



HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA

MELBOURNE REGISTRY

BETWEEN:

XMBQ

Appellant

and

MINISTER FOR IMMIGRATION AND CITIZENSHIP

Respondent

SUBMISSIONS OF THE APPELLANT

PART I FORM OF SUBMISSIONS

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

PART II ISSUES ARISING

2. If a statute confers a power upon the occurrence of an event, but does not specify the time within which it must be exercised, is there a common law principle of construction that, subject to contrary intention, the power must be exercised within a reasonable time?
- 10 3. Must the power in s 501BA(2) of the *Migration Act 1958* (Cth) be exercised within a reasonable time of the “original decision”, as defined in s 501BA(1)?

PART III SECTION 78B NOTICE

4. A notice is not required under s 78B of the *Judiciary Act 1903* (Cth).

PART IV CITATION OF REASONS BELOW

5. The primary judgment is *XMBQ v Minister for Immigration and Multicultural Affairs* [2025] FCA 553 (PJ) (CAB42). The Full Court’s judgment is *Minister for Immigration and Citizenship v XMBQ* [2026] FCAFC 19; (2026) 315 FCR 207 (FC) (CAB128).¹

¹ The Full Court made costs orders on 30 April 2026 (CAB178): *Minister for Immigration and Citizenship v XMBQ* [2026] FCAFC 55 (CAB171).

PART V FACTS

6. The appellant arrived in Australia in 2004 and held a Refugee (Class XB) (subclass 200) visa: T²[2]; M³[61]; PJ[1], [7]. On 15 December 2017, a delegate of the Minister cancelled the visa under s 501(3A) of the *Migration Act 1958* (Cth) (**Act**), the appellant having been sentenced on 22 June 2017 to a qualifying term, which he was serving: T[2]; PJ[10]. On 15 January 2019, a delegate decided under s 501CA(4) not to revoke the cancellation: T[4]; PJ[11]. The appellant applied to the Administrative Appeals **Tribunal** for review. On 9 April 2019, the Tribunal decided not to revoke: T[1]; PJ[11]. On 19 December 2019, the Federal Court quashed that decision, and ordered the Tribunal to re-determine:⁴ T[1]; PJ[11].
7. After three days of hearing,⁵ at which the parties⁶ were legally represented and the appellant gave evidence and called a forensic psychiatrist (T[23]–[29]), on 13 April 2021 the Tribunal was satisfied of “another reason” for s 501CA(4)(b)(ii) (T[70]) where consequences of removal (T[63]) outweighed a low risk of reoffending (T[30], [31], [68]), and therefore set aside the delegate’s decision and substituted a decision to revoke the cancellation: CAB5; T[1], [71]; PJ[12]–[22]. The appellant’s visa was thereby restored and he was released from immigration detention: M[7]. The Department was notified of the Tribunal’s decision shortly after it was given: PJ[23].
8. The appellant’s conviction and aggregate sentence of 359 days’ imprisonment on 7 June 2023 (PJ[24]) did not engage s 501(3A). On 8 June 2024, more than three years after the Tribunal’s “original decision” under s 501CA(4) (s 501BA(1)), the Minister purported to set aside the original decision and cancel the visa under s 501BA(2): CAB27; PJ[31].⁷ The Minister was satisfied as required by s 501BA(2)(a) (M[13]–[15]; PJ[35]) and was satisfied that cancellation was in the national interest for s 501BA(2)(b) (M[56]), having

² The Minister’s decision under s 501BA(2) (CAB27) followed the decision in *XMBQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] AATA 853 (**T**) (CAB5).

³ The Minister’s statement of reasons for the s 501BA(2) decision commences at CAB29 (**M**).

⁴ *XMBQ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2019] FCA 2134; (2019) 168 ALD 267.

⁵ The hearing was held on 22 and 23 March and 1 April 2021 (CAB26).

⁶ The appellant and the Minister: see *Administrative Appeals Tribunal Act 1975* (Cth) (**AAT Act**), s 30(1); Act, ss 500(1)(ba). The AAT Act was relevantly varied by s 500(6A)–(6L) of the Act.

⁷ The appellant was granted a bridging visa on 28 June 2024: PJ[45].

chosen not to hear the appellant given s 501BA(3) disapplied natural justice (M[9], [10]), but having found on evidence and submissions to the Tribunal (M[11]) and criminal check results from 9 November 2023 (M[12]), that his offending was very serious (M[33]; PJ[38]), there was a high likelihood he would re-offend (M[47]; PJ[40]), the need to protect the community weighed heavily in favour of cancellation (M[48]; PJ[40]) and community expectations weighed significantly towards the national interest in cancellation: M[53]; PJ[42]. As to discretion, while protection claims, non-refoulement and mental health consequences if he was removed to Somalia weighed against cancellation (M[79]), these were clearly outweighed by the national interest considerations (M[93]), so the Minister exercised the power: M[94]; PJ[43], [44].

9. The primary judge issued certiorari, upholding ground 2 that “the Minister erred jurisdictionally by failing to exercise his power within a reasonable time” (PJ[48], [192]), by first construing s 501BA(2) as “subject to an implied temporal limitation requiring that it be exercised within a reasonable time after the original decision of the delegate or the Tribunal to which the power is directed” (PJ[3], [67]–[140]), and then finding on the evidence he was “comfortably satisfied that the Minister’s decision in the present case was not made until well after a reasonable time had elapsed”: PJ[4], [141]–[191].
10. On appeal, the Minister impugned the conclusion on construction of s 501BA(2) (CAB121–3), but not the factual finding: FC[37]. The Full Court allowed the appeal (CAB176), holding that s 501BA(2) need not be exercised within a reasonable time of the original decision: FC[1], [2], [117]. The notice of contention below is now irrelevant.

PART VI ARGUMENT

A. Section 501BA(2)

11. The exclusionary aspect of the Act’s object “to regulate, in the national interest, the coming into, and presence in, Australia of non-citizens” (s 4(1)) is effected by a scheme of “interlocking”⁸ refusal and cancellation powers, and decision-making pathways, involving levels of review, including merits review by the Tribunal. Section 501BA(2), which turns on the Minister’s satisfaction whether cancellation is in “the national

⁸ *Minister for Home Affairs v Brown* (2020) 275 FCR 188, [28] (Allsop CJ, Kenny and Banks-Smith JJ).

interest”, “largely a political question”,⁹ lies at the end¹⁰ of the decision-making pathway described by the primary judge at PJ[54(c)].

