

HIGH COURT OF AUSTRALIA

GORDON, STEWARD AND GLEESON JJ

EGH19

PLAINTIFF

AND

MINISTER FOR IMMIGRATION & CITIZENSHIP

DEFENDANT

EGH19 v Minister for Immigration & Citizenship

[2026] HCA 33

Date of Judgment: 9 September 2026

S147/2025

ORDER

Application dismissed with costs.

Representation

The plaintiff is represented by Zarifi Lawyers

The defendant is represented by Australian Government Solicitor

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

EGH19 v Minister for Immigration & Citizenship

Administrative law – Judicial review – Where plaintiff's Protection (Class XA) (Subclass 866) visa cancelled on character grounds ("Cancellation Decision") – Where plaintiff made representations to Minister seeking revocation of Cancellation Decision referring to material already held by Department – Where no real prospect of plaintiff being removed from Australia in reasonably foreseeable future – Where delegate decided not to revoke Cancellation Decision ("Non-revocation Decision") – Where plaintiff granted Bridging R (Subclass 070) visa ("BVR") – Whether Non-revocation Decision affected by jurisdictional error – Whether failure to have regard to information provided by plaintiff in connection with previous decision-making – Whether cancellation of protection visa would remove risk posed by plaintiff to Australian community in circumstances where plaintiff would be released on BVR.

Words and phrases – "cancellation decision", "character grounds", "constitutional writ", "extension of time", "illogically", "irrationally", "judicial review", "jurisdictional error", "legal consequences", "non-revocation decision", "no real prospect of removing", "protection visa", "reasonably foreseeable future", "risk to the Australian community", "unlawful non-citizen", "unreasonably".

Migration Act 1958 (Cth), ss 189, 196, 197C(3), 198, 486A, 501(1), 501(3A), 501CA(4).

1 GORDON, STEWARD AND GLEESON JJ. The plaintiff seeks an extension of time to challenge a decision made on 1 April 2025 by a delegate of the defendant ("the Minister") not to exercise the power in s 501CA(4) of the *Migration Act 1958* (Cth) ("the Act") to revoke the decision to cancel his visa ("the Non-revocation Decision"). He claims that decision is affected by jurisdictional error. For the reasons that follow, no jurisdictional error has been established. The application should be dismissed with costs.

Background

2 The plaintiff was born in Papua New Guinea ("PNG") in 1989. On 30 June 2000, the plaintiff arrived in Australia, aged 11 years, as a dependant family member on his father's student visa. The plaintiff has not left Australia since April 2004. On 10 November 2006, the plaintiff was convicted of murder in the Supreme Court of New South Wales and sentenced to 17 years and six months' imprisonment, with a non-parole period of 12 years and six months. On 7 January 2018, the plaintiff was released from prison on parole and taken into immigration detention under s 189 of the Act.

3 On 21 December 2017, the plaintiff applied for a Protection (Class XA) (Subclass 866) visa. On 9 February 2018, a delegate of the Minister¹ refused to grant the plaintiff a protection visa as the delegate was not satisfied the plaintiff met s 36(2)(a) or (aa) of the Act. The then Administrative Appeals Tribunal ("the Tribunal") set aside the delegate's decision. The Tribunal found that the plaintiff met the complementary protection criterion under s 36(2)(aa) of the Act and remitted the matter for reconsideration by the Minister.

4 On 5 May 2022, a delegate of the Minister refused the plaintiff's application for a protection visa pursuant to s 501(1) of the Act. The plaintiff sought review of that decision in the Tribunal. On 28 July 2022, the Tribunal set aside that delegate's decision and, in its place, decided not to refuse the plaintiff's protection visa application pursuant to s 501(1) of the Act ("the 2022 Tribunal Decision").²

5 On 26 October 2022, a delegate of the Minister decided to grant the plaintiff a protection visa (the "Protection Visa"). In making that decision, the delegate

1 References to "the Minister" in these reasons are to the Minister administering the Act on the relevant day: *Acts Interpretation Act 1901* (Cth), s 19(1) Item 1.

2 *SQHG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration)* [2022] AATA 2810.

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made a protection finding for the plaintiff with respect to PNG within the meaning of s 197C of the Act. The plaintiff was released from immigration detention.

6 On 2 April 2024, the plaintiff was convicted in the Local Court of New South Wales in Armidale of "stalk/intimidate intend fear physical etc harm (domestic)" against his partner's father and was sentenced to three months' imprisonment, commencing on 23 February 2024.

7 On 20 May 2024, the plaintiff's Protection Visa was cancelled by a delegate of the Minister under s 501(3A) of the Act ("the Cancellation Decision"). The plaintiff was in prison. The letter notifying the plaintiff of the Cancellation Decision invited the plaintiff to make representations to the Minister about revoking the Cancellation Decision pursuant to s 501CA(4) of the Act. The plaintiff made representations to the Minister in support of his request for revocation of the Cancellation Decision.

8 On 3 July 2024, the plaintiff was convicted of four further domestic violence offences in the Local Court of New South Wales in Maitland, namely "stalk/intimidate intend fear physical etc harm", "destroy or damage property", and two counts of "assault occasioning actual bodily harm" against his partner. He was sentenced to 18 months' imprisonment, with a non-parole period of 10 months ending on 22 December 2024.

9 On 17 January 2025, the Department of Home Affairs ("the Department") wrote to the plaintiff and sought his comment on his updated criminal history and the sentencing remarks of 2 April and 3 July 2024. The letter also notified the plaintiff that the previous ministerial direction had been replaced by *Direction No 110: Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* ("Direction No 110") and invited the plaintiff to comment on the new direction, as well as the operation of s 197C of the Act in relation to his removal to PNG. The plaintiff did not respond.

