signification”.

**Appealed from FCA (FC):** [\[2013\] FCAFC 110](#).

**Held:** Appeal allowed.

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## Stamp Duty

*Commissioner of State Revenue v Lend Lease Development Pty Ltd; Commissioner of State Revenue v Lend Lease Real Estate Investments Limited; Commissioner of State Revenue v Lend Lease IMT 2 (HP) Pty Ltd*

**[M74/2014 – M81/2014](#)**: [\[2014\] HCA 51](#).

**Judgment delivered:** 10 December 2014.

**Coram:** French CJ, Hayne, Kiefel, Gageler and Keane JJ.

### **Catchwords:**

Stamp duty – *Duties Act 2000* (Vic) charged duty on dutiable value of dutiable property that is subject of dutiable transaction – Section 20 provided that dutiable value was greater of “consideration ... for the dutiable transaction” and unencumbered value of dutiable property – Land transfers part of larger, single, integrated and indivisible transaction – Whether “consideration ... for the dutiable transaction” included amounts payable under larger transaction.

Words and phrases – “consideration for”, “dutiable transaction”, “single, integrated and indivisible transaction”.

**Appealed from VSC (CA):** [\[2013\] VSCA 207](#).

**Held:** Appeals allowed.

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## Taxation

*Commissioner of Taxation v MBI Properties Pty Ltd*

**[S90/2014](#)**: [\[2014\] HCA 49](#).

**Judgment delivered:** 3 December 2014.

**Coram:** French CJ, Hayne, Kiefel, Gageler and Keane JJ.

### **Catchwords:**

Taxation – GST – *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (“GST Act”) – Supply of a going concern – Where respondent purchased premises subject to existing lease – Whether continuing observance of lessor's obligations constituted the making of supplies through an enterprise which were neither taxable supplies nor GST-free supplies – Whether respondent liable to an increasing

adjustment under s 135-5 of GST Act – Whether respondent's intended supply of residential premises by way of lease was for a “price” within the meaning of s 9-75 of GST Act.

Words and phrases – “GST”, “increasing adjustment”, “price”, “supply of a going concern”.

**Appealed from FCA (FC):** [\[2103\] FCAFC 112](#).

**Held:** Appeal allowed.

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## 2: CASES RESERVED

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

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### Administrative Law

*Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd*

**S225/2014:** [\[2014\] HCATrans 246](#).

**Date heard:** 11 November 2014.

**Coram:** French CJ, Hayne, Kiefel, Bell, Gageler and Keane JJ.

**Catchwords:**

Administrative law – Powers of Australian Communications and Media Authority (“ACMA”) – Respondent held commercial radio broadcasting licence under *Broadcasting Services Act 1992* (Cth) (“BSA”) – Respondent recorded and broadcast conversation for radio segment – ACMA investigated segment under s 170 of BSA – Investigation concerned whether respondent breached licence condition contained in cl 8(1)(g), Sch 2 of BSA which is engaged where offence is committed against another law – ACMA’s preliminary investigation report found that respondent contravened s 11(1) of *Surveillance Devices Act 2007* (NSW) – Whether ACMA can only make administrative finding of commission of offence once conviction is recorded by criminal court – Whether ACMA is required to defer enforcement action until after criminal process has concluded – Whether ACMA is bound conclusively in its administrative findings by the outcome of such criminal process.

Constitutional law – Judicial power – Whether ACMA’s conclusion of breach of licence condition involves exercise of judicial power reserved to Ch III courts.

**Appealed from FCA (FC):** [\[2014\] FCAFC 22](#).

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### Constitutional Law

See also **[Administrative Law](#)**: *Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd*

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See also **Migration**: *CPCF v Minister for Immigration and Border Protection and Anor*

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## Corporations

*Grant Samuel Corporate Finance Pty Limited v William John Fletcher and Katherine Elizabeth Barnet as Liquidators of Octaviar Limited (Receivers and Managers Appointed) (In Liquidation) & Ors; JP Morgan Chase Bank National Association & Anor v William John Fletcher and Katherine Elizabeth Barnet as Liquidators of Octaviar Limited (Receivers and Managers Appointed) (In Liquidation) & Ors*

**S228/2014**: [\[2014\] HCATrans 248](#).

**Date heard:** 12 November 2014.

**Coram:** French CJ, Hayne, Kiefel, Bell, Gageler and Keane JJ.

### Catchwords:

Corporations – Insolvency – Voidable transactions – *Corporations Act 2001* (Cth) (“Act”), s 588FF(3) – Under s 588FF(3)(b), court made order extending time for first respondent to bring proceedings under s 588(1) of Act against second respondent – After expiry of period within which any application under 588FF(3)(b) was able to be made, further court order was made under r 36.16(2)(b) of *Uniform Civil Procedure Rules 2005* (NSW) (“UCPR”) varying original extension order – Effect of variation order was to extend period within which any s 588(1) application had to be brought by further six months – Whether r 36.16(2)(b) of UCPR permits further extension of three year period specified in s 588FF(3)(a) of Act by order varying earlier valid extension in circumstances where the application for such variation is made on a date after the expiry of original three year period.

