

TE PUIA v MINISTER FOR IMMIGRATION AND BORDER PROTECTION
(P58/2016)

Date Special Case referred to Full Court: 14 November 2016

The applicant is a citizen of New Zealand who has been a resident of Australia since 22 May 2005. He was granted a class TY subclass 444 Special Category (Temporary) visa (when he last entered Australia in September 2013) which was cancelled by the defendant ('the Minister') on 27 October 2015, on the grounds that that the plaintiff failed the character test and that it was in the "national interest" to cancel his visa. Before that decision was made, an authorised migration officer gave the Minister a submission inviting him to consider whether he wished to cancel the visa under s 501(3) of the *Migration Act* 1958 (Cth). The submission included an attachment ("Attachment Z") which has never been provided to the plaintiff. The Minister provided a statement of reasons which referred to certain information which is protected from disclosure under s 503A of the Act. That information is the information in Attachment Z.

The applicant applied for judicial review in the Federal Court and sought an order setting aside the decision of the Minister made on 27 October 2015 to cancel his visa on the grounds that s 503A of the Act invalid as beyond the power of the parliament. The applicant then sought to have those proceedings removed into the High Court. On 27 October 2016 Gordon J made orders removing the matter into this Court and directing that the cause removed be heard together with the matter of *Graham v. Minister for Immigration and Border Protection* (M97/2016).

On 14 November 2016 Gordon J referred the Special Case agreed by the parties for consideration by the Full Court. Her Honour further directed that the Special Case in this matter be heard together with the Special Case in the matter of *Graham v. Minister for Immigration and Border Protection* (M97/2016).

Notices of Constitutional Matter have been served. At the time of writing the Attorneys-General for the Commonwealth, Victoria, Tasmania, Queensland, and South Australia have filed Notices of Intervention.

The questions in the Special Case include:

- Are either or both of s 501(3) and 503A(2) of the Act invalid, in whole or in part, on the ground that they:
 - a. require a Federal court to exercise judicial power in a manner which is inconsistent with the essential character of a court or with the nature of judicial power; or
 - b. so limit the right or ability of affected persons to seek relief under s 75(v) of the Constitution as to be inconsistent with the place of that provision in the constitutional structure?