10 On 1 April 2025, a delegate of the Minister made the Non-revocation Decision, deciding not to exercise the power under s 501CA(4) of the Act to revoke the decision to cancel the plaintiff's Protection Visa. At the time of the Non-revocation Decision, there were no processes underway for the Minister or a delegate to consider the grant of any visa to the plaintiff other than a Bridging R (Subclass 070) visa ("BVR").

11 Also on 1 April 2025, a different delegate of the Minister decided to grant the plaintiff a BVR under reg 2.25AB(2) of the *Migration Regulations 1994* (Cth). The plaintiff was released from immigration detention. As at 1 April 2025, the effect of the grant of a BVR was that the plaintiff would be eligible to receive

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limited assistance from the Status Resolution Support Services Program of the Department, including limited accommodation, healthcare and financial services or referral support.

Proceedings in this Court

12 On 2 October 2025, the plaintiff filed an application for a constitutional or other writ in this Court seeking a writ of certiorari to quash the Non-revocation Decision and a writ of mandamus requiring the Minister to determine whether to revoke the Cancellation Decision according to law. The plaintiff requires an extension of time to file that application.³

13 On 10 March 2026, the plaintiff filed an amended application. By that amended application, the plaintiff sought to contend that the Non-revocation Decision was affected by jurisdictional error because the delegate:

- (1) failed to have regard to relevant information held by the Department and thereby (a) constructively failed to exercise their jurisdiction by failing to consider the plaintiff's representations in the manner required by s 501CA(4) or (b) engaged in an unreasonable decision-making process;
- (2) failed to identify how the Australian community would be protected by cancelling the plaintiff's Protection Visa and thereby (a) failed to comply with para 8.1 of Direction No 110 or (b) reasoned unreasonably, illogically or irrationally; and
- (3) failed to consider in a legally reasonable way the legal consequences of the Non-revocation Decision.

14 The plaintiff's application is refused. There was no jurisdictional error in the making of the Non-revocation Decision. The circumstances in this case do not justify a grant of an extension of time for the plaintiff to file the application for a constitutional or other writ.

Non-revocation Decision

15 Section 501CA(4) of the Act provides that the Minister may revoke a decision to cancel a person's visa under s 501(3A) on the grounds that they do not pass the character test if: (1) the person makes representations in accordance with the invitation given under s 501CA(3)(b); and (2) the Minister is satisfied that

3 Act, s 486A.

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either: (i) the person passes the character test,⁴ or (ii) there is another reason why the original decision should be revoked. Where a delegate of the Minister is authorised to exercise the power under s 501CA(4), they must comply with Direction No 110, given by the Minister under s 499 of the Act, which relevantly requires a delegate to take account of certain "primary considerations"⁵ and "other considerations".⁶

16 As outlined above, on 1 April 2025, a delegate of the Minister made the Non-revocation Decision, in which they decided not to exercise the power under s 501CA(4) in relation to the plaintiff's Protection Visa. Annexed to that decision is an "index of relevant material", which is said to have been "considered by the decision maker" and which relevantly includes the 2022 Tribunal Decision and a "Section 197C Protection Finding Advice" dated 17 June 2024. The delegate provided a written statement of reasons, which it is necessary to summarise in some detail.

17 Necessarily, the delegate was not satisfied that the plaintiff passed the character test as required by s 501CA(4)(b)(i) of the Act. This was because the plaintiff had a "substantial criminal record" for the purpose of s 501(6)(a) of the Act due to his 2006 murder conviction.⁷

18 The delegate therefore considered whether there was "another reason" why the decision to cancel the plaintiff's Protection Visa should be revoked for the purpose of s 501CA(4)(b)(ii) of the Act.

Primary considerations

19 The delegate recorded that they had regard to Direction No 110 and, as required by that Direction, took "into account the following matters as primary considerations": the protection of the Australian community; whether the conduct engaged in constituted family violence; the strength, nature and duration of ties to

4 As defined by s 501 of the Act.

5 The protection of the Australian community from criminal or other serious conduct; whether the conduct engaged in constituted family violence; the strength, nature and duration of ties to Australia; the best interests of minor children in Australia; and the expectations of the Australian community: Direction No 110, paras 6, 8.

6 The legal consequences of the decision; the extent of impediments if removed; and any impact on Australian business interests: Direction No 110, paras 6, 9.

7 Act, s 501(7)(c).

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Australia; the best interests of minor children in Australia; and the expectations of the Australian community. Each was addressed in turn.

Protection of the Australian community

20 The delegate's reasons recorded that Direction No 110 states that the safety of the Australian community is the government's highest priority.⁸ The delegate also stated that, consistent with the Direction, in considering whether there was "another reason" to revoke the Cancellation Decision, the delegate considered the nature and seriousness of the plaintiff's conduct and the risk to the Australian community should the plaintiff reoffend or engage in other serious conduct.⁹

21 Under the sub-heading "Nature and seriousness of conduct", the delegate found that the plaintiff's offending was "very serious", the plaintiff having been convicted of murder and of family violence offences. The delegate had a number of other concerns. In relation to family violence offences, the delegate was concerned by the frequency of the plaintiff's offending, having been convicted a significant number of times in the relatively short period since his release from detention in 2022. The delegate also considered it a matter of serious concern that the plaintiff had continued offending despite being aware of the potential impact of that offending on his immigration status. The delegate considered that, because the plaintiff's protection visa application was refused on character grounds on 11 September 2019 and he received a copy of the decision and the reasons for refusal, the plaintiff would have been "acutely aware" of the potential impact of criminal offending on his visa status and yet he continued to commit family violence offences from October 2019.

22 Next, under the sub-heading "Risk to the Australian community", the delegate found that, having regard to the nature of the plaintiff's past offending, they considered that any future offending by the plaintiff of a similar nature would have the potential to cause "physical and psychological injury, or death, to members of the Australian community".