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 31](#).

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*Fortress Credit Corporation (Australia) II & Anor v William John Fletcher and Katherine Elizabeth Barnet as Liquidators of Octaviar*



*Limited (Receivers and Managers Appointed) (In Liquidation) and Octaviar Administration Pty Ltd & Ors*

**S276/2014:** [\[2014\] HCATrans 279](#).

**Date heard:** 11 December 2014.

**Coram:** French CJ, Hayne, Kiefel, Gageler and Keane JJ.

**Catchwords:**

Corporations – Insolvency – Voidable transactions – Extension of time – *Corporations Act 2001* (Cth) (“Act”) – First respondents were appointed liquidators of second and third respondents – Liquidators granted extension under s 588FF(3)(b) to make applications under s 588FF(1) (“shelf order”) – Liquidators brought proceedings seeking relief under s 588FF(1) against appellants with respect to certain transactions between appellants and second and third respondents – Liquidators sought to have shelf order reheard as against appellants and varied so extension of time for bringing claims applied to appellants – Appellants sought to have themselves excluded from operation of shelf order – Whether Court had power under s 588FF(3)(b) of Act to make order extending time for liquidator to make application under s 588FF(1), by reference to, or capable of comprehending, transactions that are neither known nor identified as possible subject of an application under s 588FF(1).

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 148](#).

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## Criminal Law

*CMB v Attorney General for New South Wales*

**S257/2014:** [\[2014\] HCATrans 275](#).

**Date heard:** 5 December 2014.

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

**Catchwords:**

Criminal law – Sentencing – Appeal against sentence – *Criminal Appeal Act 1912* (NSW) (“CAA”), s 5D – *Crimes (Sentencing Procedure) Act 1999* (NSW) (“CSPA”), s 23 – Appellant sexually assaulted daughter and charged – Director of Public Prosecutions (DPP) successfully applied to have charges remitted to Local Court for referral to pre-trial diversion program – During program appellant revealed other offences committed against daughter – Appellant charged with further counts of aggravated sexual and indecent

assault – At hearing appellant pleaded guilty to four counts of aggravated sexual assault and one count of aggravated indecent assault – Appellant sentenced to good behaviour bonds with requirement that appellant complete program – Attorney-General for New South Wales filed notice of appeal pursuant to s 5D of CAA – Court of Criminal Appeal allowed appeal and re-sentenced appellant to five years and six months' imprisonment – Whether Court of Criminal Appeal erred in not exercising its residual discretion to decline to interfere under s 5D of CAA - Whether Court of Criminal Appeal erred in holding that the onus lay upon appellant contrary to authority and limited purpose of Crown appeals – Whether Court of Criminal Appeal erred in its application of both s 23 of CSPA and principle in *R v Ellis* in determining what leniency should be afforded to appellant.

**Appealed from NSWSC (CCA):** [\[2014\] NSWCCA 5](#).

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## Equity

*Korda & Ors v Australian Executor Trustees (SA) Limited*  
**M82/2014:** [\[2014\] HCATrans 244](#).

**Date heard:** 6 November 2014.

**Coram:** French CJ, Hayne, Kiefel, Gageler and Keane JJ.

### Catchwords:

Equity – Trusts – Investment scheme – Investors invited to invest in timber plantation – Different operating companies undertook cultivation, milling and sale of timber – According to Trust Deed, trustee was to hold proceeds of timber sales for investors – Operating companies were liquidated before sale proceeds were paid to trustee – Whether commercial necessity mandated imputation of unstated trust over timber proceeds before payment to trustee.

**Appealed from VSC (CA):** [\[2014\] VSCA 65](#).

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*Lavin & Anor v Toppi & Ors*  
**S258/2014:** [\[2014\] HCATrans 277](#).

**Date heard:** 10 December 2014.

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

**Catchwords:**

Equity – Contribution between co-sureties – Appellants paid lesser amount, pursuant to guarantee, than respondents who were co-sureties – Creditor Bank granted appellants covenant not to sue – NSW Court of Appeal held that contribution in equity was available to respondents – Whether creditor’s covenant not to sue has effect upon rights of contribution which arise between co-sureties – Whether co-surety, having obtained covenant not to sue, shares with other co-sureties co-ordinate liabilities of the same nature and extent so as to give rise to right to contribution as between co-sureties.

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 160](#).

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## Migration

*CPCF v Minister for Immigration and Border Protection & Anor*  
**S169/2014:** [\[2014\] HCATrans 227](#); [\[2014\] HCATrans 228](#).

