

DECEMBER 2024

Reports of the Supreme Courts of the Australian States when exercising Federal Jurisdiction, the Supreme Courts of the Northern Territory and Australian Capital Territory, the Federal Circuit and Family Court of Australia and Federal Tribunals

THE FEDERAL LAW REPORTS 2024

EDITOR

VICTOR KLINE

CONSULTING EDITORS

DR OREN BIGOS KC
NICHOLAS POYNDR

SENIOR REPORTERS

ELENI KANNIS
RAFFAELE PICCOLO

REPORTER

ANDREW BELL

VOL 385 — PART 1

PAGES 1-124

The mode of citation of this part will be:
385 FLR

TABLE OF CASES REPORTED

Part 1 — Pages 1-124

Australian Federal Police, Commissioner of the v Hills Greenery	
Pty Ltd (NSW Sup Ct)	114
Bigatton v The King (NSW Ct of Cr App)	34
Calatzis v Jones (ACT Sup Ct)	70
Chen v Chen (Federal Circuit and Family Court of Australia	
(Division 1))	93
Hills Greenery Pty Ltd; Commissioner of the Australian Federal	
Police v (NSW Sup Ct)	114
Jones; Calatzis v (ACT Sup Ct)	70
King, The; Bigatton v (NSW Ct of Cr App)	34
Okwechime (No 2); Director of Public Prosecutions v (ACT Sup	
Ct)	1
Public Prosecutions, Director of v Okwechime (No 2) (ACT Sup	
Ct)	1

(Cases in **bold** reported in this part)



© 2024 Thomson Reuters (Professional) Australia Limited

Lawbook Co.

ABN 64 058 914 668

Published in Sydney

ISSN 0085-0462

INDEX

Part 1 — Pages 1-124

CONSTITUTIONAL LAW

- Federal jurisdiction — Where Supreme Court made forfeiture and restraining orders under federal proceeds of crime legislation — Where Supreme Court was exercising federal jurisdiction — Where State procedural rules applied except where federal legislation otherwise provided — Whether proceeds of crime legislation “otherwise provided” in relation to setting aside of forfeiture or restraining orders — Whether State procedural power for setting aside orders available — Judiciary Act 1903 (Cth), s 79 — Proceeds of Crime Act 2002 (Cth), Ch 2 — Uniform Civil Procedure Rules 2005 (NSW), r 36.16.
Commissioner of the Australian Federal Police v Hills Greenery Pty Ltd and Others (NSW Sup Ct) 114

CORPORATIONS LAW

- Financial services providers — Providing financial services on behalf of principal — Whether “principal” only refers to a single natural or legal person — Where indictment only alleges s 911B(1)(a)-(d) of Corporations Act 2001 (Cth) not satisfied — Whether prosecution must aver and prove s 911B(1)(e) of Corporations Act 2001 (Cth) not satisfied — Corporations Act 2001 (Cth), s 911B(1)(a)-(e).
Bigatton v The King (NSW Ct of Cr App) 34

COSTS

- Prospective costs — Where statute provided each party to proceedings bear own costs — Where statute provided Court could make order as to costs the Court considered just and in doing so had to have regard to such other matters as the Court considered relevant — Where parties to proceeding under statute applied for order for legal costs in respect of work yet to be performed — Whether statute enabled order for prospective legal costs to be made — Family Law Act 1975 (Cth), s 117.
Chen v Chen and Another (Federal Circuit and Family Court of Australia (Division 1)) 93

CRIMINAL LAW AND PROCEDURE

- Arrest — Identification and examination of person — Photographs — Power to take — Power of police officer of or above rank of sergeant — Where photograph taken at direction of sergeant — Whether delegation of taking photographs authorised — Whether requirements for taking photographs without consent cumulative — Whether power applies to officer acting at or above rank of sergeant — Crimes Act 1900 (ACT), s 230(3)(a), (b).
Director of Public Prosecutions v Okwechime and Another (No 2) (ACT Sup Ct) 1

INDEX

CRIMINAL LAW AND PROCEDURE — *continued*

- Averments — Where indictment only alleges s 911B(1)(a)-(d) of Corporations Act 2001 (Cth) not satisfied — Whether prosecution must aver or prove s 911B(1)(e) of Corporations Act 2001 (Cth) not satisfied — Corporations Act 2001 (Cth), s 911B(1)(a)-(e).
Bigatton v The King (NSW Ct of Cr App) 34
- Corporations — Financial services providers — Providing financial services on behalf of principal — Whether “principal” only refers to a single natural or legal person — Corporations Act 2001 (Cth), s 911B(1).
Bigatton v The King (NSW Ct of Cr App) 34
- Proceeds of crime — Restraining and forfeiture orders — Application to set aside — Whether State court empowered to set aside forfeiture and restraining orders under State procedural rules — Proceeds of Crime Act 2002, Ch 2 — Uniform Civil Procedure Rules 2005 (NSW), r 36.16.
Commissioner of the Australian Federal Police v Hills Greenery Pty Ltd and Others (NSW Sup Ct) 114
- Sentencing — Relevant factors — Response to charges — Plea of guilty — Level of discount — Timing of plea — Forum — Supreme Court.
Calatzis v Jones (ACT Sup Ct) 70
- Sentencing — Sentencing orders — Combination sentence — Good behaviour order — Where offender serving pre-existing sentence of imprisonment — Whether good behaviour order can start during sentence of imprisonment — Crimes (Sentencing) Act 2005 (ACT), s 31(2).
Calatzis v Jones (ACT Sup Ct) 70

EVIDENCE

- Illegally obtained — Whether evidence obtained “in consequence of” an impropriety or illegality — Test — Whether causation limited to “but for” test — Evidence Act 2011 (ACT), s 138(1).
Director of Public Prosecutions v Okwechime and Another (No 2) (ACT Sup Ct) 1
- Police interrogation — Propriety of — Administering caution — Requirement to administer caution where person “protected suspect” — Whether person a “protected suspect” — Whether investigating official believes sufficient evidence to establish person committed offence — Whether investigating official had given person reasonable grounds to believe person not allowed to leave if person wished to do so — Manner of questioning — Crimes Act 1914 (Cth), s 23B(2)(c)(i), 23B(2)(c)(iii).
Director of Public Prosecutions v Okwechime and Another (No 2) (ACT Sup Ct) 1