23 In assessing the likelihood of the plaintiff reoffending in the future, the delegate also considered factors that may have assisted to explain the plaintiff's past conduct, as well as his more recent conduct, remorse and rehabilitation. This included detailed consideration of the 2022 Tribunal Decision, including the evidence that was before the Tribunal at the time of its decision and the Tribunal's assessment that the plaintiff would pose a "material risk"

8 Direction No 110, paras 5.2(2), 8.1(1).

9 Direction No 110, para 8.1.

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to the Australian community if he was released. The delegate noted that, since the 2022 Tribunal Decision, the plaintiff had committed further family violence offences and continued to engage in alcohol abuse, which had been identified as a significant factor in his reoffending.

- 24 The delegate was satisfied that there was a "real and ongoing risk to the Australian community", as there was a likelihood that the plaintiff would reoffend. Given the nature and seriousness of the plaintiff's conduct and the potential harm to the Australian community should the plaintiff commit further offences or engage in other serious conduct, and taking into account the likelihood of the plaintiff reoffending, the delegate found that the need to protect the Australian community from criminal or other serious conduct weighed "significantly against revocation".

Family violence conduct

- 25 The delegate then considered whether the plaintiff had engaged in any conduct constituting "family violence" as defined in Direction No 110.¹⁰ The delegate found that the plaintiff had engaged in that conduct.

- 26 In considering the seriousness of the plaintiff's family violence offending, the delegate found that the plaintiff had "demonstrated a trend of increasing seriousness of family violence" progressing to two counts of assault occasioning actual bodily harm, which had on one occasion involved a threat to the safety of a child, and that the plaintiff's family violence offending fell "towards the top of the range of such conduct". The delegate attributed this consideration "significant weight against revocation".

Strength, nature and duration of ties to Australia

- 27 The delegate then considered the strength, nature and duration of the plaintiff's ties to Australia as required by Direction No 110.¹¹ The delegate was satisfied of, and afforded "particular weight" to, the fact that the plaintiff had been resident in Australia from April 2004, from the age of 14 years and 10 months. The delegate noted that the plaintiff began offending soon after arriving in Australia and again on his return to the community in October 2022. The delegate recorded that the Direction advises that these circumstances should be taken as reducing the weight to be given to the time the person has spent in Australia.

10 Direction No 110, para 4(1) definition of "family violence", para 8.2.

11 Direction No 110, para 8.3.

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28 In relation to the requirement that the delegate consider "any impact of the decision on the non-citizen's immediate family members in Australia",¹² the delegate noted that the 2022 Tribunal Decision had found that the plaintiff had a "strong and continuing relationship" with his parents, and accepted that they would suffer some emotional hardship in the event of a non-revocation decision. The delegate, however, did not accept that the plaintiff was currently in a relationship with his former partner or that she would suffer any adverse impact from a non-revocation decision. The delegate did accept that his former partner, having custody of his minor daughter, could benefit from having the plaintiff working and contributing towards her maintenance but considered that the plaintiff did not need to be physically in Australia, "or indeed hold a protection visa", in order to do so.

29 The delegate accepted that the plaintiff had developed social ties in Australia and that a decision not to revoke his visa cancellation would have some adverse impacts on his other family and friends. The delegate also accepted that the plaintiff had made some limited contribution to the Australian community through his employment from 2022 to 2024. The delegate concluded that the strength, nature and duration of the plaintiff's ties to Australia weighed "moderately in favour of revocation of the [Cancellation Decision]".

Best interests of minor children

30 After recording that Direction No 110 required the delegate to treat the best interests of the plaintiff's daughter as a primary consideration,¹³ the delegate accepted that it may be in the best interests of the plaintiff's daughter to revoke the Cancellation Decision. But this conclusion was tempered by the delegate's concern that the plaintiff's domestic violence offending may have put the daughter at risk. The delegate gave this consideration "some weight" in favour of a decision to revoke the Cancellation Decision.

Expectations of the Australian community

31 Finally, the delegate set out the statement in Direction No 110 that "[w]here a non-citizen has engaged in serious conduct in breach of [Australian laws] ... the Australian community, as a norm, expects the Government to not allow such a non-citizen to enter or remain in Australia".¹⁴ The delegate

12 Direction No 110, para 8.3(1).

13 Direction No 110, para 8.4.

14 Direction No 110, para 8.5(1).

found that the plaintiff's conduct raised "serious character" concerns and the Australian community's general expectations applied. The delegate attributed "significant weight" to this consideration against revocation of the Cancellation Decision.

Other considerations specified in Direction No 110

32 The delegate then took into account the other relevant considerations specified in Direction No 110, namely the legal consequences of the decision and the extent of impediments if removed.¹⁵

Legal consequences of the decision¹⁶

33 At the outset, the delegate recorded that they were aware that under s 198 of the Act, an unlawful non-citizen was liable to be removed from Australia as soon as reasonably practicable, but that s 197C(3) of the Act provides that s 198 does not require or authorise removal of a person to a country in relation to which a "protection finding"¹⁷ has been made in the course of a protection visa application.

34 The delegate recorded that a protection finding had been made in relation to the plaintiff with respect to PNG and that, accordingly, removal of the plaintiff to PNG was "neither required nor authorised" by the Act. The delegate recorded that the plaintiff could therefore only be removed to a third country.

35 The delegate recorded that the "legal effect" of this Court's decision in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs*¹⁸ was that "detention of the non-citizen will no longer be supported by ss 189 and 196 of the Act where there is no real prospect that it will be practicable to remove the non-citizen in the reasonably foreseeable future". As there was presently no real prospect of removing the plaintiff to a third country, the delegate recognised that he would not be subject to indefinite detention pending his removal and would instead be released from detention. The delegate stated that the Minister would "separately consider the type of visa on which [the plaintiff] should reside and

15 Direction No 110, para 9(1)(a)-(b). The delegate recorded that there was no suggestion that the cancellation of the plaintiff's visa would impact on Australian business interests for the purposes of para 9(1)(c) of Direction No 110.