**Date heard:** 14 and 15 October 2014.

**Coram:** French CJ, Hayne, Crennan, Kiefel, Bell, Gageler and Keane JJ.

**Catchwords:**

Migration – Power to detain – *Maritime Powers Act 2013* (Cth) (“Act”) – Plaintiff, along with 156 other persons, was passenger on Indian vessel bound for Christmas Island – Plaintiff claimed refugee status within meaning of Art 1 of Convention relating to the Status of Refugees and that he was person in respect of whom Australia owed non-refoulement obligations – Indian vessel was intercepted in Australia’s contiguous zone – Maritime officers implemented decision of National Security Committee of Cabinet to return Indian vessel to India – Whether s 72(4) of Act authorised maritime officers to prevent plaintiff from entering Australia or detain plaintiff for purpose of taking him to India – Whether power under Act was subject to obligation to give plaintiff opportunity to be heard about the exercise of power – Whether obligation breached.

Constitutional law – Executive power – Whether non-statutory executive power of Commonwealth authorised Commonwealth officers to prevent plaintiff from entering Australia or detain plaintiff for purposes of taking him to India – Whether non-statutory executive power was subject to obligation to give plaintiff opportunity to be heard about the exercise of power – Whether obligation breached.

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*Plaintiff S297/2013 v Minister for Immigration and Border Protection & Anor*

**S297/2013:** [\[2014\] HCATrans 276](#).

**Date heard:** 9 December 2014.

**Coram:** French CJ, Hayne, Kiefel, Bell, Gageler and Keane JJ.

**Catchwords:**

Migration – Refugees – Protection visas – Minister directed by writ of mandamus to consider and determine plaintiff’s application for Protection (Class XA) visa according to law – Minister decided to refuse to grant protection visa to plaintiff – Decision to refuse was only made because Minister was not satisfied that criterion prescribed by cl 866.226 of Sch 2 to Migration Regulations was satisfied – Whether cl 866.226 invalid – Whether decision made by Minister to refuse to grant protection visa to plaintiff made according to law.

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## Native Title

*State of Queensland v Congoo & Ors*

**B39/2014:** [\[2014\] HCATrans 271](#); [\[2014\] HCATrans 273](#).

**Date heard:** 2 and 3 December 2014.

**Coram:** French CJ, Hayne, Kiefel, Bell, Gageler and Keane JJ.

**Catchwords:**

Native title – Extinguishment – *National Security Act 1939* (Cth) (“NSA”), s 5(1) – *National Security (General) Regulations*, reg 54 – NSA enacted shortly after Australia’s entry into World War II authorising Governor-General to make regulations for securing public safety and defence of Commonwealth – Between 1943 and 1945 five orders were made under reg 54 over land over which native title determination sought – Whether orders made under reg 54 have effect of extinguishing all native title rights and interests on land – Whether reg 54 enabled Commonwealth to take possession of land simply by making orders purporting to take possession of land.

**Appealed from FCA (FC):** [\[2014\] FCAFC 9](#).

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## Proceeds of Crime

*Commissioner of the Australian Federal Police v Zhao & Anor*  
**M92/2014:** [\[2014\] HCATrans 274](#).

**Date heard:** 4 December 2014.

**Coram:** French CJ, Hayne, Kiefel, Bell and Keane JJ.

**Catchwords:**

Proceeds of crime – Practice and procedure – Application for stay of civil forfeiture proceedings under *Proceeds of Crime Act 2002* (Cth) (“POCA”) – Second respondent, who was charged with offence yet to be heard and determined, and first respondent, his wife, were granted stay of forfeiture proceedings against their restrained property by the Victorian Court of Appeal (“VCA”) – Whether VCA erred by not applying test of whether there was a real risk to administration of justice – Whether principles in *Lee v The NSW Crime Commission* and *Lee v The Queen* required VCA to take particular approach to stay of *in rem* civil forfeiture proceedings – Whether VCA failed to pay regard to distinction between compulsory examination under POCA of person charged with offence and nature of *in rem* civil forfeiture trial when it attached determinative significance to POCA’s abrogation of privilege against self-incrimination in respect of former but not latter – Whether VCA erred by granting a stay for forfeiture of property owned solely by first respondent to first respondent who had not been charged with offence on basis that any evidence she gave could expose risk of her evidence being used against second respondent in criminal proceedings.

**Appealed from VSC (CA):** [\[2014\] VSCA 137](#).

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## Property Law

*Cassegrain v Gerard Cassegrain & Co Pty Ltd*  
**S141/2014:** [\[2014\] HCATrans 249](#).

**Date heard:** 13 November 2014.

**Coram:** French CJ, Hayne, Bell, Gageler and Keane JJ.

**Catchwords:**

Property law – Indefeasibility of title – Fraud exception – *Real Property Act 1900* (NSW) (“Act”), ss 42 and 118 – Appellant’s husband (Mr Cassegrain) was director of respondent company and acted fraudulently by utilising credit balance in company loan account to purchase property – Property was transferred from respondent company to Mr Cassegrain and appellant – Mr Cassegrain later transferred his interest in property to appellant for nominal consideration – Whether Mr Cassegrain was appellant’s agent in relation to giving instructions for execution of Real Property Act transfers and lodgement of registration of transfers – Whether the appellant’s title was defeasible because Mr Cassegrain acted as the appellant’s agent – Whether appellant’s title was defeasible because Mr Cassegrain and the appellant were joint tenants – Whether because of Mr Cassegrain’s conduct, the appellant’s interest as sole registered proprietor of land was defeasible pursuant to section 118(1)(d) of Act.

