HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No. B43 of 2020

BETWEEN:

MINISTER FOR IMMIGRATION AND BORDER PROTECTION
Appellant

and

EFX17
Respondent

APPELLANT'S SUBMISSIONS

Part I: Certification

1. These submissions are in a form suitable for publication on the Internet.

Part II: Issues

2. This appeal raises the following issues.

3. *First*, whether, in discharging the duties imposed on the appellant, the Minister for Immigration and Border Protection (**Minister**), by ss 501CA(3)(a) and (b) of the *Migration Act 1958* (Cth) (**Act**), the Minister is required to take into account the former visa holder's literacy, capacity to understand English, mental capacity and health, position in custody and the facilities available to him or her in custody (**capacity matters**).

4. *Secondly*, whether it is a condition on the valid performance of the duties in ss 501CA(3)(a) and (b) that the recipient of the written notice comprehends the cancellation decision, the particulars of the information on which that decision was based and the invitation to him or her to make representations about revocation of that decision.

5. *Thirdly*, and in the alternative, whether, even if the valid performance of the duties in ss 501CA(3)(a) and (b) required the Minister to have regard to capacity matters, the respondent had proved that the Minister: (a) was aware of capacity matters, and (b) (if so) failed to take them into account.

6. *Fourthly*, whether each of the steps described in s 501CA(3)(a) and s 501CA(3)(b) is a "task" for the purposes of s 497(2) of the Act such that the person who had cancelled the respondent's visa pursuant to s 501(3A) was not required to have delegated authority from the Minister under s 496(1) in order validly to perform them.

Part III: Section 78B of the *Judiciary Act 1903* (Cth)

7. The Minister has considered whether any notice should be given under s 78B of the *Judiciary Act 1903* (Cth) and has concluded that no such notice is necessary.

Part IV: Citations

8. This appeal is brought pursuant to special leave to appeal granted by Bell and Gageler JJ on 3 July 2020 ([2020] HCATrans 93) and is from the judgment and orders of a Full Court of the Federal Court (**Full Federal Court**) dated 16 December 2019, save as to costs.[1] The Full Federal Court's judgment is reported as *EFX17 v Minister for Immigration and Border Protection* (2019) 374 ALR 272; [2019] FCAFC 230.

9. The Full Federal Court upheld an appeal from orders made by the Federal Circuit Court on 7 November 2018. The Federal Circuit Court's judgment is reported as *EFX17 v Minister for Immigration and Border Protection* (2018) 341 FLR 286; [2018] FCCA 3179.

Part V: Relevant facts

Background

10. The respondent is a citizen of Afghanistan (Core Appeal Book (**CAB**) 171 [5]) and was previously the holder of a Protection (Class XA) visa (**protection visa**) which had been granted to him in 2009: CAB 170 [1].

11. On 19 December 2016, the District Court of Queensland convicted the respondent of offences contrary to s 317 of the *Criminal Code 1899* (Qld) (acts intended to maim, disfigure or disable any person) and sentenced him to a term of seven years' imprisonment: CAB 14, 170-171 [4].

12. On 3 January 2017, a delegate of the Minister (holding position number 00001385) (**Delegate**) made a decision to cancel the respondent's protection visa pursuant to s 501(3A) of the Act: CAB 170 [1], 176 [26], 178 [29]. The Delegate did so upon being satisfied that the respondent did not pass the character test because of the operation of s 501(6)(a) (as he had a "substantial criminal record" as defined in s 501(7)(c)) and because the respondent was serving his sentence of imprisonment, on a full-time basis in a custodial institution in Queensland, for the offences of which he had been convicted: CAB 178 [27].

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1 The Minister's position as to costs is as set out in this Court's order (dated 3 July 2020), authenticated and filed on 13 and 17 July 2020, respectively.

13. On the same day, the Delegate sent an e-mail to the Brisbane Correctional Centre. The e-mail stated that the Minister had cancelled the respondent's visa pursuant to s 501 of the Act, requested that the respondent be given the attachments to the e-mail "without delay as there [wa]s a limited period of time in which to apply for revocation of the visa cancellation", and requested the Brisbane Correctional Centre have the respondent complete a form acknowledging receipt of the attachments: CAB 6. B43/2020

14. The documents attached to the e-mail relevantly comprised a letter dated 3 January 2017 from the Delegate (CAB 211 [144]) notifying him of the decision, giving particulars of the information on which that decision was based, and inviting him to make representations about revocation of that decision (**Notice**) and a form acknowledging receipt of the Notice. The Notice is reproduced at CAB 8-13. The other documents attached to the e-mail are listed at CAB 170 [3] and are reproduced at CAB 14-94.

15. On 4 January 2017, a Queensland Corrective Services (**QCS**) officer gave to the respondent, by hand, the documents listed in the preceding paragraph: CAB 170 [1], 171 [7]. The respondent signed the form acknowledging receipt of the Notice and the other documents on the same day: CAB 172 [8].

16. Case notes held by QCS recorded that, on 4 January 2017, the respondent was given the Notice and the other documents attached to the Delegate's e-mail dated 3 January 2017, informed that "his protection visa ha[d] been cancelled under s 501" "due to his substantial criminal record and [the fact that] he [wa]s serving a full-time term of imprisonment" and that he could "request a revocation of the cancellation … within 28 days": CAB 200 [111]. The respondent had "advised that he can understand English while talking, but cannot read or write well" but "also advised that he wishe[d] to leave Australia and will not be seeking a revocation of the cancellation": CAB 200 [111]. Other case notes recorded that the respondent had "limited English language abilities and expressed concern with reading and understanding the … documentation" and "requested assistance from another prisoner", was told that he had the "optio[n] of [r]evocation", and stated that he "wanted to return to Afghanistan to be closer to his family": CAB 200-201 [112].

17. According to the respondent's legal representatives, the Prisoners' Legal Service (**PLS**), on 9 January 2017 the respondent had a conversation with an Australian Border Force officer "indicat[ing] his intention to seek revocation and stay in Australia until a revocation decision had been made". The officer had informed the PLS that the respondent "appeared to be very confused about the cancellation notice": CAB 172 [9].