12. The first step on that pathway is s 501(3A), which requires the Minister to cancel a visa that has been granted to a person serving a sentence on a full-time basis in a custodial institution, if satisfied that they do not pass the character test because they have been sentenced to imprisonment for more than 12 months or for life, or to death, or have been found guilty or convicted of a sexual offence involving a child.
13. Next, if the person makes representations, the Minister or a delegate (s 496(1)) may revoke the cancellation (s 501CA(4)). If a decision not to revoke is made by a delegate, the Tribunal had (and the Administrative Review Tribunal now has) jurisdiction to review that decision: s 500(1)(ba). The making of a decision by a delegate or the Tribunal to revoke a s 501(3A) cancellation decision, thus restoring the visa, enlivened s 501BA(2): s 501BA(1).
14. Section 501BA(2) is the final step. On the primary judge’s construction, that step must be taken within a reasonable time, otherwise the pathway ends with the revocation decision. On the Full Court’s construction, the pathway is indefinite, lasting up to the duration of the visa holder’s natural life.

B. How and why the primary judge and the Full Court diverged

15. The primary judge and Kennett J both started from orthodox principles: the meaning of s 501BA turned on text, read in light of context and purpose.¹¹ Then, they diverged.
16. The first question on which they diverged is whether there is a principle that a statutory power arising on the occurrence of a particular event, with no specified time period for performance, would (subject to contrary intention) be construed to require exercise within a reasonable time.

⁹ *ENT19 v Minister for Home Affairs* (2023) 278 CLR 75, [93] (Gordon, Edelman, Steward and Gleeson JJ), quoting *Plaintiff S156/2013 v Minister for Immigration and Border Protection* (2014) 254 CLR 28, [40] (the Court).

¹⁰ Unlike some other personal ministerial powers, s 501BA(2) is not subject to revocation: PJ[57(b)].

¹¹ Both referred to *SZTAL v Minister for Immigration and Border Protection* (2017) 262 CLR 362, [14] (Kiefel CJ, Nettle and Gordon JJ), [37] (Gageler J) and *DZY (a pseudonym) v Trustees of the Christian Brothers* (2025) 282 CLR 495, [23] (Gageler CJ, Gordon, Edelman and Gleeson JJ): PJ[67]; FC[70].

17. The primary judge held there is, relying on *Koon Wing Lau v Calwell* (1949) 80 CLR 533 and *CPCF v Minister for Immigration and Border Protection* (2015) 255 CLR 514: PJ[68], [108].¹² Section 501BA(2) arising upon (and being responsive to) an original decision (PJ[69]–[72], [86]), enlivened that principle: PJ[130], [135], [140].
18. The Full Court held that *Koon Wing Lau* and *CPCF* do not support such a principle: FC[1], [24], [78], [90]. In *Koon Wing Lau*, Dixon J was just construing the word “upon”: FC[1], [16], [82]. In *CPCF*, the Commonwealth had conceded that a statutory power that affected liberty was subject to a reasonable time limit: FC[1], [23], [84]. A reasonable time limit is implied only if text, context and purpose (positively) so indicate: FC[90].
- 10 19. The primary judge was correct. In *Koon Wing Lau*, Dixon J was not only construing the word “upon”; his Honour identified a principle of interpretation or “ordinary rule”.¹³ The Court in *CPCF* applied that principle to a statute that did not include express temporal language. The principle is engaged here because the power in s 501BA(2) is enlivened upon the making of an original decision: see Part VI(C) below.
20. The different answers of the primary judge and the Full Court to the first question framed their respective approaches to the subsequent exercise in statutory interpretation.
21. For the primary judge, the principle being engaged, the next question was whether text, context and purpose evinced a contrary intention. His Honour discerned no contrary intention: PJ[140]. Section 501BA’s text, context and purpose do not support a freestanding power to cancel visas held by s 501CA(4) revocation (PJ[132]) or a supervisory regime to monitor whether the Tribunal’s predictive findings come true (PJ[131]), and the scheme would lose coherence if s 501BA(2) could be exercised on new events long after the original decision, without natural justice, where s 501(2) and (3A) are unavailable: PJ[138]. Extrinsic materials showed a purpose that the “extraordinary” power (PJ[75]¹⁴) be exercised quickly (PJ[73]), with natural justice removed only because it has been provided by the “process available under s 501CA” (PJ[75]) to the visa holder,
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¹² See also *Eswaran v Minister for Immigration, Citizenship and Multicultural Affairs* [2025] FCA 496, [13]–[53] (Longbottom J): PJ[98]–[102].

¹³ *Koon Wing Lau* (1949) 80 CLR 533, 573.

¹⁴ See also “draconian” (*Tereva v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 294 FCR 270, [14] (Mortimer J): PJ[79]), “exceptional” (*DOB18 v Minister for Home Affairs* (2019) 269 FCR 636, [13] (Rares J): PJ[77]), “exceptionality” (*Moli v Minister for Immigration and Multicultural Affairs* [2025] FCA 350, [36], [110] (Colvin J): PJ[83], [85]).

ordinarily as party to a Tribunal proceeding. The Minister is a party to Tribunal proceedings, and their Department is invariably notified of the outcome: PJ[133]. Section 501BA would lose coherence with the statutory scheme if exercisable without hearing on new events long after the original decision that do not enliven s 501(2) or (3A): PJ[138].

22. For the Full Court, no principle being engaged, the question was whether text, context and purpose positively indicate an implied time limit for s 501BA. Justice Kennett held they did not: FC[117]. Absent temporal preposition, the text suggests that if there is an original decision, the power applies continuously: FC[91], [95]. That this offends ordinary notions of fairness and humanity, so promptness is desirable, and has devastating consequences for the individual, does not affect construction: FC[92], [95]. Denial of natural justice because the Minister could consider material from the s 501CA(4) process supports a limit based on what is considered, rather than timing: FC[93], [113(a)]. A reasonable time implication produces incoherence, because duration is uncertain for high-volume decision-making (FC[96]¹⁵), and incongruent, because government resourcing is a relevant factor: FC[97]. That s 501A(2) is not limited to a reasonable time makes unlikely that s 501BA(2) is: FC[103].¹⁶ That s 501BA(2) is connected to s 501CA(4) does not require a temporal limit: FC[106].¹⁷ That s 501BA(2) overlaps adjacent cancellation powers unavailable to respond to events after the original decision may entail limits, but not a time limit: FC[109]. Extrinsic materials showed there was to be power to act quickly, not a limit if the power was not exercised quickly: FC[115]. Justice Bromwich agreed with Kennett J and additional conclusions of Thawley J: FC[1]. Justice Thawley observed that where a statute is construed so a power must be exercised in a reasonable time, such a limit constrains the legality of exercise, but does not exhaust the power: FC[3]–[6], [8]–[11], [24]. As to s 501BA(2), what is in the national interest might change by reason of new events, so an implied temporal guillotine would undermine its evident purpose: FC[31]. The harshness of s 501BA(2) is mitigated by its reasonableness limit: FC[34].
23. The primary judge was right to conclude that, the principle being enlivened, the text, context and purpose did not evince a contrary intention: see Part VI(D) below. But even if the Full Court was right that no such principle was engaged, and a time limit is implied

¹⁵ See, similarly, Thawley J at FC[32].

¹⁶ See, similarly, Thawley J at FC[33].