16 Direction No 110, para 9.1.

17 Defined in s 197C(4)-(7) of the Act.

18 (2023) 280 CLR 137.

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conditions to be imposed on that visa, following further advice from the Department". As will be discussed, the visa ultimately granted was a BVR.

36 The delegate then stated that they were aware that if a non-revocation decision was made "there would be significant restrictions on [the plaintiff's] ability to apply for another visa". In particular, the delegate stated that the plaintiff would be prevented by s 48A of the Act from making a further application for a protection visa while he was in the migration zone, unless the Minister determined under s 48B that s 48A of the Act did not apply to the plaintiff. The delegate found that, without leaving the migration zone, the plaintiff would not be able to apply for any visa other than a BVR, for which he could only apply in response to an invitation. The delegate gave this consideration weight in favour of revocation of the Cancellation Decision. In making that decision, the delegate specified that they had "not speculated on the likelihood of a Minister intervening under any of the provisions mentioned above, or the consequences for [the plaintiff] following any such intervention".

Extent of impediments if removed to PNG¹⁹

37 The delegate accepted that the plaintiff would face practical, financial and emotional hardship if he were returned to PNG and that restricted access to medication and adequate health facilities in PNG would be an impediment to his return. However, given that the plaintiff could not be removed to PNG due to the protection finding, the delegate found that "those impediments [would] not eventuate" as a result of the delegate's decision not to revoke the Cancellation Decision.

Delegate's conclusion

38 In the exercise of the delegate's discretion, the delegate stated that they had given the "highest priority" to the safety of the Australian community and the need to protect its safety. On balance, the delegate found "the factors that weigh against revocation of the [C]ancellation [D]ecision outweigh the factors in favour of revocation".²⁰ The delegate concluded that there was not "another reason" to revoke the Cancellation Decision pursuant to s 501CA(4)(b)(ii) of the Act.

19 Direction No 110, para 9.2.

20 The listed factors in favour of revocation were the best interests of the plaintiff's minor child, the plaintiff's ties to Australia and some of the legal consequences of the decision.

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39 Since the delegate was not satisfied that the plaintiff passed the character test or that there was another reason to revoke the Cancellation Decision, they concluded that the power in s 501CA(4) was not enlivened.

Ground 1 – No failure to consider plaintiff's representations

40 The plaintiff contends that the Non-revocation Decision was legally unreasonable, or the delegate failed to lawfully consider the plaintiff's representations, because the delegate failed to have regard to information provided by the plaintiff to the Department in connection with previous decision-making, including the 2022 Tribunal Decision. As the plaintiff put it, the "crux" of his claim is that, despite the plaintiff's request for revocation of the Cancellation Decision referring to information the plaintiff had supplied in relation to the 2022 Tribunal Decision, and despite indications that the delegate would have regard to material held by the Department, the delegate "selectively had regard to such information". That is, the plaintiff contends that the delegate limited their consideration to the 2022 Tribunal Decision and thereby constructively failed to exercise jurisdiction. Alternatively, the plaintiff contends that the delegate's selective reference to only some of the relevant information held by the Department resulted in unreasonableness in the decision-making.

41 The letter providing the plaintiff notice of the Cancellation Decision included an invitation, pursuant to s 501CA(3)(b) of the Act, for the plaintiff to make representations as to why the Cancellation Decision should be revoked.²¹ The notice provided that representations were required to be made in accordance with instructions outlined in the notice. The instructions included, among other things, that the plaintiff provide a statement of the reasons on which he relied in support of his representations.²²

42 The notice enclosed a "Request for revocation of a mandatory visa cancellation under s 501(3A)" form ("Revocation Request Form"). The plaintiff completed and signed this form on 24 May 2024, together with an accompanying "Personal circumstances" form ("Personal Circumstances Form"). It is these documents that the plaintiff relies upon in support of this ground of review. It is necessary to consider each in some detail.

21 See [7] above.

22 As required by *Migration Regulations*, reg 2.52(4).

Revocation Request Form

43 The first page of the Revocation Request Form explained: "If you wish to request revocation of your visa cancellation please complete all parts of this request form, as well as the 'Personal Details Form', which was attached to your notice of cancellation".

44 The second page included a section headed "Consent to collect, use and disclose information". That section of the form relevantly stated:

"It may be necessary for the Department to collect further information about you, or use ... information about you ... to assist the Minister or his/her delegate [to] assess your request for revocation. This information may be your personal information (including sensitive information) for the purposes of privacy legislation, and may include prison and parole reports."

The plaintiff was asked whether he consented to the Department, relevantly, collecting and using his "personal or sensitive information, where doing so is relevant to, and will assist with, the processing of your request for revocation". The plaintiff ticked the box indicating his consent and signed below.

45 The third page of the Revocation Request Form included a box for the plaintiff to insert hand-written responses and a request that he "provide [his] reasons as to why the Minister or his/her delegate should revoke the mandatory cancellation of [his] visa". The form explained that if the plaintiff needed "more room to set out [his] reasons" the plaintiff could "attach additional pages to this notice". This section of the Revocation Request Form also informed the plaintiff, among other things, that "a delegate of the Minister must use Ministerial Direction No 99 as a guide when making their decision" and encouraged the plaintiff to "read it thoroughly". The plaintiff was subsequently informed that this ministerial direction had been replaced by Direction No 110 and invited to provide further comment, but he did not do so.²³

46 Under the heading "Reasons for Revocation", the plaintiff stated:

"I have already been successful with the [Tribunal] on 26 October 2022 on the very basis in which the visa is AGAIN been cancelled ... You the Department already have all the information from when I was released."