**Appealed from NSWSC (CA):** [\[2013\] NSWCA 453](#).

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## 3: ORIGINAL JURISDICTION

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

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### Constitutional Law

*Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia & Ors v Queensland Rail & Anor*

**[B63/2013](#)**: *Special case.*

#### Catchwords:

Constitutional law – Commonwealth Constitution, ss 51(xx) and 109 – Employees who are members of ten unions previously employed by Queensland Rail Limited were transferred to Queensland Rail – Queensland Government intended to implement New Generation Rolling Stock project (“NGR project”) – Unions informed Queensland Rail of their concerns for potential impact of NGR project and sought discussions pursuant to cl 22 of Rollingstock Agreement – Queensland Rail did not consider itself bound by *Fair Work Act 2009* (Cth) (“FW Act”) but instead bound by *Industrial Relations Act 1999* (Qld) (“IR Act”) and by reason of s 691C of IR Act, considered Rollingstock Agreement of no effect – Unions informed Queensland Rail of desire to pursue negotiations for new enterprise agreement to replace Traincrew Agreement in accordance with FW Act – New enterprise agreement certified pursuant to IR Act – Whether Queensland Rail is corporation within meaning of s 51(xx) of Constitution – Whether Queensland Rail is trading corporation within meaning of s 51(xx) of Constitution – Whether FW Act applies to Queensland Rail and its employees by operation of s 109 of Constitution to exclusion of *Queensland Rail Transit Authority Act 2013* (Qld) or IR Act or both.

**Listed:** 3 and 4 February 2015.

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*Queensland Nickel Pty Limited v Commonwealth of Australia*

**[B25/2013](#)**: *Special case.*

#### Catchwords:

Constitutional law – Preference between States – Commonwealth Constitution, s 99 – *Clean Energy Act 2011* (Cth) (“Act”) – *Clean*

*Energy Regulations 2011* (Cth) (“Regulations”) – Plaintiff operates nickel and cobalt refinery in Queensland and was “liable entity” for purposes of s 20(3) of Act – Despite repeal of Act, its operation was preserved insofar as it related to liability of liable entities to pay unit shortfall charges for years beginning on 1 July 2012 and 1 July 2013 by items 323(1) and 324(3) of Schedule 1, Part 3 of *Clean Energy Legislation (Carbon Tax Repeal) Act 2014* (Cth) – In carrying out operational activities, there are differences with respect to level of covered emissions per unit of production produced by plaintiff and other similar refineries in Western Australia – Whether Divisions 48 of Part 3 of Schedule 1 to Regulations invalid in its application to plaintiff on ground that it gave preference to one State over another contrary to s 99 of Constitution – Whether impugned provisions should be read down so as to avoid contravening s 99 of Constitution – Whether, upon their proper construction, impugned provisions imposed upon plaintiff any liability for any “unit shortfall charge” in respect of production of nickel.

**Listed:** 5 and 6 February 2015.

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*Duncan v The State of New South Wales; NuCoal Resources Ltd v State of New South Wales; Cascade Coal Pty Ltd & Ors v The State of New South Wales*

[S119/2014](#); [S138/2014](#); [S206/2014](#): *Special case.*

**Catchwords:**

Constitutional law – Chapter III – Judicial power – Independent Commission Against Corruption (ICAC) commenced public inquiry styled “Operation Acacia” investigating the application and allocation of mining lease – ICAC commenced second public inquiry styled “Operation Jasper” investigating, amongst other things, decision of Minister for Mineral Resources to open mining area for coal exploration and award mining licences – Both inquiries produced reports which recommended Parliament pass special legislation to expunge or cancel authorities granted under *Mining Act 1992* (NSW) (“Mining Act”) – *Mining Amendment (Operations Jasper and Acacia) Act 2014* (NSW) inserted Sch 6A into Mining Act – Whether cl 1 to 13 of Sch 6A of Act are invalid because they constitute exercise of judicial power and Parliament of NSW may not exercise judicial power.

Constitutional law – Commonwealth Constitution, s 109 – Inconsistency between Commonwealth law and State law – Cl 11 of Sch 6A of Mining Act authorises appropriate official to publish or reproduce literary or artistic works in which plaintiffs hold copyright – Whether cl 11 of Sch 6A of Mining Act inconsistent with *Copyright Act 1968* (Cth).



**Listed:** 10, 11 and 12 February 2015.

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See also **[Native Title](#)**: *Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland*

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## 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.