18. On 31 January 2017, the PLS notified the Minister's department (**Department**) that it had been appointed by the respondent to represent him: CAB 202 [117]. On the same day,

the PLS made a request under the *Freedom of Information Act 1982* (Cth) for access to documents relating to the respondent held by the Department: CAB 202 [117]. The terms of that request were revised on 7 February 2017 to seek access to, relevantly, documents in relation to the respondent's protection visa application and visa cancellation: CAB 203 [121]. The Department responded to the request by letter dated 24 May 2017 (which was received by the PLS on 1 June 2017), relevantly providing a copy of the Notice: CAB 204 [125].

19. On 9 June 2017, the PLS wrote to the Department to request that the Notice be re-issued to the respondent on account of his claimed illiteracy and inability to understand the nature of the visa cancellation and revocation processes under the Act: CAB 171 [5], 205 [129]-[130].

20. On 15 August 2017, the Department wrote to the PLS to advise that, while the respondent's request had been considered, the Notice was "legally effective" and, accordingly, there were "no grounds for the Department to re-notify [the respondent] of the decision to cancel his visa under s 501(3A)": CAB 206 [131].

Federal Circuit Court

21. The respondent commenced proceedings in the Federal Circuit Court challenging the validity of the Notice: CAB 98. He sought a declaration that the delivery of the Notice did not comply with s 501CA(3) and a writ of mandamus requiring the Minister to perform the duties in s 501CA(3) according to law: CAB 99. The respondent argued that the Notice did not comply with the requirements of s 501CA(3) because:

a) in deciding the way in which written notice of the cancellation decision and particulars of relevant information were to be given, the Minister was required to, but did not, have regard to his "circumstances" (*cf* s 501CA(3)(a)), being the capacity matters (CAB 105-108 (grounds 1, 3)).

b) in formulating and delivering to the respondent the particulars of relevant information (*cf* s 501CA(3)(a)(ii)) and the invitation to make representations about revocation of the cancellation decision (*cf* s 501CA(3)(b)), the Minister was required to, but did not, have regard to the capacity matters (CAB 106-107 (grounds 2-3)); and

c) the person who gave the Notice was not a delegate of the Minister under s 496 of the Act (CAB 108 (ground 4)).

22. The primary judge rejected these arguments.[2]

Full Federal Court

23. The respondent appealed from the primary judge's orders to the Federal Court by notice of appeal filed on 28 November 2018: CAB 153-158. His grounds of appeal essentially repeated the arguments that he made in the Federal Circuit Court.

24. A majority in the Full Federal Court (Greenwood J, with whom Rares J generally agreed) upheld the respondent's appeal.

25. Compliance with s 501CA(3): As to the question whether the Notice was given pursuant to s 501CA(3), Greenwood J observed that the "irreducible minimum standard" of the duty to do the things described in s 501CA(3)(a) was such that, whatever method of notification was chosen by the Minister as appropriate, the Notice was required to "meet the statutory standard of *giving* "the person" written **notice** of the decision and *giving* the person "particulars" of the reason for cancelling his or her visa" (CAB 193 [89]) [emphasis in original]. His Honour considered that the way selected by the Minister as "appropriate in the circumstances" was "directed to the way of giving the notice and particulars" and did not diminish "the scope, burden and standard of the statutory obligation to *give notice*" (CAB 193-194 [89]) [emphasis in original].

26. At CAB 206 [132], Greenwood J observed that "the state of considered appropriateness [in s 501CA(3)] is conditioned by the phrase "in the circumstances"" and went on to say, at CAB 206 [133], that it was not clear what "circumstances" the Minister took into account in determining the method by which the material would be given to the respondent. His Honour further said that, whichever method of giving notice was selected, it had to meet "the *irreducible minimum standard* of actually *giving* the person written *notice* and the information comprehended by the defined term "relevant information" (CAB 206 [133]) [emphasis in original]. That is to say, the former visa holder had to be "given notice" – and notice could not be given merely by the physical provision of the material listed in s 501CA(3)(a). In this connection, Greenwood J drew a dichotomy between "service", on the one hand, and the obligation to "give notice", on the other (CAB 206 [133]). If a former visa holder had "no capacity to comprehend whatever it is that [wa]s given to, or served upon, him or her", the Minister will not have

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2 *EFX17 v Minister for Immigration and Border Protection* (2018) 341 FLR 286 at 296-304 [38(c)]-[38(j)], 305-306 [38(o)]-[38(z)] (CAB 130-141, 142-145). It should be noted that the Minister had contended that the Federal Circuit Court did not have jurisdiction to review the validity of the Notice. That contention was not accepted by the Federal Circuit Court. It was also made by the Minister in the Full Federal Court by way of notice of contention (CAB 160-163) and rejected. The Minister no longer contends that the Federal Circuit Court did not have jurisdiction.

discharged his duty to "'give' the relevant person 'notice'" in accordance with s 501CA(3)(a) (CAB 206-207 [133]).

27. The "circumstances" of the respondent which Greenwood J said suggested that he was "simply not capable of comprehending the suite of documents handed to him" were listed at CAB 207-208 [134]. His Honour then found, at CAB 208 [135], that those circumstances were such that the mere provision of the documents, coupled with "the urgency impressed upon the [QCS officer] to ensure that he secured the [respondent]'s signature on the acknowledgment" did not meet "the irreducible minimum standard of giving [the respondent] notice of the cancellation decision and the particulars of relevant information". These findings were made not on the basis of the material before the Minister at the time that the Notice was given, but on the evidence before the Full Federal Court. As will be developed below, it was an erroneous approach (even if, contrary to the Minister's submissions, capacity matters did need to be considered) to impugn the validity of the Notice by reference to matters which the respondent did not prove, in either court below, were ones of which the Minister was aware.

28. Justice Greenwood found that the respondent was "familiar to the Minister's departmental officers in the sense that he had been granted a protection visa" and "[a]ll of the relevant circumstances relating to" the grant of that visa "were known to the departmental officers": CAB 210 [139]. His Honour also found that "[i]t must have been apparent to the Department either actually or inferentially that the [respondent] suffered special disadvantage": CAB 210 [139].

29. Turning to s 501CA(3)(b), Greenwood J observed that that duty also reflected "an irreducible minimum standard of ensuring that the [respondent] [wa]s invited to make representations about revocation" and that, unless the respondent was "capable of comprehending" that the material given to him contained an invitation to make representations about revocation, then that invitation "was not … real and meaningful" and, accordingly, "not an invitation for the purposes of the Act": CAB 209 [137] (see also CAB 194 [90]).

