

HIGH COURT OF AUSTRALIA

GAGELER CJ,
JAGOT AND BEECH-JONES JJ

GARY GERARD MORTON

PLAINTIFF

AND

MINISTER FOR IMMIGRATION
AND CITIZENSHIP

DEFENDANT

Morton v Minister for Immigration and Citizenship
[2026] HCA 38
Date of Judgment: 14 October 2026
S68/2026

ORDER

- 1. The plaintiff is granted an extension of time to file the application for a constitutional or other writ.*
- 2. The application for a constitutional or other writ is dismissed with costs.*

Representation

The plaintiff is represented by Alan Rigas Solicitors

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

Morton v Minister for Immigration and Citizenship

Immigration – Visas – Where delegate refused application for Return (Residence) (Class BB) visa – Where ministerial direction required consideration of protection of Australian community and extent of impediments applicant may face if removed – Whether delegate failed to consider information concerning access to medication, therapy and supports in Singapore – Whether delegate failed to comply with s 54 or s 55 of *Migration Act 1958* (Cth) – Whether delegate failed to afford procedural fairness – Whether delegate's findings concerning risk of harm to Australian community legally unreasonable, illogical or irrational.

Words and phrases – "constitutional writ", "eye keenly attuned to error", "illogical", "irrational", "legally unreasonable", "procedural fairness", "substantial and clearly articulated argument", "totality of the evidence", "unacceptable risk of harm", "whole of the reasons".

Migration Act 1958 (Cth), ss 54(1), 55(1), 499(2A).

1 GAGELER CJ, JAGOT AND BEECH-JONES JJ. The plaintiff applies for a writ of certiorari quashing the decision of the delegate of the Minister for Immigration and Citizenship ("the Minister") on 15 June 2026 to refuse the plaintiff's application for a Return (Residence) (Class BB) visa ("RR visa") under s 501(1) of the *Migration Act 1958* (Cth) and a writ of mandamus requiring the Minister to determine the plaintiff's application for an RR visa according to law, as well as an order for costs.

2 Jagot J referred the application for determination by a Full Court by order made on 30 September 2026 pursuant to r 25.09.3(d) of the *High Court Rules 2004* (Cth).

3 Although the plaintiff contended that this Court is able to remit the matter to the Federal Circuit and Family Court of Australia (Division 2) on the basis that the jurisdiction of that Court to determine the application is not excluded by s 476(4)(a) of the *Migration Act* on its proper construction, the plaintiff accepted that as the Minister contended to the contrary it "may be more efficient for the Court simply to determine the substantive issues (which are relatively narrow in compass) rather than holding a hearing on the question of remittal". We adopt that course.

4 We have also determined the application without listing the application for hearing in accordance with r 25.09.1 of the *High Court Rules*, a course to which the Minister consented but the plaintiff did not. The plaintiff's position was that "if the two grounds pressed in the application are to be determined adversely against the [plaintiff], he respectfully seeks to first be heard orally, as oral submissions may supplement any gaps in the written submissions, and also considering the real human consequences for the [plaintiff] of an adverse determination". We do not consider the plaintiff's contention to be justified, having regard to the opportunity taken by both parties to place all relevant material before the Court for consideration.

5 A short extension of time is required for the plaintiff to make the application, for which an adequate explanation has been provided. The Minister did not oppose the grant of the extension of time other than on the basis of the Minister's contentions that the grounds on which the application is made are unsustainable. As will be explained, the Minister's contentions to this effect must be accepted but, as we have determined the application on its merits, it is appropriate that the extension of time be granted and that the plaintiff's application be dismissed with costs.

Grounds

6 The plaintiff challenges the validity of the decision to refuse to grant him an RR visa on two grounds (the third ground no longer being pressed on the plaintiff's behalf).

7 Ground one (failure to consider a claim, submissions and evidence) contends that the delegate: (i) failed to comply with the obligation in s 54 or s 55 of the *Migration Act* "to have regard to all of the information in the application"; and/or (ii) "denied the plaintiff procedural fairness by failing to respond to a substantial and clearly articulated argument, in failing to consider whether the plaintiff could access the medication; therapy; and supports to maintain his sobriety, mental health and treat his HIV infection, if returned to Singapore".

8 Ground two (findings on an unacceptable risk of harm to the community) contends that the delegate "made findings that were legally unreasonable, illogical and/or irrational in relation to the plaintiff representing a risk of harm to the Australian community that is 'unacceptable'".

Basic facts

9 The basic facts below have been extracted from the written submissions of the parties.

10 The plaintiff is a national of Singapore. He first arrived in Australia in February 2005, when he was 22 years old. He remained in Australia under a permanent residency visa.