¹⁷ See, similarly, Thawley J at FC[26].

only if indicated by text, context and purpose, still the primary judge was right to imply the time limit, because it is so indicated, for the same reasons set out in Part VI(D) below.

C. The reasonable time principle

24. ***The principle is supported by authority.*** In *Koon Wing Lau*, Melbourne and Sydney plaintiffs challenged the validity of s 4 of the *Immigration Act 1901-1949* (Cth).¹⁸ Section 4(1) gave the Minister a discretionary power to issue a certificate of exemption authorising the person named in the certificate to enter or remain in Australia. While that certificate was in force, s 4(1) mandated that the person named “shall not” be subject to any of the provisions restricting entry into or stay in Australia. Section 4(4) provided that:
 10 “[u]pon the expiration or cancellation of any such certificate, the Minister may declare the person named in the certificate to be a prohibited immigrant and that person may thereupon be deported from [Australia] in pursuance of an order of the Minister.”
25. The Sydney plaintiffs argued that s 4(1) and (4) were *ultra vires*: the major premise was that the immigration power did not extend to persons who had been absorbed into the community; the minor premise was that “upon” meant “any time after the expiration etc”, so a person admitted on a certificate could be deported “many years afterwards, when he has ceased to be an immigrant and has been absorbed into the community”; the conclusion was that s 4(1) and (4) exceeded the immigration power.¹⁹ The Minister for Immigration contested the major premise: the immigration power was co-extensive with the aliens
 20 power, or at least persons entering as immigrants remained subject to the immigration power unless the Commonwealth did something to put them beyond it.²⁰
26. Chief Justice Latham (with whom McTiernan J²¹ and Webb J²² agreed), decided for validity on the major premise of the scope of the immigration power.²³
27. By contrast, Dixon J addressed the minor premise first, because the “meaning and effect” of s 4(1) and (4) should be determined before testing their validity.²⁴ The Sydney

¹⁸ *Koon Wing Lau* (1949) 80 CLR 533, 537.

¹⁹ *Koon Wing Lau* (1949) 80 CLR 533, 542–4 (Mr Barwick KC for the Sydney plaintiffs).

²⁰ *Koon Wing Lau* (1949) 80 CLR 533, 544–5 (Mr Alderman KC, addressing on all actions).

²¹ *Koon Wing Lau* (1949) 80 CLR 533, 583.7.

²² *Koon Wing Lau* (1949) 80 CLR 533, 593.7.

²³ *Koon Wing Lau* (1949) 80 CLR 533, 559–66.

²⁴ *Koon Wing Lau* (1949) 80 CLR 533, 570.5. See also 572.4: “meaning, application and validity”.

plaintiffs' argument on interpretation had two distinct elements. *First*, "upon" meant "after" rather than immediately (relying on Jordan CJ in *Ex parte Lesiputty; Re Murphy* identifying that "upon" could mean *before, simultaneously, or after*²⁵).²⁶

28. The *second* premise, "founded"²⁷ on the first, was that s 4(4) was therefore available "many years afterwards, when [a person] has ceased to be an immigrant".²⁸ Justice Dixon rejected that premise, because, although the power was available after expiration etc:

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... in accordance with the ordinary rule, that must be taken to mean within a reasonable time after the expiration and cancellation of the certificate of exemption. What is a reasonable time will depend upon all the facts, including the conduct of the person named in the certificate. It does not necessarily mean that by successfully evading the authorities for a long period of time, he can escape from the operation of sub-s (4). But the operation of sub-s (4) is limited to a reasonable time after the expiry or cancellation of the certificate.²⁹

29. On this interpretation, the major premise as to validity did not arise.³⁰
30. Justice Williams (with whom Rich J agreed)³¹ accepted the plaintiffs' argument on the major premise³² but, with Dixon J, rejected it on the minor premise. However, his Honour's reasoning more squarely derived the reasonable time limit from "upon",³³ relying on *Folkard v Metropolitan Railway Co* (1873) LR 8 CP 470, where a statutory power "upon the trial" was construed to "mean within a reasonable time afterwards".³⁴
- 20 31. In *R v Forbes; ex parte Kwok Kwan Lee* (1971) 124 CLR 168, the applicant's challenge to the validity of s 18 of the Act, which provided "[t]he Minister may order the deportation of a person who is a prohibited immigrant under any provision of this Act", as beyond the immigration power, was rejected by Barwick CJ (with whom McTiernan, Windeyer, Owen and Gibbs JJ agreeing),³⁵ distinguishing grant of temporary entry permits under s 10 of the Act, which prevented an immigrant losing status as an immigrant, from the

²⁵ (1947) 47 SR (NSW) 433, 436. See also *Koon Wing Lau* (1949) 80 CLR 533, per Latham CJ at 559.6

²⁶ *Koon Wing Lau* (1949) 80 CLR 533, 542.8.

²⁷ *Koon Wing Lau* (1949) 80 CLR 533, 559.7 (Latham CJ).

²⁸ *Koon Wing Lau* (1949) 80 CLR 533, 542.9.

²⁹ *Koon Wing Lau* (1949) 80 CLR 533, 573–4.

³⁰ *Koon Wing Lau* (1949) 80 CLR 533, 576.3, 577.6.

³¹ *Koon Wing Lau* (1949) 80 CLR 533, 569–70.

³² *Koon Wing Lau* (1949) 80 CLR 533, 588.2, 589–90.

³³ *Koon Wing Lau* (1949) 80 CLR 533, 590.8.

³⁴ (1873) LR 8 CP 470, 471 (Bovill CJ).

³⁵ (1971) 124 CLR 168, 174.

provisions considered in *Koon Wing Lau*.³⁶ Having rejected the “basic submission”³⁷ as to validity, Barwick CJ rejected an argument, based on *Koon Wing Lau*, that s 18 was available only within a reasonable time of expiry of a temporary entry permit, because there was no “unexpressed condition” to which s 18 was subject.³⁸

32. In *Plaintiff S297/2013 v Minister for Immigration and Border Protection* (2014) 255 CLR 179, Crennan, Bell, Gageler and Keane JJ referred with approval to Dixon J’s reasoning in *Koon Wing Lau* in construing the duty to decide a non-protection visa application as impliedly limited to be performed within a reasonable time, to be determined by a court having regard to the circumstances of the case in the context of the decision-making framework established by the Act.³⁹

33. In *CPCF*, the plaintiff alleged his detention was unlawful, including as being unauthorised under s 72(4) of the *Maritime Powers Act 2013* (Cth), which provided, without express temporal constraint, “[a] maritime officer may detain the person and take the person, or cause the person to be taken” to a place in or outside the migration zone. The plaintiff argued in writing that s 72(4) was not an “unconstrained discretion”⁴⁰ but was limited by purpose and time (including by reference to *Plaintiff S4* (2014) 253 CLR 219 at [28], [34], where the temporal constraint, involving detention, was “as soon as reasonably practicable”).⁴¹ In writing, the defendants accepted a temporal constraint, but sought to re-frame it: “s 72(4) authorises a maritime officer to take ... within a reasonable time. That is consistent with the ordinary principle that applies in cases where no period is specified in a statute for doing a particular act”, footnoting *Folkard*, Dixon J and Williams J in *Koon Wing Lau* and *Hospital Benefit Fund of WA Inc v Minister for Health, Housing & Community Services* (1992) 39 FCR 225 at 229.⁴² The defendants accepted this constraint in order to sail between the Charybdis of “unconstrained discretion”⁴³ and

³⁶ *Forbes* (1971) 124 CLR 168, 174.6 (McTiernan, Windeyer, Owen and Gibbs JJ agreeing).