30. At CAB 209 [138], Greenwood J identified the steps that, had they been taken by the Minister, may have been sufficient to comply with s 501CA(3): providing an interpreter skilled in Hazaragi; ensuring that a representative of the PLS was available to the respondent when the documents were handed to him; or ensuring that QCS officers who provided the Notice to the respondent responded to his request to seek the assistance of a fellow prisoner.

31. Justice Rares agreed "generally" with Greenwood J (CAB 217 [165]). At CAB 219 [173], his Honour said that an invitation to make representations about revocation must be

"intelligible, in fact, to the person to whom it is given" in order to be an invitation under s 501CA(3)(b). And at CAB 220 [175], Rares J said that a notice and an invitation must be "in a form that is actually meaningful" to the intended recipient and given "after the Minister has engaged in active intellectual consideration about what will be "appropriate in the circumstances"". His Honour further observed, at CAB 220 [175], that the former visa holder must "be able to understand, immediately on … receipt" the things given to him or her in accordance with ss 501CA(3)(a) and (b). Justice Rares considered that the e-mail from the Department dated 3 January 2017 "did not seek to ensure that the [respondent] would be in a position to understand what the documents that it asked be given to him, said": CAB 220 [176].

32. Delegation: The reasoning of the majority on the question whether the Notice was valid because it was not given to the respondent by a person who had delegated authority from the Minister pursuant to s 496(1) focused on the construction of the word "task" in s 497(2). Each of Greenwood J (at CAB 212-213 [149]-[153], 215-216 [162]-[163]) and Rares J (at CAB 220-221 [179]-[182]) held that the steps in ss 501CA(3)(a) and (b) were not "mere" "tasks" in connection with a decision to cancel a visa pursuant to s 501(3A) and, therefore, did not come within s 497(2). Justice Greenwood held that the duties in ss 501CA(3)(a) and (b) imposed on the Minister "substantive obligation[s]" or "obligation[s] of substance" (CAB 212 [150]-[151]). Justice Rares considered that compliance with s 501CA(3) was "no ordinary administrative procedure of a formal nature" (CAB 221 [182]). Accordingly, to be valid, the Notice was required to be, but was not, given to the respondent by a person who was a delegate of the Minister for the purposes of s 501CA(3).

33. Justice Logan dissented. Relevant parts of his Honour's judgment will be referred to in Part VI of these submissions.

Part VI: Argument

The proper construction of s 501CA(3) (grounds 1 and 2)

34. As at 3 January 2017, s 501CA relevantly provided as follows:

> ***Cancellation of visa—revocation of decision under subsection 501(3A) (person serving sentence of imprisonment)***
>
> *(1) This section applies if the Minister makes a decision (the **original decision**) under subsection 501(3A) (person serving sentence of imprisonment) to cancel a visa that has been granted to a person.*
>
> *(2) For the purposes of this section, **relevant information** is information (other than non-disclosable information) that the Minister considers:*
>
> *(a) would be the reason, or a part of the reason, for making the original decision; and*

(b) is specifically about the person or another person and is not just about a class of persons of which the person or other person is a member.

(3) As soon as practicable after making the original decision, the Minister must:

(a) give the person, in the way that the Minister considers appropriate in the circumstances:

(i) a written notice that sets out the original decision; and

(ii) particulars of the relevant information; and

(b) invite the person to make representations to the Minister, within the period and in the manner ascertained in accordance with the regulations, about revocation of the original decision.

(4) The Minister may revoke the original decision if:

(a) the person makes representations in accordance with the invitation ...

35. The following textual and contextual features of s 501CA(3) support a construction of that provision that does not require the Minister, in discharging his duties thereunder, to have regard to matters such as the former visa holder's literacy, understanding of English, health, mental capacity or the fact that he or she may be in criminal detention and the facilities available to him or her in custody. They also support the proposition that it is not a condition on the valid performance of those duties that the former visa holder must comprehend the material that has been given to him or her.

(a) Section 501CA(3)(a) requires the Minister to "give" certain things to the former visa holder

36. By reason of ss 501CA(3)(a)(i) and (ii), the Minister comes under a duty to "give" to the former visa holder "a written notice that sets out the original decision" and "particulars of the relevant information", respectively. Each of those two things is clearly defined. The former comprises a statement of the decision of the Minister to cancel the person's visa under s 501(3A); the latter comprises the information described in s 501CA(2) (i.e. the information on which the decision to cancel the person's visa was based). The word "give", in this context, is used in its ordinary sense and conveys nothing more than physical provision of the things identified in ss 501CA(3)(a)(i) and (ii).

37. This construction of the word "give" in s 501CA(3)(a) is supported by the judgment of this Court in *WACB v Minister for Immigration and Multicultural and Indigenous Affairs* (2004) 79 ALJR 94 (***WACB***) – a case to which neither judge in the majority in the Full Federal Court referred (*cf* Logan J at CAB 237 [232]-[233]). That case involved the construction of the former s 478(1)(b) of the Act, which required an application for judicial review to be lodged with the Registry of the Federal Court "within 28 days of an applicant being notified of the decision". The decision which the appellant sought to have reviewed in the Federal Court was a decision of the Refugee Review Tribunal (**RRT**) given orally in accordance with the former s 430D(1). Pursuant to s 430D(2), the RRT was required to "give" to a review applicant in immigration detention and the Secretary

of the Department a copy of its written statement (prepared pursuant to s 430(1)) within 14 days after the decision concerned had been made.

38. The plurality considered that the ordinary meaning of the word "give", understood in its context, required the "physical delivery" of the written statement to the review applicant (at 101 [37]). The context, their Honours observed, was that the RRT "must give the applicant a copy of the written statement" (at 101 [37]). It was only upon the physical delivery of the written statement that the 28-day period within which the review applicant could seek judicial review of the RRT's decision in the Federal Court began to run under s 478(1)(b). Notification was effected when the written statement was "given" to the review applicant (at 101 [36]).