23 See [9] above.

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The plaintiff asked that the Department "[u]pdate your (Department) Information" and referred to "26/10/2022 – (Decision) AAT". It is common ground that the date provided by the plaintiff was incorrect. The Tribunal's decision was dated 28 July 2022. The plaintiff was granted a visa and released from immigration detention on 26 October 2022.

47 The next page of the Revocation Request Form asked the plaintiff to "list and attach any documents that may assist the Minister or his/her delegate in making a decision". The plaintiff was told that any documents "must be either the original document or a copy of the original document that is certified in writing to be a true copy". The list of supporting documents was prefilled with reference to a "Personal details form" and "Form 956 – Advice by a migration agent/exempt person of providing immigration assistance". The plaintiff did not add to that list, nor did he strike through the inapplicable Form 956.

Personal Circumstances Form

48 The first page of the Personal Circumstances Form stated that its completion was not mandatory, "[a]lthough it is in your interests to provide relevant information in response to your s 501 case that you wish the decision-maker to take into account". The form then explained the consequences of not providing a response as follows: "if you choose not to provide a response, the decision-maker will rely upon information the Department currently holds when making his/her decision".

49 In completing this form, the plaintiff referred to the fact that the Department already held a significant amount of information about him and that he sought to rely upon that information in response to the invitation. For example: (1) in response to a question about the date and place of his first arrival in Australia, the plaintiff said "The Department already has all the information"; (2) in response to questions about relationships he had with a spouse or partner, the plaintiff said "You already have all this information. Please refer to AAT Decision 26 October 2022"; (3) in response to a question asking the plaintiff to outline any factors to help explain his offending, the plaintiff said "I have already been through all of this with the department after spending 5½ years in immigration. I have been successful with [the Tribunal] in October 2022"; (4) in response to a question about medical treatment, the plaintiff said "You the department have all my medical record already"; (5) in response to a question about what concerns or fears the plaintiff might have if he was returned to his country of citizenship, the plaintiff said "I will die, the department is already aware of this from when I won my case [on] 26 October 2022".

50 The final page of the Personal Circumstances Form contained a list of "suggested documents to support your claims", with boxes for the plaintiff to tick

next to each of the documents provided. The plaintiff did not tick any of these boxes or provide any of the suggested documents.

Analysis

51 In *Plaintiff M1/2021 v Minister for Home Affairs*,²⁴ it was explained that the statutory scheme for the revocation of a decision to cancel a person's visa for failure to satisfy the character test under s 501(3A), of which s 501CA(4) forms a central part, "commences with a former visa holder making representations". The decision-maker, in determining whether they are satisfied that there is "another reason" why the original decision should be revoked for the purposes of s 501CA(4)(b)(ii), undertakes their assessment "by reference to the case made by the former visa holder by their representations".²⁵

52 The decision-maker must read, identify, understand and evaluate those representations, and bring their mind to bear on the facts stated in them and the arguments or opinions put forward.²⁶ The decision-maker's engagement with the representations must occur within the bounds of rationality and reasonableness.²⁷ What the decision-maker must do will "necessarily depend on the nature, form and content of the representations", and "[t]he requisite level of engagement – the degree of effort needed by the decision-maker – will vary, among other things, according to the length, clarity and degree of relevance of the representations".²⁸ There is no obligation on the decision-maker to consider claims that are not clearly articulated or which do not clearly arise on the material,²⁹ and not every statement within the representations is a mandatory relevant consideration.³⁰ Further, "it is generally for the person making the

24 (2022) 275 CLR 582 at 594 [14]-[15].

25 *Plaintiff M1/2021* (2022) 275 CLR 582 at 598 [22].

26 *Plaintiff M1/2021* (2022) 275 CLR 582 at 598 [24].

27 *Plaintiff M1/2021* (2022) 275 CLR 582 at 599 [25].

28 *Plaintiff M1/2021* (2022) 275 CLR 582 at 599 [25].

29 *Plaintiff M1/2021* (2022) 275 CLR 582 at 599 [25].

30 *Plaintiff M1/2021* (2022) 275 CLR 582 at 598 [23].

application to identify the personal facts and circumstances relevant to the decision".³¹

53 Even assuming that the plaintiff could have fashioned submissions that required the delegate to trawl through all of the material held by the Department in order to sift out what might be relevant, determine what might possibly be made of that material and then take that material into account, the Revocation Request Form and the Personal Circumstances Form did not impose such a burden.

54 In relation to the Revocation Request Form, the parts relied upon by the plaintiff concerned the plaintiff giving consent to the collection, use and disclosure of the plaintiff's personal information.³² That portion of the form did not convey to the plaintiff that he did not need to provide representations or documents in support of revocation of the Cancellation Decision under s 501CA(4). Indeed, the Personal Circumstances Form emphasised that it was in the plaintiff's interests to "provide relevant information in response to your s 501 case" that the plaintiff wished the decision-maker to take into account.³³ The plaintiff did not do that.

55 It is common ground that the plaintiff referred to the 2022 Tribunal Decision in both the Revocation Request Form and the Personal Circumstances Form. As is apparent from the summary of the Non-revocation Decision,³⁴ the delegate read, considered and referred to that decision. The plaintiff did not refer to any particular document or material that was before the Tribunal that the plaintiff wanted the delegate to consider or which the Tribunal did not refer to in its reasons for decision. In the "supporting documents" section of the Revocation Request Form and "suggested documents to support your claims" section of the Personal Circumstances Form, the plaintiff did not list any document he wished the delegate to consider.³⁵

56 On 17 January 2025, the Department wrote to the plaintiff enclosing a copy of the plaintiff's updated criminal history and sentencing remarks and sought

31 *Ismail v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 280 CLR 265 at 277 [23].