³⁷ *Forbes* (1971) 124 CLR 168, 172.3.

³⁸ *Forbes* (1971) 124 CLR 168, 175.2–3.

³⁹ (2014) 255 CLR 179, [37] fn 32.

⁴⁰ *Plaintiff S4/2014 v Minister for Immigration and Border Protection* (2014) 253 CLR 219, [22] (the Court).

⁴¹ *CPCF v Minister for Immigration and Border Protection*, No. S169 of 2014, **Plaintiff’s Submissions** filed 11 September 2014, Part C, [31], [32], [36], [37], [40], [41], fnn 33–7, 42, 43.

⁴² *CPCF v Minister for Immigration and Border Protection*, No. S169 of 2014, **Defendants’ Submissions** filed 30 September 2014, [55] fn 45.

⁴³ Defendants’ oral argument, 15 October 2014, [2014] HCATrans 228, lns 5269–71. And see fn 40 above.

the Scylla of the plaintiff's stricter constraint. As the plaintiff's counsel explained in oral argument, the "central issue" was that the defendants' proposed reasonable time constraint gave more discretion than the plaintiff's position on *Plaintiff S4* would permit.⁴⁴ On the defendants' submission, the principle's application was not required by any constitutional limit nor concern that the High Court would not be in a position to assess the lawfulness of a person's detention.⁴⁵

34. The Court held, by a 4:3 majority, that s 72(4) authorised the detention,⁴⁶ and by a 6:1 majority that s 72(4) was not conditioned by an obligation to afford procedural fairness.⁴⁷ The Court was unanimous in the view that s 72(4) was required to be exercised within a reasonable time. For French CJ, the power to detain was incidental to the power to take, and both had to be exercised within a reasonable time, which formed part of his Honour's reasoning to answering questions 1(c), 2 and 4 as he did.⁴⁸ For Hayne and Bell JJ (in dissent), s 72(4) conferred a "single composite power", the power to detain given in aid of the power to take (to an identified place), which had to be exercised within a reasonable time.⁴⁹ For Crennan J, s 72(4), "a compound power to detain and take", being subject to the reasonable time limit for which the defendant contended based on *Koon Wing Lau*, not "as soon as practicable",⁵⁰ authorised the detention.⁵¹ For Kiefel J (in dissent), s 72(4) could not be construed as requiring that the power be exercised as soon as reasonably practicable, but did have to be exercised within a reasonable time, referring to *Koon Wing Lau* and *Plaintiff S4*.⁵² For Gageler J, s 72(4) was a "composite power" to "detain" and

⁴⁴ Plaintiff's oral argument, 14 October 2014, *CPCF v Minister for Immigration and Border Protection* [2014] HCATrans 227, lns 405–32. See also lns 702–826, and defendants' oral argument, 15 October 2014, [2014] HCATrans 228, lns 4295–321, 4339–64, 4499–501, 5019–28, 5158–61, lns 5269–73.

⁴⁵ Defendants' Submissions, [54]–[55]; Cf Plaintiff's Submissions, [31].

⁴⁶ *CPCF* (2015) 255 CLR 514 (French CJ, Crennan, Gageler and Keane JJ; Hayne, Kiefel and Bell JJ dissenting).

⁴⁷ *CPCF* (2015) 255 CLR 514, [53] (French CJ), [117] (Hayne and Bell JJ), [227] (Crennan J), [372] (Gageler J), [502] (Keane J), albeit that Hayne and Bell JJ found it was not necessary to answer: [136].

⁴⁸ *CPCF* (2015) 255 CLR 514, [45], [52].

⁴⁹ *CPCF* (2015) 255 CLR 514, [90], [96].

⁵⁰ *CPCF* (2015) 255 CLR 514, [184], [197], [200].

⁵¹ *CPCF* (2015) 255 CLR 514, [184], [197], [200], [211].

⁵² *CPCF* (2015) 255 CLR 514, [313]–[314].

“take” that entailed a “duty” to take once the power to detain had been exercised, which duty had to “be completed within a reasonable time”, citing Dixon J in *Koon Wing Lau*.⁵³

35. Justice Keane construed s 72(4) as a “compound power”.⁵⁴ Referring to Dixon J and Williams J in *Koon Wing Lau*, his Honour said the defendants’ concession that the power was subject to a reasonable time limit was “rightly made”, “consistently with the principle of interpretation that ordinarily applies in cases where no period is specified in a statute for doing an act authorised or required by the statute”, affirming Dixon J that “[w]hat is a reasonable time will depend upon all the facts”.⁵⁵ The “unpalatable conclusion” that s 72(4) permitted indefinite detention was avoided by purposive constraints and “by the application of the ordinary rule that a power must be exercised within a reasonable time having regard to the purpose for which it was conferred and the circumstances in which it falls to be exercised”.⁵⁶

36. So, each member of the Court concluded that s 72(4) was subject to a requirement that it be exercised within a reasonable time. Each member of the majority relied on a reasonable time limit, and (assuming French CJ did so accepting the defendants’ submission), in so doing each relied on the reasoning of (at least) Dixon J in *Koon Wing Lau*.

37. None confined that reasoning to construction of a temporal preposition, there being none in s 72(4). Nor is it apparent why the principle would turn on the express textual inclusion of a temporal preposition. To illustrate, the clear effect of s 501BA(1) being that s 501BA(2) arises upon the making of an “original decision”, it is unclear why application of the principle would depend on whether or not the word “upon” was expressly included in s 501BA(2) to explain this temporal connection.

38. Other examples can be found of the principle’s application to powers (rather than duties), including powers that do not contain temporal language.⁵⁷ In this Court and lower courts,

⁵³ *CPCF* (2015) 255 CLR 514, [363], [376].

⁵⁴ *CPCF* (2015) 255 CLR 514, [421].

⁵⁵ *CPCF* (2015) 255 CLR 514, [451], [452].

⁵⁶ *CPCF* (2015) 255 CLR 514, [453].