39. There is no relevant distinction between the context or function of each of the former s 430D(2) and s 501CA(3)(a). Like s 430D(2), s 501CA(3)(a) requires the decision-maker to give, by physical delivery, to the former visa holder written notice of the cancellation decision and particulars of the information on which it was based – and nothing more. Upon giving the written statement prepared under s 430(1), the 28-day period specified in s 478(1)(b) within which to seek judicial review of the RRT's decision began to run. That period could not be extended by the Federal Court: s 478(2). Similarly, upon giving the written notice of the cancellation decision and particulars of relevant information under s 501CA(3)(a), the 28-day period specified in s 501CA(4)(a) within which to seek revocation of that decision begins to run.[3] And like the former s 478(2), there is no provision in s 501CA to extend the 28-day period within which to make representations about revocation of the cancellation decision.[4]

40. The construction of s 501CA(3) is not assisted by s 501(5) (*cf* CAB 179 [31], 182 [45], 191 [78], 193 [87] per Greenwood J, 218 [169], 220 [175] per Rares J). It may be accepted that the rules of natural justice and the code of procedure set out in Subdivision AB of Division 3 of Part 2 of the Act do not apply to a decision to cancel a visa under s 501(3A). However, s 501CA presupposes a decision under s 501(3A) having already been made: s 501CA(1). Put another way, s 501(5) applies in respect of the exercise of power under s 501(3A) and ceases to have work to do consequent upon the cancellation of a visa. The power under s 501CA(4)(b) to revoke a decision to cancel a person's visa is an ameliorating one[5] which a former visa holder can only seek to have the Minister exercise where he or she has been furnished with the things listed in ss 501CA(3)(a) and (b). To the extent that "a natural justice purpose attends s 501CA(3)" (as Logan J observed at CAB 234 [219]), it does not involve or permit reading into s 501CA(3) substantive notions

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3 See reg 2.52(2)(b) of the *Migration Regulations 1994* (Cth) (**Regulations**).

4 *BDS20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCA 1176 at [52] per Stewart J.

5 See, for example, *HZCP v Minister for Immigration and Border Protection* [2019] FCAFC 202 at [192] per Colvin J.

of procedural fairness or adopting a construction of that sub-section that involves the imposition of obligations of ensuring understanding on the part of a former visa holder. Any natural justice purpose attending s 501CA(3) does not extend beyond furnishing to the person the things that are specified in sub-paragraphs (a) and (b).

41. That s 501CA(3)(a) is merely concerned with notification of the cancellation decision, which s 501(5) permits to be made by the Minister without prior notice to the visa holder, is supported by the Second Reading Speech to the Bill that led to the enactment of s 501CA[6] and the absence of any reference in the Explanatory Memorandum to that Bill to the proper performance of the duty in s 501CA(3) being dependent on the former visa holder's ability to understand that which has been given to him or her.[7] That the scheme is concerned with the physical delivery of material to the former visa holder is confirmed by reg 2.52(2)(b) of the Regulations.[8]

42. Contrary to the reasoning of the majority in the Full Federal Court, neither the text nor purpose of s 501CA(3)(a) calls for consideration of a former visa holder's intellectual or linguistic abilities (or capacity matters more generally) as a condition on the valid performance of the duty to "give" the things identified in those paragraphs. The word "give" in s 501CA(3)(a) simply cannot bear such a construction. In circumstances where the word "give" in a notification provision such as the former s 430D(2) was settled by this Court in *WACB*,[9] had it been the intention of the Parliament to alter its meaning in a notification provision as s 501CA(3)(a) so as to accord with the construction adopted by the majority in the Full Federal Court, different words would have been employed.[10]

43. Nor can such a duty be read into s 501CA(3)(a) in the face of the plurality's observations in *WACB* as to the relevance of a person's inability to comprehend what has been given to him or her to the question whether he or she has been "notified" of a decision.[11] In that case, it was argued by the appellant – who was at all material times an unaccompanied

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6 Australia, House of Representatives, *Parliamentary Debates* (Hansard), 24 September 2014 at 10327.

7 Explanatory Memorandum to the Migration Amendment (Character and General Visa Cancellation) Bill 2014 (Cth) at [91]-[92].

8 *cf Brayson Motors Pty Ltd (in liq) v Federal Commissioner of Taxation* (1985) 156 CLR 651 at 652 per Mason J (*arguendo*). The operative version of reg 2.52(2)(b) was introduced by item 11 of Sch 3 to the *Migration Amendment (2014 Measures No 2) Regulation 2014* (Cth), which commenced one day after the commencement of s 501CA (which was inserted by item 18 of Sch 1 to the *Migration Amendment (Character and General Visa Cancellation) Act 2014* (Cth)).

9 Other provisions in the Act that require documents to be "given" to persons include ss 57(2)(a), 359AA(1)(a), 359A(1)(a), 368A(1)-(2), 368D(4)(b), (5)(b), 424AA(1)(a), 424A(1)(a), 430A(1)-(2), 430D(4)(b), (5)(b), 501C(3)(a) and 501G(1).

10 *Re Alcan Australia Ltd; Ex parte Federation of Industrial, Manufacturing and Engineering Employees* (1994) 181 CLR 96 at 106-107 per Mason CJ, Brennan, Deane, Dawson, Toohey, Gaudron and McHugh JJ (and the cases there cited).

11 See also *Nguyen v Refugee Review Tribunal* (1997) 74 FCR 311, where it was held by a Full Court of the Federal Court that the requirement in the former s 166BA of the Act that the Minister notify a visa applicant of the decision on his or her application did not impose a duty on the Minister to ensure that the notice is translated into his or her native language: see at 319-321 per Tamberlin J, 324-326 per Sundberg J, 332 per Marshall J.

minor (at 96 [4], 109 [80]), in immigration detention at Curtin (at 96 [6], 109 [80]), allegedly could neither read nor write in either English or his native language (at 96 [4], 109 [81]) and had received no education in Afghanistan other than religious (at 96 [4], 109 [81]) – that he had not been notified of the RRT's decision for the purposes of s 478(1)(b) of the Act because, in effect, he could not understand what was given to him (at 97 [11]). He further argued that the RRT's written statement had to be translated into a language that he understood. The plurality rejected these submissions, observing that (at 102 [43]):

> *The Act provides a complete answer. The Act does not distinguish between notification given to a person in the position of the appellant and any other visa applicant. Nor does it distinguish between applicants with differing levels of education or literacy.*[12]

See also the judgment of Kirby J at 111 [89] and 113 [98], [100].

44. The plurality's observations pertain to the operation of the Act generally and are not confined to the former s 478(1)(b). They are fatal to the construction of s 501CA(3) propounded by the present respondent and embraced by the majority in the Full Federal Court. As Logan J correctly observed at CAB 236-237 [231], s 501CA(3) "does not distinguish between classes of holders of cancelled visas" and "applies indifferently to all persons subject to a cancellation decision, some of whom may be literate in English or of full mental capacity, some of whom may not be and some of whom may be of varying intermediate degrees of literacy and intellect."