32 See [44] above.

33 See [48] above.

34 See [16]-[39] above.

35 See [47] and [50] above.

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comments on those matters, as well as the matters identified in Direction No 110.³⁶ The plaintiff did not respond. As the Minister submits, at that time the plaintiff's personal circumstances had significantly changed since the 2022 Tribunal Decision. In that three-year period, the plaintiff had been convicted of seven further offences relating to family violence, at least some of which concerned the person who was his partner at the time of the 2022 Tribunal Decision,³⁷ the plaintiff indicated in the Personal Circumstances Form that he would not be living with his former partner on release, and the plaintiff had become a father to a daughter. The Personal Circumstances Form did not refer to any other family members or describe any impact on those persons of the Cancellation Decision.³⁸ The delegate's decision reflected those facts.³⁹

57 The plaintiff's further complaint that the delegate had no basis to justify their "selective reference" to the 2022 Tribunal Decision and the "Section 197C Protection Finding Advice" among the material held by the Department is rejected.⁴⁰ The first was referred to by the plaintiff in the Personal Circumstances Form. The second the delegate was required to consider under Direction No 110 in considering the legal consequences of the decision.⁴¹

58 Finally, the plaintiff identified four matters that he contends the delegate failed to consider. A failure of the delegate to consider those matters, either taken alone or in combination, would not involve jurisdictional error.

59 The first complaint was that the delegate found that the plaintiff "did not list any family members in Australia in his representations" in his Personal Circumstances Form, when in fact the plaintiff had previously provided statements by "family members and friends" in 2018, 2021 and 2022. The delegate's statement was accurate. The plaintiff did not list any family members other than his daughter in the Personal Circumstances Form. Given what had transpired since the previous

36 See [9] above.

37 See [8] above.

38 In the section of the form titled "Family details", the plaintiff did not list any family members. However, he did provide details of his daughter.

39 See [21], [28], [30] above.

40 See [16] above.

41 Direction No 110, para 9.1.

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statements held by the Department were made in 2018, 2021 and 2022,⁴² the delegate was not required to assume that information would still be relevant. In any event, the delegate was prepared to accept that the plaintiff had developed some family and social ties and that a non-revocation decision would have some adverse impact on those persons.⁴³

60 The second complaint was that the delegate stated that they considered "it curious and concerning that [the plaintiff] did not express any remorse for any of his criminal offending in his representations dated 24 May 2024". The plaintiff submits that this overlooks statements he made in 2017 acknowledging the seriousness of his offending, apologising and accepting responsibility for it. However, the delegate's statement that in May 2024 – immediately after the plaintiff's visa had been cancelled, and in the context of responding to the Cancellation Decision – the plaintiff did not express remorse for his offending was accurate. The fact that the plaintiff might have made some statement of remorse in 2017 does not undermine the delegate's statement. The plaintiff had offended repeatedly since 2017, so the plaintiff's statements in 2017 plainly did not reflect the circumstances at the time of the Non-revocation Decision.

61 The third complaint was the failure of the delegate to refer to a document from Corrective Services New South Wales. Again, that document was from 2017 and contained no more than a one-sentence reference to the plaintiff having completed the "Getting Smart" program in July 2014. No details about that program were given. Insofar as the program addressed drug and alcohol use, as the delegate observed, the plaintiff increased his drug use from 2018.

62 The fourth complaint was that the delegate failed to consider a report of Patrick Sheehan, a psychologist, dated 19 November 2020 ("the Sheehan Report"). The Sheehan Report was provided more than four years before the Non-revocation Decision and prior to the plaintiff offending a further seven times and receiving further sentences of imprisonment. The Sheehan Report did not address the plaintiff's circumstances, or risk of recidivism, at the time of the Non-revocation Decision. Further, the delegate carefully considered the 2022 Tribunal Decision, which was critical of the Sheehan Report, noting Mr Sheehan's lack of awareness of the full extent of the plaintiff's violent behaviour and observing that the gap in Mr Sheehan's knowledge "seriously undermines the veracity of his report".⁴⁴ The delegate referred to the Sheehan Report and,

42 See [56] above.

43 See [29] above.

44 2022 Tribunal Decision at [90].

in the circumstances, it was not legally unreasonable for the delegate not to further engage with it.

63 This ground of review is rejected.

Ground 2 – Protection of the Australian community

64 The plaintiff contends that the delegate erred jurisdictionally by reasoning "as if deciding not to revoke the cancellation of the plaintiff's visa would completely remove the risk posed to the Australian community of the plaintiff reoffending and in attributing weight to that consideration on that basis". The plaintiff submits that that reasoning was unreasonable in circumstances where the delegate had "elsewhere concluded that there was no real prospect of removing the plaintiff from Australia in the reasonably foreseeable future".⁴⁵ Alternatively, the plaintiff contends that Direction No 110 required the delegate to apply para 8.1 "where relevant",⁴⁶ and that the delegate mechanically applied para 8.1 "without accounting for the plaintiff's irremovability".

65 Paragraph 8.1 of Direction No 110 identifies the protection of the Australian community as the "highest priority of the Australian Government". The plaintiff contends that it is implicit in this paragraph that protection of the Australian community is achieved only by "removing the non-citizen from the Australian community" and a decision-maker would therefore "ordinarily need to account for the fact of irremovability" when assessing para 8.1 and the weight to be given to it. The plaintiff contends that did not occur here.

66 The plaintiff's contentions are rejected. The reasoning of the delegate in assessing para 8.1 of Direction No 110 was not illogical, irrational or unreasonable.