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## 4: SPECIAL LEAVE GRANTED

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

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### Corporations

*Selig & Selig v Wealthsure Pty Ltd & Ors*

**A11/2014:** [\[2014\] HCATrans 251](#).

**Date heard:** 14 November 2014 – *Special leave granted on limited grounds.*

**Catchwords:**

Corporations – Provision of financial advice – Contravention of *Corporations Act 2001* (Cth) (Act) – First and second respondents were appellants' financial advisors - First and second respondents recommended financial product and provided appellants with disclosure document that did not comply with s 953A of Act – Financial product was insolvent and appellants lost their investment – First and second respondents argued that loss was apportionable and that promoters of financial product should bear majority of claim – Whether claim for damages for misleading financial advice pursuant to ss 769C, 945A, 945B and/or 1041E of Act apportionable under ss 1041H-1041S of Act – Whether claims should be reduced by reference to contributory conduct under s 1041I(1B) of Act.

**Appealed from FCA (FC):** [\[2014\] FCAFC 64](#).

**Listed:** 12 March 2015.

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### Criminal Law

*Lindsay v The Queen*

**A24/2014:** [\[2014\] HCATrans 252](#).

**Date heard:** 14 November 2014 – *Special leave granted.*

**Catchwords:**

Criminal law – Defences – Provocation – Appellant convicted of murder – Circumstances of offence included two incidents where victim had made homosexual advances – Court of Criminal Appeal

found errors in directions of trial judge as to provocation – Court of Criminal Appeal applied proviso without positive submission by prosecution and held that partial defence of provocation should not have been left to jury – Court of Criminal Appeal relied on academic literature on contemporary attitudes to homosexual behaviour to support conclusion – Whether appropriate for Court of Criminal Appeal to initiate consideration of and then apply proviso – Whether academic literature is relevant in consideration of objective limb of provocation – Whether it is permissible for Court of Criminal Appeal to rely on academic literature without affording parties opportunity to make submissions.

**Appealed from SASC (CCA):** [\[2014\] SASCF 56](#).

**Listed:** 11 March 2015.

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## Estoppel

*Tomlinson v Ramsey Food Processing Pty Limited*  
**S220/2014:** [\[2014\] HCATrans 284](#).

**Date heard:** 12 December 2014 – *Special leave granted*.

### **Catchwords:**

Estoppel – Issue estoppel – Appellant was employee at abattoir owned by respondent – Appellant was injured as result of respondent’s negligence – Appellant and others complained to Fair Work Ombudsman about abattoir’s failure to pay all wage entitlements – Fair Work Ombudsman brought proceedings in its name against respondent – Appellant separately commenced proceedings claiming damages against respondent for personal injury under *Civil Liability Act 2002* (NSW) – Appellant argued in proceedings that abattoir was relevant employer – Respondent pleaded by way of defence that appellant was issue estopped by reason of earlier proceedings on the issue of employee/employer such that respondent was appellant’s relevant employer – Whether Fair Work Ombudsman was privy of appellant employee in earlier proceedings – Whether appellant was issue estopped by earlier decision made in proceedings commenced by Fair Work Ombudsman to which appellant was not party.

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 237](#).

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# Migration

*Uelese v Minister for Immigration and Border Protection*

**S277/2014:** [\[2014\] HCATrans 239](#).

**Date heard:** 17 October 2014 – *Special leave granted*.

## Catchwords:

Migration – Application of s 500(6H) of *Migration Act 1958* (Cth) (“Act”) – Appellant’s visa was cancelled – In deciding whether to affirm Minister’s decision, Administrative Affairs Tribunal (AAT) was required to take into account best interests of minor children in Australia – AAT declined to consider or make determination as to best interests of two of appellant’s children – Information as to those children was not adduced by appellant but was apparent from documents tendered by first respondent – Whether Full Court erred in failing to find jurisdictional error in decision of AAT holding that s 500(6H) of Act prohibited AAT from having regard to information concerning two of appellant’s children unless appellant had set out information in written statement to first respondent at least two days before hearing – Whether Full Court erred in failing to find jurisdictional error in AAT holding that date upon which AAT “holds a hearing” for purposes of ss 500(6H) and 500(6I) of Act is first day of any such hearing, and does not include date upon which adjourned hearing is resumed.

**Appealed from FCA (FC):** [\[2013\] FCAFC 86](#).

**Listed:** 6 March 2015.

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# Statutes

*Independent Commission Against Corruption v Cunneen & Ors*

**S302/2014:** [\[2014\] HCATrans 296](#).

**Date heard:** 12 December 2014 – *Referred to Full Court*.

## Catchwords:

Statutes – Interpretation – *Independent Commission Against Corruption Act 1988* (NSW) (“Act”), ss 8(2) and 13(1) – Respondents were summoned to public inquiry by applicant regarding allegations that first and second respondents had intended to pervert course of justice – Respondents challenged inquiry on basis that allegations could not constitute “corrupt conduct” under Act – Whether

allegation amounting to perverting the course of justice could also amount to conduct that “adversely affects, or could adversely affect... the exercise of official functions by any public official” within meaning of s 8(2) of Act – Whether allegation capable of being investigated by applicant.

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 421](#).