45. The construction of s 501CA(3) for which the Minister contends is fortified by s 198(2B).[13] By reason of s 198(2B)(c)(i), a person who has failed to make representations within the time prescribed by reg 2.52(2)(b) is liable to be removed from Australia as soon as reasonably practicable. The presence in the Act of a provision such as s 198(2B) supports a construction of s 501CA(3) that imposes duties on the Minister the discharge of which is objectively ascertainable and does not require consideration of a former visa holder's intellectual or linguistic abilities. Were that not so, the Minister could not confidently take the serious step of removing the person from Australia – and that would frustrate the evident purpose of s 198(2B) (to facilitate the removal of an unlawful non-citizen whose visa remains cancelled)[14] and result in uncertainty in the

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12 *cf* the judgment of the primary judge: *Jaffari v Minister for Immigration and Multicultural Affairs* (2001) 113 FCR 524 at 537 [40].

13 This provision was inserted into the Act by item 11 of Sch 1 to the *Migration Amendment (Character Cancellation Consequential Provisions) Act 2017* (Cth).

14 See the Explanatory Memorandum to the Migration Amendment (Character Cancellation Consequential Provisions) Bill 2016 (Cth), which states (at [37]) that s 198(2B) "provides a clear basis for removal from Australia of a non-citizen whose visa has been cancelled by a delegate of the Minister … under subsection 501(3A), and where the cancellation decision has not been revoked under section 501CA" [emphasis added].

administration of the Act (which should be avoided).[15] This supports the unlikelihood that the Parliament's intention was for the words of s 501CA(3) to convey the meaning ascribed by the majority.

(b) The words "in the way that the Minister considers appropriate in the circumstances" are concerned with the manner or method of "giving" the things listed in s 501CA(3)(a)

46. Section 501CA(3)(a) requires the Minister to give written notice of the cancellation decision and particulars of the information on which it was based "in the way that [he] considers appropriate in the circumstances". These words were deployed by the majority to read into s 501CA(3)(a) an obligation to take into account capacity matters (CAB 193-194 [89], 206-207 [133] per Greenwood J, 217 [165], 218-220 [171], [173]-[175] per Rares J). For the following reasons, the taking of that step involved a misreading of the words in s 501CA(3)(a).

47. The words "in the way that the Minister considers appropriate in the circumstances" are concerned with the physical method or manner of "giv[ing]" the material described in ss 501CA(3)(a)(i) and (ii) (see, for example, Logan J at CAB 237-238 [234]-[235]). The Minister's duty under s 501CA(3)(a) is to give the written notice and the particulars of relevant information – not to explain their contents to the former visa holder. Indeed, if an explanation was to be required, there would often be no control over the quality of the explanation or its understanding. Because s 501CA(3)(a) does not require consideration of capacity matters, or explanation to the individual, reg 2.55 may operate according to its terms. The sending under reg 2.55(3)(a) and deemed receipt by force of reg 2.55(5) were effective to meet what s 501CA(3)(a) required.[16] In so far as the assistance of the QCS was sought, that step was open and, as Logan J acknowledged at CAB 243 [258], the performance of the obligations in s 501CA(3) will need to "mesh in" with the procedures of the prison or other criminal detention facility in which the former visa holder is residing at the time of notification.

48. There are further reasons why the majority below was incorrect to find that the words "in the way that the Minister considers appropriate in the circumstances" imposed a duty on the Minister to take into account capacity matters (whether at the time that the Minister selects the method of giving the written notice and the particulars of relevant information, or at the time that the material is given to the former visa holder). The implication of such a duty into s 501CA(3)(a) is too large a step, which is at variance with the words used by

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15 As Mortimer J said in *Butt v Minister for Immigration and Border Protection* (2014) 227 FCR 359 at 374 [48], "the scheme should be construed in a way which promotes certainty in the operation and application of its provisions" and "given an operation that is as specific and clear as possible".

16 It is through regs 2.55(1)(a) and (c) that regs 2.55(3)(a) and (5) came to apply.

the Parliament,[17] gives to the sub-paragraph an unnatural meaning,[18] and pays no regard to the fact that the sub-section is concerned with the giving (or physical delivery) of information to a former visa holder. It has the effect of re-writing the sub-section to impose on the Minister an additional requirement—the fulfilment of an "irreducible minimum standard"—applicable to "giving notice" (words that do not appear in s 501CA(3)) in the particular case by reference to a former visa holder's subjective characteristics. In so far as s 501CA(3)(a) required the Minister to 'give notice' to the respondent, that obligation was discharged upon the physical provision of the written notice of the cancellation decision and particulars of relevant information on 4 January 2017.

49. The approach of the majority also fails to appreciate the differences in language between s 501CA(3)(a) and other, similarly worded provisions in the Act. Section 57(2)(a), for example, requires the Minister to "give" to a visa applicant particulars of "relevant information" (defined in s 57(1)) "in the way that the Minister considers appropriate in the circumstances". Yet s 57(2)(b) imposes a duty on the Minister to "ensure, as far as is reasonably practicable, that the applicant understands why it is relevant to consideration of the application".[19] And it has to be assumed that s 57(2)(b) has work to do (different from s 57(2)(a)).[20] Had it been the intention of the Parliament to require the Minister, as a condition on the valid performance of the duty in s 501CA(3)(a), to ensure that the former visa holder understood what was furnished to him or her, language wider than that which appears in s 57(2)(b) would be necessary and could very easily have been enacted. In fact, even the (lesser) obligation in s 57(2)(b) is not repeated in s 501CA(3). This also tends against the construction of s 501CA(3) propounded by the respondent and preferred by the majority below.

50. A construction of s 501CA(3)(a) that requires the Minister to have regard to capacity matters in the discharge of the duty to give the things listed in that sub-paragraph also

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17 *Taylor v Owners – Strata Plan No 11564* (2014) 253 CLR 531 (***Taylor***) at 548 [38] per French CJ, Crennan and Bell JJ. See also *Uelese v Minister for Immigration and Border Protection* (2015) 256 CLR 203 at 233-234 [104] per Nettle J; *HFM043 v Republic of Nauru* (2018) 92 ALJR 817 at 820 [24] per Kiefel CJ, Gageler and Nettle JJ.