67 First, contrary to the plaintiff's contentions, cancellation of a visa may serve the purpose of protecting the Australian community even though removal from Australia may not be reasonably practicable at the time the decision is made. The Act creates an enforceable duty to remove an unlawful non-citizen from Australia "as soon as reasonably practicable" in a range of specified circumstances,⁴⁷ and a duty to detain such persons pending removal.⁴⁸ As this

45 See [35] above.

46 Direction No 110, para 6.

47 Act, s 198. See generally *NZYQ* (2023) 280 CLR 137 at 148-149 [12]-[13], 162 [55].

48 Act, ss 189(1), 196(1).

Court held in *NZYQ*,⁴⁹ executive detention of an alien who has failed to obtain permission to remain in Australia ceases to be lawful when there is "no real prospect of removal of the alien from Australia becoming practicable in the reasonably foreseeable future". However, the power to detain will be re-enlivened if and when a state of facts comes to exist giving rise to a real prospect of the alien's removal from Australia becoming practicable in the reasonably foreseeable future. Visa cancellation ensures that such persons are available for removal if it becomes reasonably practicable and may therefore serve the purpose of protecting the Australian community, even though removal from Australia may not be reasonably practicable at the time the decision is made. In the interim, a bridging visa such as a BVR may be granted subject to conditions aimed at protecting the Australian community.⁵⁰

68 Second, and in any event, there was nothing illogical, irrational or unreasonable in the delegate's assessment of protection of the Australian community as a primary consideration. The delegate's reasons must be read fairly and as a whole. The reasons for the Non-revocation Decision are structured in the manner described above: in sequence with different topics under separate headings. Read as a whole, the Court would not infer that, in dealing with one topic, the delegate had forgotten the substance of what was stated elsewhere in the reasons or had quarantined the assessment of one topic from every other topic.⁵¹ The decision-maker should not be thought to have approved each paragraph of the statement of reasons in isolation, before moving on to the next paragraph.⁵²

69 As has been explained, under the heading "Legal consequences of the decision" the delegate made the following six findings or statements: the delegate (1) accepted that the plaintiff was a person in respect of whom Australia had non-refoulement obligations and, pursuant to s 197C(3) of the Act,

49 (2023) 280 CLR 137 at 162 [55], 166-167 [73].

50 See, generally, *Migration Regulations*, regs 2.25AA, 2.25AB, Pt 070 of Sch 2, Sch 8. But note that curfew and ankle monitoring conditions (conditions 8620 and 8621) cannot lawfully be imposed: *EGH19 v The Commonwealth* (2026) 100 ALJR 400; 428 ALR 467.

51 *Ismail* (2024) 280 CLR 265 at 286 [50]. See also *Minister for Immigration and Multicultural Affairs v SSVJ* (2026) 315 FCR 435 at 443 [27].

52 *SSVJ* (2026) 315 FCR 435 at 443 [27].

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the plaintiff could not be removed to PNG;⁵³ (2) acknowledged that the plaintiff could only be removed to a country other than PNG;⁵⁴ (3) referred to *NZYQ* and observed that, where there is no real prospect of removal in the reasonably foreseeable future, a non-citizen must be released from immigration detention;⁵⁵ (4) stated that, as there was "presently" no real prospect of removal to a third country, non-revocation of the Cancellation Decision would lead to the plaintiff being "released from detention";⁵⁶ (5) stated that the Minister would separately consider the "type of visa on which he should reside" and the conditions to be imposed on that visa (the only "type" of visa that could be granted to the plaintiff was a BVR, which, as the delegate foreshadowed, was subject to both mandatory and discretionary conditions);⁵⁷ and (6) observed that a non-revocation decision would result in there being "significant restrictions" on the plaintiff's ability to apply for any other visa in the future.⁵⁸

70 In sum, it can be readily inferred that the delegate made the Non-revocation Decision (including the assessment of the protection of the Australian community for the purposes of para 8.1 of Direction No 110) on the understanding and basis that, if the plaintiff's visa remained cancelled, the plaintiff would be released into the Australian community as the holder of a BVR, which would be subject to conditions.

71 Indeed, conditions imposed on a BVR regulate the holder's conduct in Australia and are designed to offer protection to the Australian community.⁵⁹ Those conditions do not apply to the Protection Visa previously held by the plaintiff (which would have been reinstated if a decision to revoke

53 See [33]-[34] above.

54 See [34] above.

55 See [35] above.

56 See [35] above.

57 See [35] above.

58 See [36] above.

59 *XKTK v Minister for Immigration, Citizenship and Multicultural Affairs* (2025) 311 FCR 539 at 562 [107]. See also *Plaintiff S22/2025 v Minister for Immigration and Multicultural Affairs* (2025) 99 ALJR 1378 at 1382-1383 [15]-[17], 1384 [25]; 425 ALR 79 at 85, 88. But note that there are limits on the conditions that may be imposed on a BVR to protect the community: *EGH19* (2026) 100 ALJR 400; 428 ALR 467.

the cancellation had been made). By operation of s 76AAA of the Act, a BVR ceases to be in effect once removal of the plaintiff becomes reasonably practicable because of a third country granting the plaintiff a right to enter and remain in that country.⁶⁰ The grant of a BVR made the plaintiff available for removal from Australia, should removal to a third country become reasonably practicable at some future point in time.

Ground 3 – No failure to consider legal consequences of delegate's decision

72 The plaintiff contends that the delegate erred jurisdictionally by failing to have regard, in a legally reasonable way, to the legal consequences of the Non-revocation Decision on two bases. First, the delegate failed to consider the "legal consequence" that as a result of the decision, the plaintiff would become an unlawful non-citizen but would not be detained. Second, the delegate failed to consider the "sufficiently certain legal consequence" that the plaintiff would be granted a BVR and would be subject to, at least, its mandatory conditions. As will be explained, the delegate's reasoning was not legally unreasonable.

First framing of error

73 The delegate did not fail to consider that, as a result of the Non-revocation Decision, the plaintiff would become an unlawful non-citizen but would not be detained. The delegate recorded that they were aware that ss 198 and 197C of the Act applied to the plaintiff and of the further restrictions on the plaintiff applying for any other form of visa.⁶¹ In the circumstances, it is readily to be inferred that the delegate was aware that the immediate result of the Non-revocation Decision was that the plaintiff would become an unlawful non-citizen.