**Listed:** 4 and 5 March 2015.

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## Taxation

*Ausnet Transmission Group Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia*

**M35/2014:** [\[2014\] HCATrans 288](#).

**Date heard:** 12 December 2014 – *Special leave granted*.

**Catchwords:**

Taxation – Income Tax – *Income Tax Assessment Act 1997* (Cth) (“ITAA”) – Appellant paid three imposts to State of Victoria under s 163AA(1) of *Electricity Industry Act 1993* (Vic) on purchase of transmission licence – Whether three imposts deductible pursuant to s 8-1 of ITAA – Whether observations of Fullagar J in *Colonial Mutual Life Assurance Society Ltd v Federal Commissioner of Taxation* were qualified by Court’s decision in *Cliffs International Inc v FCT* – Whether practical and business advantage secured by payment of compulsory exaction to State can be capital in nature.

**Appealed from FCA (FC):** [\[2014\] FCAFC 36](#).

**Note:** *Ausnet Transmission Group Pty Ltd* formally *SPI Powernet Pty Ltd*.

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## Tort Law

*King v Philcox*

**A26/2014:** [\[2014\] HCATrans 253](#).

**Date heard:** 14 November 2014 – *Special leave granted*.

**Catchwords:**

Tort law – Negligence – Duty of care – Mental harm – Respondent’s brother (victim) was passenger in car driven by appellant which was involved in collision killing victim – Respondent drove past the accident scene five times, each time unaware that victim was his brother – Respondent later developed psychiatric illness upon realising scene of accident was where victim died – Whether appellant owes duty of care to sibling of victim to avoid causing mental harm caused by learning about death of victim in motor accident – Whether existence of duty of care determined solely by reference to s 33(1), *Civil Liability Act 1936* (SA) (“CLA”) – Whether respondent’s psychiatric illness reasonably foreseeable – Whether respondent was “present at the scene of the accident when the accident occurred” as required by s 51(1)(a) of CLA.

**Appealed from SASC (FC):** [\[2014\] SASFC 38](#).

**Listed:** 10 March 2015.

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# **5: CASES NOT PROCEEDING OR VACATED**

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# 6: SPECIAL LEAVE REFUSED

## Publication of Reasons: 10 December 2014 (9:45 am)

No.	Applicant	Respondent	Court appealed from	Results
1.	Radzi	Minister for Immigration and Border Protection & Anor (B30/2014)	Federal Court of Australia [2014] FCA 626	Application Dismissed <a href="#">[2014] HCASL 199</a>
2.	Redmond (2 applications)	Redmond (B33/2014; B34/2014)	Full Court of the Family Court of Australia	Application Dismissed <a href="#">[2014] HCASL 200</a>
3.	Hu	Stansure Strata Pty Ltd & Ors (B36/2014)	Federal Court of Australia [2014] FCA 779	Application Dismissed <a href="#">[2014] HCASL 201</a>
4.	Sharma	Minister for Immigration and Border Protection & Anor (M56/2014)	Federal Court of Australia [2014] FCA 566	Application Dismissed <a href="#">[2014] HCASL 202</a>
5.	Karam	Palmone Shoes Pty Ltd (M57/2014; M62/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 148	Application Dismissed <a href="#">[2014] HCASL 203</a>
6.	Karam	Palmone Shoes Pty Ltd (M58/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 148	Application Dismissed <a href="#">[2014] HCASL 204</a>
7.	Karam	Palmone Shoes Pty Ltd (M59/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 148	Application Dismissed <a href="#">[2014] HCASL 205</a>
8.	Karam	Aloe & Co Pty Ltd (M60/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 148	Application Dismissed <a href="#">[2014] HCASL 206</a>
9.	Karam	Aloe & Co Pty Ltd (M61/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 148	Application Dismissed <a href="#">[2014] HCASL 207</a>
10.	Esperanza	Gimenez (M69/2014)	Full Court of the Family Court of Australia	Application Dismissed <a href="#">[2014] HCASL 208</a>



6: Special Leave Refused

11.	MZZET	Minister for Immigration and Border Protection & Anor (M83/2014)	Federal Court of Australia [2014] FCA 824	Application Dismissed <a href="#">[2014] HCASL 209</a>
12.	MZZTG & Ors	Minister for Immigration and Border Protection & Anor (M84/2014)	Federal Court of Australia [2014] FCA 822	Application Dismissed <a href="#">[2014] HCASL 210</a>
13.	Tan	The Queen (M85/2014)	Supreme Court of Victoria (Court of Appeal) [2009] VSCA 148	Application Dismissed <a href="#">[2014] HCASL 211</a>
14.	Sami	Minister for Immigration and Citizenship (P11/2014)	Full Court of the Federal Court of Australia [2013] FCAFC 128	Application Dismissed <a href="#">[2014] HCASL 212</a>
15.	McCardle	McCardle (P28/2014)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 129	Application Dismissed <a href="#">[2014] HCASL 213</a>
16.	Spencer	Spencer (P32/2014)	Full Court of the Family Court of Australia	Application Dismissed <a href="#">[2014] HCASL 214</a>
17.	Preston	AIA Australia Ltd (S139/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 165	Application Dismissed <a href="#">[2014] HCASL 215</a>
18.	Hussein	Kubica & Anor (S207/2014)	Federal Court of Australia [2014] FCA 695	Application Dismissed <a href="#">[2014] HCASL 216</a>
19.	SZSOP & Anor	Minister for Immigration and Border Protection & Anor (S227/2014)	Federal Court of Australia [2014] FCA 844	Application Dismissed <a href="#">[2014] HCASL 217</a>
20.	Nandyala	Minister for Immigration and Border Protection & Anor (S230/2014)	Federal Court of Australia [2014] FCA 815	Application Dismissed <a href="#">[2014] HCASL 218</a>
21.	SZSYS by his litigation representative, SZSYT & Ors	Minister for Immigration and Border Protection & Anor (S238/2014)	Federal Court of Australia [2014] FCA 857	Application Dismissed <a href="#">[2014] HCASL 219</a>