18 *Taylor* at 557 [66] per Gageler and Keane JJ. See also *SZTAL v Minister for Immigration and Border Protection* (2017) 262 CLR 362 at 375 [38] per Gageler J.

19 See also ss 120(2) (read with s 120(3)), 359A(1) and 424A(1) of the Act. Section 57(2)(b) does not call for consideration of 'capacity matters' (and nor can such an obligation be read into the provision in the face of s 51A). It merely requires that "the importance of the information and its potential impact upon the applicant's case for a visa be identified and the information be communicated in a way which promotes that understanding as far as is possible" and that "consideration be given to the means by which particulars of the information should be provided, as most suitable to that purpose" (by a method specified in s 58): *Saeed v Minister for Immigration and Citizenship* (2010) 241 CLR 252 at 261 [20] per French CJ, Gummow, Hayne, Crennan and Kiefel JJ.

20 *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 382 [71] per McHugh, Gummow, Kirby and Hayne JJ.

gives rise to administrative unworkability (and for that reason also should be jettisoned). On the construction embraced by the majority, the Minister will be required to: B43/2020

a) ascertain what are the limitations of the former visa holder in terms of his or her ability or capacity to understand the material given to him or her;

b) identify how those limitations may be overcome; and

c) take such steps as are necessary to overcome those limitations.

51. However, as the reasons for judgment of Greenwood J at CAB 209 [138] illustrate, the discharge of the duty in s 501CA(3)(a) may require an exceedingly broad inquiry having to be carried out by the Minister before the former visa holder has been given the material described in that provision. The Minister would have to ascertain the impediments confronting a former visa holder in prison, including his or her ability to comprehend what it is that is said in the material given to him or her, before attempting to address them. The Minister would also need to foresee what steps he or she should take to overcome those impediments. But there is nothing in the text or context of s 501CA(3)(a) that requires such inquiries or which would fix the Minister with, or make his actions dependent upon, knowledge – much less knowledge after the event – of prison officers in relation to capacity matters.

52. The uncertainty, administrative burden, cost and inconvenience associated with the majority's construction of s 501CA(3)(a), matters to which Logan J was alive at CAB 237 [231] and 240 [246], are apparent. They highlight the large number of words that are required to be read into s 501CA(3)(a) and the improbability that the Parliament intended that provision to be construed in the manner for which the (present) respondent contended below. That construction should not be adopted, for it otherwise "would … have the effect of drastically reducing the intelligibility of the [Act] to those who administer it".[21]

53. Further, the construction favoured by the majority raises more questions than it answers. Their Honours did not explain, for example, how the Minister would go about ascertaining a former visa holder's levels of literacy and comprehension, by what standard comprehension is to be judged, or how the Minister might go about ensuring that the intermediary (which, according to Greenwood J at CAB 209 [138], may be an interpreter, a legal representative or a fellow inmate) has accurately conveyed to the former visa holder the information contained in the material furnished to him or her.

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21 *Clubb v Edwards* (2019) 93 ALJR 448 at 540 [436] per Edelman J.

(c) Section 501CA(3)(b) requires nothing more than the provision of an opportunity to make representations about revocation

54. Section 501CA(3)(b) merely calls for the Minister to inform the former visa holder that he or she may make representations about revocation of the decision to cancel his or her visa within the period and in the manner ascertained in accordance with the Regulations. Like s 501CA(3)(a), s 501CA(3)(b) "applies indifferently across a range of persons whose visa has been cancelled, admitting of an infinite variety of literacy and comprehension capacities" (CAB 240 [245] per Logan J). This Court's observations in *WACB* at 102 [43] have equal application to s 501CA(3)(b) and are a complete answer to the majority's construction of that provision.

55. In the Full Federal Court, the majority appeared to draw analogies with the duty imposed on the Administrative Appeals Tribunal (**AAT**) by ss 360(1) and 425(1) to invite a review applicant to "appear before [it] to give evidence and present arguments relating to the issues arising in relation to the decision under review" (at CAB 194 [90], 209 [137]-[138] per Greenwood J, 219-220 [173], [175] per Rares J). Those analogies are not apt. The differences between the scheme of review in Parts 5 and 7 of the Act, on the one hand, and, on the other, the scheme for the revocation of mandatory cancellation decisions made under s 501(3A), are significant. Section 501CA does not, for example, contain any provision equivalent to ss 366C or 427(7).[22] While ss 348(1) and 414(1) require the AAT to "review" the Part 5- or Part 7-reviewable decision, being its "core function",[23] s 501CA does not require the Minister to "review" any cancellation decision. While ss 360(1) and 425(1) require the AAT to identify the issues arising in relation to the decision under review,[24] s 501CA(3)(b), like s 501C(3)(b), "does not require identification of the issues which the individual concerned must address if she or he decides to make representations"[25] (save, of course, as to whether the cancellation decision should be revoked). The differences between s 501CA(3)(b) and ss 360(1) and 425(1) just described were not acknowledged by the majority.

56. Analogies with ss 360(1) and 425(1) and the use of the word "meaningful"[26] are not apt. Either there was compliance with s 501CA(3) or there was not. In any event, even if that

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22 The presence of these powers in Parts 5 and 7 is important, as the Federal Court has held that, if, by reason of language difficulties, an applicant cannot give evidence and present arguments, the content of s 425(1) will compel the exercise of s 427(7): see, for example, *Singh v Minister for Immigration and Multicultural Affairs* (2001) 115 FCR 1 at 6 [27] per Tamberlin, Mansfield and Emmett JJ. But no such power is conferred, or duty imposed, on the Minister by s 501CA.

23 *Minister for Immigration and Citizenship v SZIAI* (2009) 83 ALJR 1123 at 1127 [18] per French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ.

24 *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 228 CLR 152 at 162-163 [33]-[35] per Gleeson CJ, Kirby, Hayne, Callinan and Heydon JJ.

25 *Roach v Minister for Immigration and Border Protection* [2016] FCA 750 at [28] per Perry J.