⁵⁷ See, eg, *Donovan v City of Sale* [1979] VR 461, 469–70 (Murphy J); *Kardas v Australian Securities Commission* (1998) 53 ALD 303, 313 (Heerey J); *Tjong v Tjong (No 2)* [2018] NSWSC 1981, [136] (Parker J). See also *Hall v State of South Australia* (2010) 271 LSJS 239, [79] (Gray J); *National Home Doctor Service Pty Ltd v Director of Professional Services Review* (2020) 276 FCR 382, [53] (Griffiths J). Much earlier, see *Bonella v Twickenham Local Board of Health* (1887) 20 QBD 63, 66–7 (Lord Esher MR,

the principle stated by Dixon J in *Koon Wing Lau* has been understood as a principle capable of application to both duties⁵⁸ and entitlements,⁵⁹ without confining the principle's scope to powers that limit liberty or other rights.

39. Professor Pearce says, citing *Koon Wing Lau* and other authorities,⁶⁰ that, at common law, courts have been prepared to imply a reasonable time requirement “where no period is specified for doing a particular act”.⁶¹ He equates the scope of application of the common law principle with that of the statutory provisions that have “superseded” it in ACT, Queensland, South Australia and Western Australia.⁶²

10 40. **A common law principle.** Ascertainment of a provision's legal meaning can be affected by a common law “canon of construction”,⁶³ also described as a “principle” or “presumption”.⁶⁴ The “legislature is presumed to intend, where it does not disapply it, that

Bowen and Fry LLJ concurring), discussed under the heading “Presumption against intending Injustice or Absurdity” in Maxwell, *On the Interpretation of Statutes* (3rd edn, 1896), 277, 285.

⁵⁸ See, eg, *Re Morgan, K.L. v John Fairfax & Sons Ltd* (1987) 72 ALR 83, 86 (Beaumont J); *BTR Plc v Westinghouse Brake & Signal Co (Australia) Ltd* (1992) 34 FCR 246, 272–3 (Beaumont J); *Repatriation Commission v Morris* (1997) 79 FCR 455, 461 (Beaumont J); *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332, [102] (Gageler J); *Plaintiff S297/2013* (2014) 255 CLR 179, [37] (Crennan, Bell, Gageler and Keane JJ); *BMFI6 v Minister for Immigration and Border Protection* [2016] FCA 1530, [20] (Bromberg J); *1155 Nepean Hwy v Promax Buildings* [2020] VSC 398, [102] (Digby J); *Viscariello v Legal Profession Conduct Commissioner* [2021] SASCF 24, [68]–[69] (Tilmouth AJ, Lovell and Hughes JJ agreeing); *Knowles v Secretary, Department of Defence* (2021) 287 FCR 348, [53] (the Court); *Braun v Health Ombudsman* [2021] QSC 209, [110] (Jackson J); *Centuria Property Funds Ltd in the matter of Centuria Property Funds Ltd* [2024] FCA 202, [16] (Jackman J).

⁵⁹ See, eg, *Moss v Moss* (1936) 55 CLR 166, 177 (Starke J), 179 (Dixon J); *Sullivan v Oil Company of Australia Ltd* [2002] 2 Qd R 94, [38] (Muir J, McPherson JA and Atkinson J agreeing); *Le v Brydens Lawyers Pty Limited* [2017] NSWSC 180, [61] (Schmidt J).

⁶⁰ *Koon Wing Lau* (1949) 80 CLR 533, 573–4 (Dixon J); *R v Skurray* (1967) 86 WN (Pt 1) (NSW) 1; *Deputy Commissioner of Taxation v Ganke* [1975] 1 NSWLR 252; *Re O'Reilly; Ex parte Australena Investments Pty Ltd* (1983) 58 ALJR 36; *BTR plc* (1992) 34 FCR 246, 272–3 (Hill J).

⁶¹ Pearce, *Interpretation Acts in Australia* (2nd ed, 2023), [4.50]. See, Pearce, *Statutory Interpretation in Australia* (10th ed, 2024) 77, Annexure 2.56.

⁶² Pearce, *Interpretation Acts in Australia* (2nd ed, 2023), [4.50]. See, *Legislation Act 2001* (ACT), s 151B and *Acts Interpretation Act 1954* (Qld), s 38(4) (applicable to duties and powers); *Legislation Interpretation Act 2021* (SA), s 44(3) and *Interpretation Act 1984* (WA), s 63 (applicable to duties).

⁶³ *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, [78] (McHugh, Gummow, Kirby and Hayne JJ).

⁶⁴ See, eg, *Project Blue Sky* (1998) 194 CLR 355, fn 56; *Badari v Minister for Territory Families and Urban Housing* (2025) 100 ALJR 30, [16], [17] (the Court).

any relevant principle of common law shall fill out the Act’s meaning and effect”.⁶⁵ At least as applied to powers,⁶⁶ the reasonable time principle has less force, and could be rebutted more easily, than a “strong”⁶⁷ principle or presumption such as that pertaining to procedural fairness. Nevertheless, it is a principle attributed to Parliament unless displaced. In this sense, Dixon J’s “ordinary rule” is a common law principle or presumption, which has interpretive utility because it reflects and protects principles or values that “can be taken to be respected by all arms of government”.⁶⁸

41. ***A principle rooted in reason.*** Like other principles by which reasonableness conditions on statutory power are attributed to Parliament, the presumption of a reasonable time limit where a power is conferred on occurrence of an event may be understood as rooted in the deeper principle that statutory powers must be exercised according to reason:⁶⁹ cf FC[75]. Unreasonable delay in administrative decision-making tends to diminish confidence in the law and public administration.⁷⁰ This concern may also be seen in other principles, for example that decision-making should be based on current information.⁷¹
42. ***A principle according with common sense.*** In *Hospital Benefit Fund*, Wilcox, Burchett and French JJ construed the power in s 78(4) of the *National Health Act 1953* (Cth), which was enlivened by notification of changes to the constitution, articles of association, or rules of an organization, as limited to exercise within a reasonable time of receiving the notification. Their Honours observed that Parliament could not have contemplated the

⁶⁵ Bennion, *Bennion on Statutory Interpretation* (5th ed, 2008), 771. See also *Lacey v Attorney-General (Qld)* (2011) 242 CLR 573, [43] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ); *Plaintiff S10/2011 v Minister for Immigration and Citizenship* (2012) 246 CLR 636, [97] (Gummow, Hayne, Crennan and Bell JJ); *Lee v NSW Crime Commission* (2013) 251 CLR 196, [45] (French CJ).

⁶⁶ The position might be different in relation to duties as the displacement of the implication may render the duty “illusory”, potentially frustrating this Court’s jurisdiction under s 75(v) to issue mandamus: *Australena* (1983) 58 ALJR 36, 36 (Murphy J); *Plaintiff S297/2013* (2014) 255 CLR 179, [37] (Crennan, Bell, Gageler and Keane JJ).

⁶⁷ *Badari* (2025) 100 ALJR 30, [17] (the Court).

⁶⁸ *Probuild Constructions (Aust) Pty Ltd v Shade Systems Pty Ltd* (2018) 264 CLR 1, [58] (Gageler J).