## 6: Special Leave Refused

22.	Illawarra Hotel Company Pty Limited	Walton Construction Pty Limited (S106/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 211 [2014] NSWCA 130	Application Dismissed with Costs <a href="#">[2014] HCASL 220</a>
23.	Holden	Wolff (S121/2014)	Full Court of the Family Court of Australia	Application Dismissed with Costs <a href="#">[2014] HCASL 221</a>

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## Publication of Reasons: 10 December 2014 (2:00 pm)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Wagdy Hanna & Associates Pty Ltd	National Library of Australia (C5/2014)	Supreme Court of the Australian Capital Territory (Court of Appeal)  [2014] ACTCA 32	Application dismissed <a href="#">[2014] HCASL 222</a>
2.	WZATD & Anor	Minister for Immigration and Border Protection & Anor (P40/2014)	Federal Court of Australia [2014] FCA 968	Application dismissed <a href="#">[2014] HCASL 223</a>
3.	B	A (P41/2014)	Supreme Court of Western Australia (Court of Appeal)  [2014] WASCA 173	Application dismissed <a href="#">[2014] HCASL 224</a>
4.	JS	The State of Western Australia (P43/2014)	Supreme Court of Western Australia (Court of Appeal)  [2014] WASCA 177	Application dismissed <a href="#">[2014] HCASL 225</a>
5.	Santos	The State of Western Australia (P46/2014)	Supreme Court of Western Australia (Court of Appeal)  [2013] WASCA 39	Application dismissed <a href="#">[2014] HCASL 226</a>
6.	SZSFM	Minister for Immigration and Border Protection & Anor (S236/2014)	Federal Court of Australia [2014] FCA 860	Application dismissed <a href="#">[2014] HCASL 227</a>
7.	SZSLM	Minister for Immigration and Border Protection & Anor (S247/2014)	Federal Court of Australia [2014] FCA 945	Application dismissed <a href="#">[2014] HCASL 228</a>
8.	SZSXH	Minister for Immigration and Border Protection & Anor  (S254/2014)	Federal Court of Australia  [2014] FCA 914	Application dismissed <a href="#">[2014] HCASL 229</a>
9.	Donnelly	Australia and New Zealand Banking Group Limited & Anor (S126/2014)	Supreme Court of New South Wales (Court of Appeal)  [2014] NSWCA 145	Application dismissed with costs <a href="#">[2014] HCASL 230</a>

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<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
10.	Auzhair Supplies Pty Limited	Gerace & Ors (S144/2014)	Supreme Court of New South Wales (Court of Appeal) [2013] NSWCA 181	Application dismissed with costs <a href="#">[2014] HCASL 231</a>

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## Publication of Reasons: 11 December 2014

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Angel	The Queen (A18/2014)	Supreme Court of South Australia (Court of Criminal Appeal) [2014] SASCFC 75	Application Dismissed <a href="#">[2014] HCASL 232</a>
2.	Cleret	Rago (B31/2014)	Supreme Court of Queensland (Court of Appeal) [2014] QCA 158	Application Dismissed <a href="#">[2014] HCASL 233</a>
3.	Sgargetta	National Australia Bank Limited (M70/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 159	Application Dismissed <a href="#">[2014] HCASL 234</a>
4.	WZART	Minister for Immigration and Citizenship & Anor (P35/2014)	Federal Court of Australia [2013] FCA 1349	Application Dismissed <a href="#">[2014] HCASL 235</a>
5.	Valdez	Frazier (S132/2014)	Full Court of the Family Court of Australia	Application Dismissed <a href="#">[2014] HCASL 236</a>
6.	SZTEH	Minister for Immigration and Border Protection & Anor (S133/2014)	High Court of Australia [2014] HCATrans 118	Application Dismissed <a href="#">[2014] HCASL 237</a>
7.	Jamal	State of NSW (NSW Police Force) (S200/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 199	Application Dismissed <a href="#">[2014] HCASL 238</a>
8.	SZSOB	Minister for Immigration and Border Protection & Anor (S203/2014)	Federal Court of Australia [2014] FCA 685	Application Dismissed <a href="#">[2014] HCASL 239</a>
9.	Lane & Anor	Northern NSW Local Health District (formerly known as North Coast Area Health Service) (S223/2014)	Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 233	Application Dismissed <a href="#">[2014] HCASL 240</a>
10.	SZTGU	Minister for Immigration and Border Protection & Anor (S237/2014)	Federal Court of Australia [2014] FCA 859	Application Dismissed <a href="#">[2014] HCASL 241</a>
11.	Taniela	Minister for Immigration and Border Protection & Anor (S239/2014)	Full Court of the Federal Court of Australia [2014] FCAFC 104	Application Dismissed <a href="#">[2014] HCASL 242</a>
12.	Valdez	Frazier (S248/2014)	Full Court of the Family Court of Australia	Application Dismissed <a href="#">[2014] HCASL 243</a>