26 A term employed by Gray, Cooper and Selway JJ in *Minister for Immigration and Multicultural and Indigenous Affairs v SCAR* (2003) 128 FCR 553 at 561 [36].

were not so, the respondent was given a "meaningful" opportunity to make representations about revocation of the cancellation decision (*cf* CAB 194 [90], 209 [137]-[138] per Greenwood J, 220 [175], 221 [182] per Rares J). The Notice explained the decision that had been made, invited the respondent to make representations about revocation and, despite there being no duty to do so, drew to his attention (by the provision of a direction given by the Minister pursuant to s 499(1))[27] those matters which would inform the Minister's decision under s 501CA(4)(b) and which he may address.

(d) Conclusion

57. For the foregoing reasons, the majority erred in holding that the Notice was invalid because the Minister did not have regard to capacity matters in performing his duties under ss 501CA(3)(a) and (b). In fact, there was no obligation on the Minister to have regard to capacity matters in giving the things described in s 501CA(3)(a) or in inviting the respondent to make representations about revocation under s 501CA(3)(b). Nor did the valid performance of those duties turn on the question whether the respondent understood the Notice.

The respondent did not discharge his onus of proof (ground 3)

58. In the Federal Circuit Court, the onus was on the respondent to demonstrate jurisdictional error (CAB 234 [221] per Logan J).[28] Relevantly, on the construction of s 501CA(3) for which the present respondent contended below (and which, as explained above, is not conceded), the discharge of that onus required him to prove that the Minister, *first*, had knowledge of the capacity matters at the time that a decision was made to give the Notice by a particular method (or when it was given to him), and, *secondly*, failed to have regard to the capacity matters.

59. The respondent did not establish either proposition.

60. As to the first, there was nothing in the evidence before the Federal Circuit Court or the Full Federal Court on which a finding could be based, or from which it could be inferred, that, prior to the respondent's receipt of the Notice, the Minister had knowledge of the capacity matters (CAB 238 [237] per Logan J). The evidence did not establish that, at or prior to that time, the Minister was aware of any of the matters which Greenwood J listed at CAB 207-208 [134]. It appears that his Honour formed a view, on the material before

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27 Direction No 65 – *Visa refusal and cancellation under s 501 and revocation of a mandatory cancellation of a visa under s 501CA* dated 22 December 2014: CAB 47-79.

28 *Minister for Immigration and Citizenship v SZGUR* (2011) 241 CLR 594 at 616 [67] per Gummow J; *Plaintiff M64/2015 v Minister for Immigration and Border Protection* (2015) 258 CLR 173 (***Plaintiff M64/2015***) at 185 [24] per French CJ, Bell, Keane and Gordon JJ; *BVD17 v Minister for Immigration and Border Protection* (2019) 93 ALJR 1091 at 1100 [38] per Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ.

the Full Federal Court,[29] as to the respondent's ability (or lack thereof) to comprehend that which had been furnished to him on 4 January 2017 and did not confine himself to the material that was before the Minister. To the extent that Greenwood J did so, his Honour erred. Justice Greenwood also speculated, at CAB 210 [139], as to what the Minister knew in relation to the respondent's capacity prior to the issue of the Notice (*cf* CAB 235 [222] per Logan J). The fact that the respondent had been granted a protection visa or "suffered special disadvantage" does not carry the consequence that the Minister was aware of the capacity matters.

61. As to the second, even if the Minister had been aware of the capacity matters (as to which he makes no concessions), there was nothing in the evidence before either court below on which a finding could be based, or from which it could be inferred, that the Minister did not take them into account in discharging the duties in ss 501CA(3)(a) and (b). There was no statement of reasons in this respect and none was required.[30] Nor was there any other evidence enabling identification of everything that was or was not taken into account.

Delegation (ground 4)

62. Section 496(1) of the Act confers power on the Minister to "delegate to a person any of [his] powers under th[e] Act" "by writing signed by him". It does not, however, mandate delegation every time a person other than the Minister exercises a power or carries out a duty or a function under the Act.

63. Section 497 relevantly provides as follows:

> ***Delegate not required to perform certain administrative tasks***
>
> ...
>
> *(2) If the Minister delegates the power to cancel visas, the delegation does not require the delegate personally to perform any task in connection with the cancellation, except the taking of a decision in each case whether a visa should be cancelled.*
>
> *(3) Nothing in subsection ... (2) shall be taken to imply that:*
>
> *(a) a person on whom a power is conferred by or under this or any other Act; or*
>
> *(b) a delegate of such a person;*
>
> *is required personally to perform all administrative and clerical tasks connected with the exercise of the power.*

64. Section 497 limits how much work must be done by the Minister personally or by his delegates. By way of example, if a delegate of the Minister makes a decision to cancel a person's visa under s 501(3A), s 497(2) operates so that he or she is not required to

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29 See CAB 194-206 [92]-[131], 207-208 [134]-[135], 209 [137]-[138].

30 Accordingly, as this Court observed in *Plaintiff M64/2015* at 185 [25], "it is difficult to draw an inference that the decision has been attended by an error of law from what has *not* been said by the [d]elegate" [emphasis in original]. See also at 189 [36].

perform personally any task "in connection with"[31] the cancellation other than to make the decision to cancel the visa. Instead, another person may (validly) perform tasks in connection with the cancellation (save for the taking of the decision to cancel the visa). If that were not so, s 497(2) would be rendered otiose.[32]

65. Section 497(3) states that, irrespective of how s 497(2) is construed, it does not require the Minister or a delegate personally to perform all of the administrative and clerical tasks connected with the exercise of a power to cancel a visa. The enactment of s 497(3) is an indication that the Act leaves room for the operation of the agency or *Carltona* principle.[33] However, s 497(2) does not depend upon that principle and itself authorises, or confirms the authority of, a person who is not the Minister or a delegate to take steps in connection with cancellation. Nor is s 497(2) limited to administrative or clerical tasks;[34] it extends to "any task in connection with the cancellation" and would, plainly, extend to the steps described in ss 501CA(3)(a) and (b).

66. Turning to the circumstances of the present case, the majority in the Full Federal Court erred in two respects.

67. *First*, while Greenwood J accepted that the steps described in s 501CA(3) were ones in connection with the decision to cancel the respondent's visa (CAB 212-213 [152]),[35] his Honour held that they did not comprise "tasks" for the purposes of s 497(2). In this regard, the majority drew an arbitrary distinction between "mere" administrative or clerical tasks, on the one hand, and, on the other, steps that were more than "mere" tasks because they engaged the exercise of substantive powers or obligations (CAB 212-213 [151]-[153], 215-216 [162] per Greenwood J, 220 [179] per Rares J). The duties in ss 501CA(3)(a) and (b) were found to fall into the latter category.