⁶⁹ *Li* (2013) 249 CLR 332, [24]–[29] (French CJ), [68] (Hayne, Kiefel and Bell JJ), [90] and authorities in fn 185 (Gageler J); *Giris Pty Ltd v Commissioner of Taxation (Cth)* (1969) 119 CLR 365, 382 (Windeyer J). See also *Eswaran* [2025] FCA 496, [52] (Longbottom J: “a temporal limitation simply adds another dimension to the requirement of reasonableness”).

⁷⁰ *NAIS v Minister for Immigration and Multicultural and Indigenous Affairs* (2005) 228 CLR 470, [161] (Callinan and Heydon JJ).

⁷¹ *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24, 45 (Mason J); *Shi v Migration Agents Registration Authority* (2008) 235 CLR 286, [41] (Kirby J).

notified changes “would be left uncertain for possibly years”,⁷² otherwise the organization would “always have to conduct its affairs under the sword of Damocles of the possible formation of an adverse ministerial opinion”.⁷³ As authority for reading the power as limited to a reasonable time from notification, their Honours relied on the statement in *Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation* (1981) 147 CLR 297 that “the rules of statutory interpretation are ‘no more than rules of common sense’”.⁷⁴ Common sense, together with requirements of good administration “and the need for people affected ... to know where they stand”, also inform the interpretive question whether a decision-making power can be exercised only once.⁷⁵

- 10 43. That the reasonable time principle is supported by reason and common sense may also be seen in recognition of analogous principles in interpretation of other legal instruments, including contracts (PJ [128])⁷⁶ and search warrants.⁷⁷

D. Text, context and purpose are consistent with a reasonable time limitation

44. Because s 501BA confers power to cancel a visa conditional on the occurrence of an original decision, and does not specify any time for performance, it engages the reasonable time principle. The question is then whether the principle is rebutted by evidence in the text, context and purpose of a contrary intention. It is not. The text, context and purpose are consistent with a reasonable time limitation. Or, if no such principle is engaged, they would lead to the conclusion that the legal meaning of s 501BA(2) is that the provision is conditioned by the requirement it be exercised within a reasonable time.
- 20

⁷² *Hospital Benefit Fund* (1992) 39 FCR 225, 227.7.

⁷³ *Hospital Benefit Fund* (1992) 39 FCR 225, 229.3.

⁷⁴ *Hospital Benefit Fund* (1992) 39 FCR 225, 229, quoting *Cooper Brookes* (1981) 147 CLR 297, 320–1 (Mason and Wilson JJ). See also, in respect of duties, *Skurray* (1967) 86 WN Pt 1 (NSW), 3 (Wallace P, Jacobs JA agreeing).

⁷⁵ *Kabourakis v Medical Practitioners Board of Victoria* (2006) 25 VAR 449, [48] (Nettle JA). See also *Minister for Immigration and Multicultural Affairs v Bhardwaj* (2002) 209 CLR 597, [8] (Gleeson CJ).

⁷⁶ *Reid v Moreland Timber Co Pty Ltd* (1946) 73 CLR 1, 13 (Dixon J); *Donau Pty Ltd v ASC AWD Shipbuilder Pty Ltd* (2019) 101 NSWLR 679, [99]–[111] (Bell P, Emmett AJA agreeing). See also *Hick v Raymond* [1893] AC 22, 32 (Lord Watson), 34 (Lord Ashbourne); *Canning v Temby* (1905) 3 CLR 419, 424, 426–7 (Griffith CJ); *Cavallari v Premier Refrigeration Co Pty Ltd* (1952) 85 CLR 20, 27 (Dixon CJ, McTiernan, Fullagar and Kitto JJ); *Perri v Coolangatta Investments Pty Ltd* (1982) 149 CLR 537, 543 (Gibbs CJ), 554 (Mason J), 556 (Wilson J), 567–8 (Brennan J, Stephen J agreeing).

⁷⁷ *R v Applebee* (1995) 79 A Crim R 554, 557–8 (Higgins J).

45. *Text.* By s 501BA(1), the power in s 501BA(2) “arises only if and when there has been an ‘original decision’”: PJ[69], cf FC[72]. On its text, the power is “directed to” the earlier event: PJ [69],[130], cf FC[74]. Its “two aspects”,⁷⁸ to set aside the original decision and cancel the visa, combined empower the Minister to “substitute”⁷⁹ a new decision for the original decision, albeit s 501BA(2)’s criteria differ from s 501CA(4).
46. Section 501BA(2) is not simply switched on by the original decision but otherwise unconnected to it: PJ[70], cf FC[95]. The “set aside” aspect would be superfluous if Parliament intended a freestanding cancellation power.
47. Parliament has enacted cancellation powers available after a s 501CA(4) decision
 10 revoking cancellation, including s 501(3)(b), if its criteria are met, and s 501(2) and (3A), if their criteria are met and there is a change in factual circumstances: PJ[137].⁸⁰ If s 501BA(2) is indefinite, it is always available instead, but only for visa holders historically subject of a s 501CA(4) decision, itself the outcome of independent merits review⁸¹ “intended to bring administrative finality”⁸² under legislation “itself enacted in the national interest”.⁸³
48. Unlike s 501(2), (3) and (3A), s 501BA(2) is textually anchored to the s 501(3A)
 20 cancellation decision that preceded the “original decision” under s 501CA(4). Section 501BA(2)(a)(i) or (ii) will necessarily be met for the same reason s 501(3A)(a)(i) or (ii) was met at the time of the initial mandatory cancellation. Here, for example, the 22 June 2017 sentence that satisfied the delegate as required by s 501(3A)(a)(ii) on 15 December 2017, then satisfied the Minister as required by s 501BA(2)(a) on 8 June 2024 (see paragraphs 6 and 8 above). Although the national interest criterion in s 501BA(2) is distinct, it will necessarily be considered in context of the offending that triggered mandatory cancellation in the first place. In this way, it is tied to the pathway that it terminates, in a way that s 501(2), (3) and (3A) (which start their respective pathways, as set out in PJ[54]) are not.

⁷⁸ *CRRN v Minister for Immigration and Multicultural Affairs* [2025] FCA 192, [33] (Owens J); PJ[63].

⁷⁹ Statement of Compatibility with Human Rights to the Migration Amendment (Character and General Visa Cancellation) Bill 2014 (Cth), 2.

⁸⁰ *Minister for Immigration and Border Protection v Makasa* (2021) 270 CLR 430, [55] (the Court).

⁸¹ *Tereva* (2022) 294 FCR 270, [14] (Mortimer J); PJ[79].

⁸² *Brown* (2020) 275 FCR 188, [33] (Allsop CJ, Kenny and Banks-Smith JJ).

⁸³ *Moli* [2025] FCA 350, [110], [111] (Colvin J); PJ[85].

49. *Context.* The Act evinces a concern that a person’s visa status be resolved in a timely way. There are numerous express time limits, many demanding: PJ[61]. Where Parliament did not expressly limit the time for deciding visa applications, this Court attributed to it a requirement to decide in a reasonable time.⁸⁴ There are good reasons to avoid uncertainty of a kind introduced by construing s 501BA(2) as being permanently available, so that the Minister can forever exercise the power on being satisfied that cancellation is in the national interest.