11 On 20 August 2015, the plaintiff was found guilty by a jury in the District Court of New South Wales for importing a commercial quantity of border controlled drugs, namely Gamma-Butyrolactone ("GBL"), contrary to s 307.1 of the *Criminal Code* (Cth). He was sentenced to 18 months imprisonment with a non-parole period of 12 months. In sentencing the plaintiff, the sentencing judge in the District Court of New South Wales noted that the plaintiff had a lengthy criminal history of drug offences including "a series of possess and attempted to possess prohibited drug convictions between 2006 and 2011" and also "supplying a prohibited drug in 2007, [with] a 15 month suspended sentence from the District Court".

12 On 6 September 2016, the plaintiff's then extant RR visa was mandatorily cancelled under s 501(3A) of the *Migration Act*, as he had a "substantial criminal record" under s 501(7)(c) of that Act. On 10 May 2017, the visa cancellation was revoked under s 501CA(4) of the *Migration Act*. On the same date, the plaintiff signed an acknowledgment that he understood that his visa(s) could again be considered for cancellation "if further information of relevance comes to the

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attention of the department at any time in the future" and that "if this happens, [his] past conduct and previous relevant information can also be reconsidered".

13 The plaintiff was convicted of numerous further offences of possessing prohibited drugs between 2020 and 2022 and was subjected to fines and community correction orders. In 2021, the plaintiff was convicted of driving recklessly or in a dangerous manner for which he was subjected to a fine and cancellation of his driver's licence for 12 months.

14 On 21 December 2023, while departing from Sydney Airport for a holiday to Singapore and Bali, the plaintiff applied for an RR visa. On 20 January 2026, the plaintiff received a notice of intention to consider refusal of this application based on character grounds under s 501(1) of the *Migration Act*. The plaintiff responded to that notice by lodging submissions and supporting documents. The Minister's delegate refused the plaintiff's application for the RR visa, giving notice of that refusal to the plaintiff on 16 June 2026.

15 Since 21 December 2023 the plaintiff has been in Bali.

Statutory regime

Migration Act

16 Section 501(1) of the *Migration Act* provides that the "Minister may refuse to grant a visa to a person if the person does not satisfy the Minister that the person passes the character test". By s 501G(1), if a decision is made under s 501(1) of the *Migration Act* to refuse to grant a visa to a person, the Minister must give the person a written notice that "(c) sets out the decision; and (d) specifies the provision under which the decision was made and sets out the effect of that provision; and (e) sets out the reasons (other than non-disclosable information) for the decision".

17 By s 54(1) of the *Migration Act*, the "Minister must, in deciding whether to grant or refuse to grant a visa, have regard to all of the information in the application". By s 55(1), "[u]ntil the Minister has made a decision whether to grant or refuse to grant a visa, the applicant may give the Minister any additional relevant information and the Minister must have regard to that information in making the decision".

18 By s 499(1) of the *Migration Act*, the "Minister may give written directions to a person or body having functions or powers under this Act if the directions are about: (a) the performance of those functions; or (b) the exercise of those powers". By s 499(2A), a "person or body must comply with a direction under subsection (1)".

Direction 110

19 Direction no 110 – Visa refusal and cancellation under section 501 and
revocation of a mandatory cancellation of a visa under section 501CA
("Direction 110") was given by the Minister under s 499(1) of the *Migration Act*.

20 Paragraph 5.2 of Direction 110 states that:

"The principles below provide the framework within which
decision-makers should approach their task of deciding whether to refuse
or cancel a non-citizen's visa ... The factors (to the extent relevant in the
particular case) that must be considered in making a decision ... are
identified in Part 2."

21 The principles in para 5.2 of Direction 110 include the following:

"(1) Australia has a sovereign right to determine whether non-citizens
who are of character concern are allowed to enter and/or remain in
Australia. ...

(2) The safety of the Australian Community is the highest priority of the
Australian Government.

...

(7) Decision-makers must take into account the primary and other
considerations relevant to the individual case ..."

22 In Pt 2 of Direction 110, para 6 states that:

"Informed by the principles in paragraph 5.2, a decision-maker must
take into account the considerations identified in sections 8 and 9, where
relevant to the decision."

23 According to para 7(2) in Pt 2 of Direction 110:

"The primary consideration at 8.1 below (protection of the
Australian community) is generally to be given greater weight than other
primary considerations. Otherwise, primary considerations should
generally be given greater weight than the other considerations."

24 Under the heading "Primary considerations", para 8 in Pt 2 of Direction 110
provides that:

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"In making a decision ... the following are primary considerations:

(1) protection of the Australian community from criminal or other serious conduct;

..."

25 Paragraph 8.1(1) in Pt 2 of Direction 110 provides that "[w]hen considering protection of the Australian community, decision-makers should keep in mind that the safety of the Australian community is the highest priority of the Australian Government".

26 Paragraph 8.1(2) in Pt 2 of Direction 110 requires decision-makers to also give consideration to "a) the nature and seriousness of the non-citizen's conduct to date"; and "b) the risk to the Australian community, should the non-citizen commit further offences or engage in other serious conduct".