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31 The words "in connection with" are broad in their reach: see, for example, *R v Khazaal* (2012) 246 CLR 601 (***Khazaal***) at 613 [31] per French CJ; *DBE17 v Commonwealth* (2019) 266 CLR 156 at 168 - 169 [25] per Nettle J; *Collector of Customs v Cliffs Robe River Iron Associates* (1985) 7 FCR 271 at 275 per Bowen CJ, Morling and Neaves JJ; *Collector of Customs v Pozzolanic Enterprises Pty Ltd* (1993) 43 FCR 280 at 288 per Neaves, French and Cooper JJ; *Minister for Immigration and Multicultural Affairs v Singh* (2000) 98 FCR 469 at 477 [29] per Black CJ, Sundberg, Katz and Hely JJ; *R v Orcher* (1999) 48 NSWLR 273 at 278 [28] per Spigelman CJ.

32 *McCulloch v Minister for Home Affairs* [2019] FCA 54 (***McCulloch***) at [44] per Markovic J.

33 *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560 at 563 per Lord Greene MR. See also *O'Reilly v State Bank of Victoria Commissioners* (1983) 153 CLR 1 at 11 per Gibbs CJ, 31 per Wilson J; *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at 38 per Mason J.

34 *McCulloch* at [42(2)].

35 His Honour used the relational phrase "in relation to", not "in connection with", at CAB 212-213 [152], but the two expressions are similar: *Khazaal* at 613 [31]. Like the latter, the former is of broad import: see, for example, *Powers v Maher* (1959) 103 CLR 478 at 484-485 per Kitto J; *State Government Insurance Office (Qld) v Crittenden* (1966) 117 CLR 412 at 416 per Taylor J; *Workers' Compensation Board (Q) v Technical Products Pty Ltd* (1988) 165 CLR 642 at 653-654 per Deane, Dawson and Toohey JJ; *O'Grady v Northern Queensland Co Ltd* (1990) 169 CLR 356 at 374 per Toohey and Gaudron JJ, 376 per McHugh J; *Airservices Australia v Canadian Airlines* (1999) 202 CLR 133 at 219 [242]-[243] per McHugh J.

68. However, to say that a step is not "merely" a task is to acknowledge that it is, nonetheless, a "task". The fact that a task may also lead to the conferral upon a former visa holder of a substantive right does not deprive it of the character of a "task" as understood in s 497(2). Nor does the fact that the task might be important. There is nothing in the extrinsic material to the Bill that led to the insertion into the Act of the forerunner to s 497[36] that would support a construction of the word "task" as excluding a step taken under the Act, in connection with a decision to cancel a visa, that involved the exercise of a power or performance of an obligation. On the contrary, the Explanatory Memorandum to the Migration Legislation Amendment Bill 1994 (Cth), which led to the enactment of the current s 497(2) (then numbered s 177), provides support for the Minister's construction of that sub-section. It relevantly provides as follows (at [172]-[173]):

> *This clause amends section 177 which provides that a delegate need not personally perform any task except making the decision. This is to cater for situations such as where another officer interviews an applicant and prepares a submission for consideration by a delegate.*
>
> *The purpose of the amendments is to:*
>
> ...
>
> - *put beyond doubt that a delegation to cancel visas does not require the delegate to personally perform any task except taking the decision as to whether the visa should be cancelled.*

The example does not detract from the purpose stated.

69. Furthermore, even if, despite the width of the language employed in s 497(2), it were confined to the performance of administrative or clerical tasks, each of the steps in ss 501CA(3)(a) and (b) can properly be characterised in that way (CAB 242 [254]-[255] per Logan J). Performance of those steps required the physical delivery of the things there described.

70. *Secondly*, Greenwood J construed s 497(2) as "mak[ing] clear that the delegation of the power to cancel a visa does not *carry with it* a "requirement" that the delegate "personally perform" "any task" in connection with the cancellation" (CAB 211-212 [147]) (emphasis in original). Essentially, his Honour read s 497(2) as only authorising the delegate who took the decision to cancel the respondent's visa not to perform any other task in connection with that decision. The person performing that task, his Honour considered, still had to have delegated authority from the Minister under s 496(1). But it would be a strange result if s 497 were enacted for that limited purpose. Indeed, it would not have

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36 The former s 66DB (see cl 32 of the Migration Legislation Amendment Bill 1989 (Cth)). Section 66DB was enacted by s 31 of the *Migration Legislation Amendment Act 1989* (Cth) (**1989 Amendment Act**)). Section 66DB was renumbered s 177 by s 35 of the 1989 Amendment Act, and s 177 was renumbered s 497 by s 83 of the *Migration Legislation Amendment Act 1994* (Cth) (**1994 Amendment Act**). Section 80 of the 1994 Amendment Act also amended s 177 of the Act (now s 497).

been necessary for the Parliament to enact s 497 if it did not go further than that which Greenwood J considered was its reach. To read s 497(2) as doing nothing more than not imposing an additional duty on the delegate who made the cancellation decision would be to render it superfluous.

71. For these reasons, contrary to the reasoning of the majority at CAB 216 [163] and 217 [165], the Delegate did have authority to take the steps described in ss 501CA(3)(a) and (b) and the Notice was validly given to the respondent.

Part VII: Orders sought

72. The Minister seeks the following orders:

1. Appeal allowed.

2. Set aside orders 1, 2(a) and 2(b) of the orders made by the Full Court of the Federal Court of Australia on 16 December 2019 and, in their place, make the following order:

"1. Appeal dismissed."

Part VIII: Oral argument

73. The Minister anticipates that he will require approximately one-and-a-half hours for the presentation of his oral argument (including in response to the notice of contention).

Dated: 21 August 2020

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No. B43 of 2020

BETWEEN:

MINISTER FOR IMMIGRATION AND BORDER PROTECTION
Appellant

and

EFX17
Respondent

ANNEXURE OF STATUTORY PROVISIONS

1. *Migration Act 1958* (Cth), ss 496, 497, 501, 501CA (compilation number 133, as at 3 January 2017).
2. *Migration Act 1958* (Cth), s 198(2B) (compilation number 134, as at 23 February 2017).
3. *Migration Regulations 1994* (Cth), regs 2.52, 2.55 (compilation number 182, as at 3 January 2017).