10 50. *Purpose.* The purpose of s 501BA(2) to “reverse”⁸⁵ the state of affairs obtaining in consequence of the Tribunal’s decision is “concerned with the consequences or outcome” of the original decision: PJ[71]. Section 501BA(2) is properly described as “overrid[ing]”⁸⁶ the state of affairs produced by the original decision: PJ[58], [130]. It is modelled on earlier powers (such as s 501A(2)) enacted in response to the Tribunal making decisions seen to be “clearly at odds with community standards and expectations”,⁸⁷ and there is no merits review of a s 501BA(2) decision because “the government is ultimately responsible for ensuring that decisions reflect community standards and expectations”.⁸⁸

20 51. A reasonable time limit ensures that the state of affairs resulting from the original decision remains the focus of the power. If and to the extent the Minister can take into account matters that have occurred after the original decision (FC [74]), such matters are neither the focus of s 501BA(2) nor the reason it was enacted, and “fresh” cancellation powers are available to the Minister for conduct that occurs, or is revealed, after the original decision has been made: PJ[137].

52. Further, Parliament may be taken to have intended that a state of affairs at odds with community standards and expectations, resulting from an original decision, would be remedied in a timely manner. The extrinsic materials show an expectation that powers

⁸⁴ *Plaintiff S297/2013* (2014) 255 CLR 179, [37] (Crennan, Bell, Gageler and Keane JJ).

⁸⁵ *CRRN* [2025] FCA 192, [33] (Owens J). See also *Moli* [2025] FCA 350, [20] (Colvin J).

⁸⁶ For description of the analogous powers in s 501A(2) and (3) as “override” powers see, *Makasa* (2021) 270 CLR 430, [10], [33], [53], [56] (the Court), applied to s 501BA(2) in *YTLT v Minister for Home Affairs* [2021] HCATrans 177 (Gageler J).

⁸⁷ Commonwealth House of Representatives, *Parliamentary Debates*, 2 December 1998, 1232 (Ruddock). See also at 1233.

⁸⁸ Explanatory Memorandum to the Migration Amendment (Character and General Visa Cancellation) Bill 2014 (Cth), 15 [86]; PJ [75]. See also *Tereva* (2022) 294 FCR 270, [40] (Bromwich J).

like s 501BA(2) would be exercised “quickly” and “decisively”: PJ[73]–[74]; cf FC[31], [92], [115].⁸⁹

53. The purpose of s 501BA(2) is not to “wait and see” whether a person’s visa should be cancelled in light of events that transpire, perhaps long after the original decision, viewed with hindsight, or to monitor whether the Tribunal’s predictive findings come true: PJ[131], [132]. Section 501BA(2), if indefinite and exercisable by reference to events occurring any time after the original decision that do not attract the fresh exercise of the freestanding powers to cancel a visa under s 501(2) or s 501(3A), would produce incoherence with the statutory scheme (PJ[138]), especially where s 501BA(2) is free from natural justice, merits review, or any oversight requirement such as to table the decision in Parliament: PJ[52], [57(c)], [58].⁹⁰

54. *Fairness*. By s 501BA(3), Parliament expressly displaced the natural justice principle in its immediate application to s 501BA(2). The explanation was that in exercising s 501BA(2), the Minister would have access, without the need to afford procedural fairness, to representations made by the visa-holder to the delegate and, if applicable, the Tribunal:⁹¹ PJ[59], [75], [138]; FC[93]. This explanation does not hold if the power is available for exercise many years after the s 501CA(4) process has concluded. Parliament’s specific disapplication of the hearing rule for s 501BA(2) does not remove the need to construe the Act “against a background of common law notions of justice and fairness”:⁹² cf FC[93]. Limiting s 501BA(2) to a reasonable time after the original decision coheres with the evident justification for s 501BA(3), even if a limit “based purely on timing” does not prevent consideration of events occurring after the original decision: FC[93].

E. The Full Court’s approach

55. For the reasons above, the Full Court was wrong to deny the existence of the reasonable time principle: FC[1], [13], [15], [90]. That error then affected their Honours’ approach

⁸⁹ See, in respect of s 501A, *Makasa* (2021) 270 CLR 430, [33] (the Court). In *Kardas* (1998) 53 ALD 303, Heerey J observed at 313 that the “prophylactic rather than punitive” purpose of the power, and the need to take “steps to protect the public”, supported a reasonable time condition. Cf PJ[110]–[112].

⁹⁰ See, by analogy, *ENT19* (2023) 278 CLR 75, [97] (Gordon, Edelman, Steward and Gleeson JJ).

⁹¹ Explanatory Memorandum to the Migration Amendment (Character and General Visa Cancellation) Bill 2014 (Cth), 15 [84].

⁹² *Kioa v West* (1985) 159 CLR 550, 609 (Brennan J).

to the question of statutory interpretation, and they ended up placing too much weight on the simple fact that the text of s 501BA did not specify a temporal limit.

56. The Full Court erred in concluding that a reasonable time condition was not consistent with the text, context and purpose of s 501BA(2): FC[1], [25]–[34], [91]–[116]. The preferable construction in light of text, context and purpose has been outlined above. It remains to address some specific points about the Full Court’s reasoning.

57. Justice Thawley sought to draw a bright line between “legality” and “jurisdiction”, holding that time limitations are examples of conditions that make exercises of power unlawful, not invalid: FC[3]–[12]. That reasoning is inconsistent with the conclusions on construction of Dixon J and Williams J in *Koon Wing Lau* and the members of the Court in *CPCF*. If Thawley J intended to indicate that a s 501BA(2) decision made after a reasonable time might be unlawful but not invalid, such a construction would be rejected as such unlawfulness would not be enforceable by any practical remedy, mandamus being unavailable in respect of s 501BA(2): PJ[127], [134].⁹³

58. Justice Thawley reasoned that the “national interest” purpose of the power counted against it being subject to a reasonable time condition because of the possibility of the national interest “radically changing” over time: FC[31]. Justice Kennett similarly expressed the view that the power should accommodate the possibility that the Minister might “re-assess” the national interest over time: FC[109]. But the content of the criterion in s 501BA(2)(b) cannot solely determine the extent and duration of the power, especially where other powers may remain available and use the same “national interest” criterion: s 501(3)(b). The object of the whole Act is to regulate, in the national interest, the coming into and presence in Australia of non-citizens, and that object is advanced by providing for visas to be the only source of the right to enter or remain in Australia: s 4(1), (2). Section 501BA(2) must take its proper part in that scheme. That is not achieved by discerning in s 501BA(2)(b), which is a precondition to exercising the power, a lever to elevate s 501BA to a freestanding, indefinite cancellation power such that the visa of any person once subject to s 501CA(4) revocation is forever contingent on the view of the Minister from time to time as to the national interest in cancellation of that visa. This does not mean s 501BA(2)(b)’s national interest criterion is irrelevant to determining the