74 The plaintiff's further contention, that the delegate failed to consider that the plaintiff would remain an unlawful non-citizen in the community but without a visa, is rejected. It was an agreed fact that the Minister had referred the plaintiff to the relevant part of the Department for consideration of the grant of a BVR and there was no process underway for consideration of a grant of any other visa to the plaintiff. Indeed, the delegate expressly observed that the Minister was

60 *Plaintiff S22/2025* (2025) 99 ALJR 1378 at 1385 [27]; 425 ALR 79 at 88-89. The BVR ceases to be in effect immediately after notice is given to the non-citizen: Act, s 76AAA(4).

61 See [33]-[36] above.

considering the grant of a visa, which in context must have been a BVR.⁶² Further, it was an agreed fact that a BVR was granted to the plaintiff the same day as the Non-revocation Decision and the plaintiff accepts that departmental emails around this time evidence an intention to coordinate between the delegate responsible for the Non-revocation Decision and the delegate responsible for the BVR decision. Indeed, the plaintiff's own position in his submissions, and the second way he attempts to frame this error, proceeds on the basis that the grant of a BVR was "a sufficiently certain legal consequence".

75 In sum, the delegate did not fail to consider a legal consequence of the Non-revocation Decision by not addressing the possibility of the plaintiff residing in the community as an unlawful non-citizen without a visa. To adopt and adapt what was said by Gageler CJ, Edelman and Jagot JJ in *Plaintiff S22/2025 v Minister for Immigration and Multicultural Affairs*,⁶³ "[i]t must be inferred that the unstated alternative if the plaintiff was not granted the BVR, that he would reside in the community without a visa as an unlawful non-citizen, was not mentioned by the delegate because [they] knew that the grant of the BVR was the overwhelming likelihood".

76 *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v KFTJ*,⁶⁴ on which the plaintiff places significant reliance, is distinguishable. To take just one basis for distinction, in that case the Minister had had put to them at the time of making a decision to cancel a visa under s 501BA of the Act the "option" of referring consideration of whether to grant KFTJ a BVR to a delegate, which the Minister had circled on the same day that they signed the s 501BA cancellation decision and the statement of reasons.⁶⁵ The Court inferred that the Minister made the decision to cancel his visa before referring the case to a delegate to consider granting a BVR. The plaintiff's position in this proceeding is factually different.

Second framing of error

77 As noted, the plaintiff's second framing of this error was to contend that the grant of a BVR, with at least the mandatory conditions applicable to it,

62 See [35] above. See also *Plaintiff S22/2025* (2025) 99 ALJR 1378 at 1382-1383 [15]-[17]; 425 ALR 79 at 85.

63 (2025) 99 ALJR 1378 at 1383 [18]; 425 ALR 79 at 86.

64 (2026) 316 FCR 273.

65 *KFTJ* (2026) 316 FCR 273 at 286 [45]-[46]. See also 285 [44], 286-287 [47]-[49].

was a "sufficiently certain legal consequence" which the delegate was required to consider. That contention also fails.

78 The delegate was required to consider the legal consequences of the exercise of power in question or the consequences visited by Australian law on the persons whom the decision affects. Having recognised the likelihood that a non-revocation decision would lead to the plaintiff's release into the Australian community on a BVR, the delegate's reasons do not reveal any failure to appreciate that the BVR would be subject to any mandatory conditions of such a visa.⁶⁶ Again, to adopt and adapt what was said by Gageler CJ, Edelman and Jagot JJ in *Plaintiff S22/2025*,⁶⁷ "[a]lthough the delegate made no specific reference to the consequences of the grant of a BVR, including the imposition of mandatory monitoring conditions, there was no obligation upon the delegate to make express reference to those consequences (however probable) of a discretionary exercise of executive power while the plaintiff was being detained or after release".

79 The plaintiff sought to impugn the delegate's statement that, in making the decision, they had "not speculated on the likelihood of the Minister intervening under any of the provisions mentioned above, or the consequences for [the plaintiff] following any such intervention".⁶⁸ The plaintiff contends that in this paragraph the delegate expressly refused to speculate on whether the plaintiff "would most likely be the subject of a grant of the BVR including the mandatory conditions to which such visas are subject".⁶⁹ That contention misreads the delegate's statement, which in context addresses the immediately preceding two paragraphs that deal with the plaintiff's limited ability himself to apply, in the future, for another visa. What the delegate declined to speculate about was the possibility of the Minister intervening under s 48B of the Act to lift the s 48A bar that would otherwise prevent the plaintiff from making a visa application. The delegate's statement does not address the likelihood of a grant of a BVR, which could be granted without the plaintiff applying.⁷⁰

66 See [35]-[36] above.

67 (2025) 99 ALJR 1378 at 1382 [14]; 425 ALR 79 at 85. See also *SSVJ v Minister for Immigration, Citizenship and Multicultural Affairs* [2025] FCA 954 at [27].

68 See [36] above.

69 cf *Plaintiff S22/2025* (2025) 99 ALJR 1378 at 1382 [13]; 425 ALR 79 at 84.

70 *Migration Regulations*, regs 2.25AA(2), 2.25AB(2).

Extensions of time

80 The plaintiff was required to make his application for a constitutional or other writ within 35 days of the date of the Non-revocation Decision.⁷¹ The plaintiff did not do so. The Court must be satisfied that it is "necessary in the interests of the administration of justice" to extend the 35-day period.⁷² In deciding that question, relevant considerations include the length of and reasons for the delay and the merits of the putative application for judicial review.⁷³

81 The circumstances in this case do not justify a grant of an extension of time. The application fails to disclose any jurisdictional error in the Non-revocation Decision.

Conclusion and orders

82 The application should be dismissed with costs.

71 Act, s 486A(1).

72 Act, s 486A(2).

73 *Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 276 CLR 579 at 588-589 [11]-[12], 599-600 [40].