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
13.	SZTKJ	Minister for Immigration and Border Protection & Anor (S253/2014)	Federal Court of Australia [2014] FCA 900	Application Dismissed <a href="#">[2014] HCASL 244</a>
14.	Edwards & Ors	Legalese Pty Ltd Trading as Peter Scragg & Associates (A13/2014)	Full Court of the Supreme Court of South Australia [2014] SASFC 58	Application Dismissed with Costs <a href="#">[2014] HCASL 245</a>
15.	Simonetto & Anor	Dick (D1/2014)	Supreme Court of the Northern Territory (Court of Appeal) [2014] NTCA 4	Application Dismissed with Costs <a href="#">[2014] HCASL 246</a>
16.	Gandini	Legal Profession Complaints Committee (P40/2013)	Supreme Court of Western Australia (Court of Appeal) [2013] WASCA 168	Application Dismissed with Costs <a href="#">[2014] HCASL 247</a>
17.	Soia & Anor	Bennett (P9/2014); (P10/2014)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 27	Application Dismissed with Costs <a href="#">[2014] HCASL 248</a>
18.	Walsh	Baron (P26/2014)	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 124	Application Dismissed with Costs <a href="#">[2014] HCASL 249</a>
19.	Fraser	Burswood Resort (Management) Ltd	Supreme Court of Western Australia (Court of Appeal) [2014] WASCA 130	Application Dismissed with Costs <a href="#">[2014] HCASL 250</a>

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## Sydney: 12 December 2014

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court</i>	<i>appealed</i>	<i>from</i>	<i>Results</i>
1.	RH	The Queen (S146/2014)	Supreme Court of New South Wales (Court of Criminal Appeal)			Special leave refused <a href="#">[2014] HCATrans 282</a>
			[2014] NSWCCA 71			
2.	Ngo	The Queen (S208/2014)	Supreme Court of New South Wales (Court of Criminal Appeal)			Special leave refused <a href="#">[2014] HCATrans 283</a>
			[2013] NSWCCA 142			
3.	Li & Ors	Zhou & Anor (S213/2014)	Supreme Court of New South Wales (Court of Appeal)			Special leave refused <a href="#">[2014] HCATrans 281</a>
			[2014] NSWCA 176			
4.	Monis	The Queen (S214/2014)	Application for Removal			Application refused <a href="#">[2014] HCATrans 280</a>
5.	Droudis	The Queen (S215/2014)	Application for Removal			Application refused <a href="#">[2014] HCATrans 280</a>
6.	Loveridge	The Queen (S216/2014)	Supreme Court of New South Wales (Court of Criminal Appeal)			Special leave refused <a href="#">[2014] HCATrans 285</a>
			[2014] NSWCCA 120			
8.	Mariam	The Queen (S224/2014)	Supreme Court of New South Wales (Court of Appeal)			Special leave refused <a href="#">[2014] HCATrans 286</a>
			[2913] NSWCCA 338			

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## Melbourne: 12 December 2014

<i>No</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Crocker	The Queen (M13/2014)	Supreme Court of Victoria (Court of Appeal) [2013] VSCA 318	Special leave refused <a href="#">[2014] HCATrans 294</a>
2.	Purcell Partners (A Firm)	Settlement Group Pty Ltd (M36/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 68; [2013] VSCA 370	Special leave refused with costs <a href="#">[2014]</a> <a href="#">HCATrans 290</a>
3.	Christian Youth Camps Limited	Cobaw Community Health Services Limited & Ors (M40/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 75	Special leave refused with costs <a href="#">[2014]</a> <a href="#">HCATrans 289</a>
4.	Patrick-(a pseudonym)	The Queen (M51/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 89	Special leave refused <a href="#">[2014] HCATrans 295</a>
5.	Taleb	The Queen (M53/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 96	Special leave refused <a href="#">[2014] HCATrans 292</a>
6.	Ozden & Anor	Commonwealth Bank of Australia (M64/2014)	Supreme Court of Victoria (Court of Appeal) [2014] VSCA 127	Special leave refused with costs <a href="#">[2014]</a> <a href="#">HCATrans 291</a>
7.	Miles	Commissioner of Patents (M90/2014)	Full Court of the Federal Court of Australia [2014] FCAFC 109	Special leave refused with costs <a href="#">[2014]</a> <a href="#">HCATrans 293</a>

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