⁹³ *Morgan v Minister for Immigration and Multicultural Affairs* [2025] FCA 266 [56]–[57], [62]–[63], [70] (McDonald J).

duration of the power; “what is a reasonable time within which to exercise the power in s 501BA(2) requires regard to be had to the protective ‘national interest’ purpose for which the power is conferred and the circumstances in which it falls to be exercised”.⁹⁴

59. Justice Thawley thought a “reasonable time” condition would create uncertainty as to when the power is available: FC[32]. Justice Kennett expressed similar views: FC[69], [96]–[97]. But courts have long administered “reasonable time” standards, some express⁹⁵ and some implied, including in the present context: cf FC[96].⁹⁶ That a postulated reasonable time condition on jurisdiction might be evaluative is not, on its own, a basis to doubt its existence or application: PJ[133]–[134]. In any event, the proposition that a condition on statutory executive power requiring evaluative judgment would not be attributed to Parliament proves too much, because it would preclude the standard attribution of a jurisdictional condition of reasonableness on statutory powers.

60. Justice Thawley and Kennett J each considered that s 501A(2) was analogous to s 501BA(2), but was not subject to a reasonable time condition (as held by Bromberg J in *KDSP v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2020) 279 FCR 1),⁹⁷ which counted against s 501BA(2) being subject to such a condition: FC[33], [103]. However, there is an important difference between the two powers: s 501A(2), in its refusal aspect, must be exercised in the course of considering a visa application, and so is amenable to mandamus, whereas s 501BA(2), being concerned solely with cancellation, is not amenable to mandamus: PJ[126]–[127], [134]. In *KDSP*, Bromberg J accepted that *Koon Wing Lau* supported a reasonable time limit, except that s 501A(2) in its refusal aspect was a step in the performance of the duty imposed by s 65, which could be enforced by mandamus.⁹⁸ As Kennett J noted at FC[103], s 501A(2) is also available for cancellation, where mandamus is not available, but Bromberg J’s

⁹⁴ *Eswaran* [2025] FCA 496, [50] (Longbottom J).

⁹⁵ See, eg, *Thornton v Repatriation Commission* (1981) 52 FLR 285, 289–91 (Fisher J); *BMF16* [2016] FCA 1530, [21]–[26] (Bromberg J) (in context of s 7(1) of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) review); *Viscariello* [2021] SASCFC 24, [68]–[73] (Tilmouth AJ; Lovell and Hughes JJ agreeing) (in the context of s 27(3) of the *Acts Interpretation Act 1915* (SA)).

⁹⁶ See, eg, the pithy analysis in *Chapman v Minister for Immigration and Multicultural Affairs* [2025] FCA 24, [59]–[61] (Lee J).

⁹⁷ (2020) 279 FCR 1, [105]–[128].

⁹⁸ *KDSP* (2020) 279 FCR 1, [120]–[127]. See also *Morgan* [2025] FCA 266, [70] (McDonald J); *Eswaran* [2025] FCA 496, [51] (Longbottom J).

reasoning against a reasonable time limit in *KDSP* turned almost entirely on the availability of mandamus in connection with s 501A(2)'s refusal aspect.

61. Finally, the Full Court was right to recognise the potentially “devastating” and “harsh consequences” of its construction, but wrong to conclude that such consequences are irrelevant to the interpretative exercise: FC[34], [92], [95].

PART VII ORDERS SOUGHT BY APPELLANT

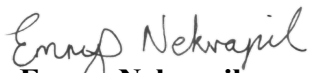
62. The appeal should be allowed and orders made as set out in the notice of appeal.

PART VIII ESTIMATE OF TIME

63. The appellant estimates that 1.5 hours will be required to present his oral argument.

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Dated: 24 September 2026


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ANNEXURE TO THE APPELLANT'S SUBMISSIONS

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date(s)
Commonwealth					
1.	<i>Migration Act 1958</i> (Cth)	Compilation No 160 (29 March 2024 to 30 June 2024)	ss 4, 496, 500, 501, 501A, 501BA, 501CA	Act in force on the date of the Minister's cancellation decision	8 June 2024: date of the Minister's cancellation decision
2.	<i>Migration Act 1958</i> (Cth)	Compilation No 2 (6 May 1966 to 10 April 1973)	ss 10, 18	Version considered in <i>R v Forbes; ex parte Kwok Kwan Lee</i> (1971) 124 CLR 168	2 January 1971: date the power considered in <i>R v Forbes; ex parte Kwok Kwan Lee</i> (1971) 124 CLR 168 was purportedly exercised
3.	<i>Immigration Act 1901-1949</i> (Cth)	As amended by No 31 of 1949 (12 July 1949 to 31 May 1959)	s 4	Version considered in <i>Koon Wing Lau</i> (1949) 80 CLR 533	21 December 1949: date this Court published its judgment in <i>Koon Wing Lau</i> (1949) 80 CLR 533

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date(s)
4.	<i>Maritime Powers Act 2013</i> (Cth)	As made (27 March 2013 to 15 December 2014)	s 72	Version considered in <i>CPCF</i> (2015) 255 CLR 514	1 July 2014: date the power considered in <i>CPCF v</i> (2015) 255 CLR 514 was purportedly exercised
5.	<i>National Health Act 1953</i> (Cth)	As amended by No 122 of 1991 (27 June 1991 to 8 October 1991)	s 78	Version considered in <i>Hospital Benefit Fund</i> (1992) 39 FCR 225	1 October 1991: date the power considered in <i>Hospital Benefit Fund</i> (1992) 39 FCR 225 was purportedly exercised
6.	<i>Administrative Appeals Tribunal Act 1975</i> (Cth)	Compilation No 74 (1 January 2021 to 31 August 2021)	s 30	For context and background only	22 and 23 March and 1 and 13 April 2021: date of the Administrative Appeals Tribunal's hearing and decision to

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date(s)
					revoke the Minister's cancellation decision (CAB26)
7.	<i>Administrative Decisions (Judicial Review) Act 1977 (Cth)</i>	Compilation No 133 (27 August 2026 to present)	s 7	For illustrative purposes only	None
<i>State and Territories</i>					
8.	<i>Legislation Act 2001 (ACT)</i>	Republication No 126 (23 February 2026 to present)	s 151B	For illustrative purposes only	None
9.	<i>Acts Interpretation Act 1954 (Qld)</i>	As amended by No 23 of 2023 (1 February 2024 to present)	s 38	For illustrative purposes only	None
10.	<i>Legislation Interpretation Act 2021 (SA)</i>	As amended by No 55 of 2025 (20 November	s 44	For illustrative purposes only	None

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date(s)
		2025 to present)			
11.	<i>Interpretation Act 1984</i> (WA)	As amended by No 19 of 2025 (18 December 2025 to present)	s 63	For illustrative purposes only	None