27 Paragraph 8.1.1 provides that:

"(1) In considering the nature and seriousness of the non-citizen's criminal offending or other conduct to date, decision-makers must have regard to the following:

a) without limiting the range of conduct that may be considered very serious, the types of crimes or conduct described below are viewed very seriously by the Australian Government and the Australian community:

...

b) without limiting the range of conduct that may be considered serious, the types of crimes or conduct described below are considered by the Australian Government and the Australian community to be serious:

..."

28 Paragraph 8.1.2 states that:

"(1) In considering the need to protect the Australian community (including individuals, groups or institutions) from harm, decision-makers should have regard to the Government's view that the Australian community's tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases. Some conduct and the harm that

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would be caused, if it were to be repeated, is so serious that any risk that it may be repeated may be unacceptable."

29 Under the heading "Other considerations", para 9(1) in Pt 2 of Direction 110 provides that:

"In making a decision ... the considerations below must also be taken into account, where relevant, in accordance with the following provisions. These considerations include (but are not limited to):

...

b) extent of impediments if removed;

..."

30 According to para 9.2(1) of Direction 110:

"Decision-makers must consider the extent of any impediments that the non-citizen may face if removed from Australia to their home country, in establishing themselves and maintaining basic living standards (in the context of what is generally available to other citizens of that country), taking into account:

a) the non-citizen's age and health;

b) whether there are substantial language or cultural barriers;
and

c) any social, medical and/or economic support available to them in that country."

Ground one

Plaintiff's case

31 The information lodged in support of the plaintiff being granted an RR visa consisted of detailed submissions and accompanying information. The plaintiff submitted that this information included that the plaintiff, as a person "with a specific health profile" – namely, "LGBTQ+ individual living with HIV, with PTSD and methamphetamine/GBL dependence in remission" – "could not receive the specialist treatment in Singapore, due to issues in access, availability and cultural safety".

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32 Further, the plaintiff submitted, the information in support of the grant of the RR visa addressed para 9.2(1) of Direction 110 in detail including by stating that: (i) the plaintiff's family in Singapore "do not know about his HIV diagnosis, nor the full extent of his criminal history, nor that he is gay" and "would be unable to provide informed support and could not help him to access HIV treatment"; (ii) "[s]ame-sex relationships continue to have no legal recognition in Singapore and the social and cultural environment remains significantly less accepting" and the plaintiff "would not be able to disclose his HIV status comfortably to medical professionals without fear of the social consequences"; (iii) "[a]ntiretroviral therapy is available in Singapore primarily through private healthcare at significant cost", and the "plaintiff has no established employment, income or private health infrastructure in Singapore" and has not lived there since 2005; and (iv) "[s]ince June 2022, the plaintiff has attended Narcotics Anonymous (NA)" which he considers mandatory to maintaining his recovery and sobriety and "Codependents Anonymous (CoDA)" but "[t]here is an absence of an equivalent peer-based fellowship infrastructure in Singapore". In addition the plaintiff noted that the accompanying psychologist's report identified "the absence of family support and structured supports [in Singapore]; an environment where [the plaintiff] does not disclose his homosexuality due to a lack of acceptance; and a disruption to his protective factors (NA and CoDA) that have sustained his sobriety since 2022, as matters expected to contribute to the plaintiff's increased isolation, emotional distress, mental health deterioration and a risk of relapse in addiction, if returned to Singapore".

33 The plaintiff contended that, despite this detailed information, the delegate dealt with para 9.2(1) of Direction 110 by making a cursory finding. The delegate found that there were "potential implications [in Singapore] for individuals who identify at [sic] LGBTQIA+ and individual with [sic] history of drug offending" but concluded that "there is no information before me to indicate that [the plaintiff] would be unable to access appropriate HIV medication and treatment in Singapore. I find that his current situation reflects a personal choice not to pursue treatment at this time, rather than an absence of available medical care".

34 While the plaintiff accepted that, in describing the information lodged in support of the grant of the RR visa elsewhere in the reasons for decision, the delegate had referred in greater detail to that information, the plaintiff contended that: (i) "Direction 110 stipulates that certain matters are to be mandatory considerations under particular sections [of that direction] which a decision-maker must take into account"; (ii) accordingly, it "is no answer that the matters advanced by the plaintiff were considered in an earlier section of the reasons, when [Direction 110] itself requires the delegate to grapple with those matters specifically in the relevant sections"; and (iii) rather, as each of the considerations (primary and other) in Direction 110 differ and compete, the decision-maker must

take into account the "differing and competing matters within their relevant paragraphs".

35 For these reasons the plaintiff contended that the observation of Gleeson CJ in *Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S20/2002*¹ ("*Applicant S20*") about a decision-maker's reasons was inapt because it related to a different statutory context. Gleeson CJ said in *Applicant S20*:²

"Decision-makers commonly express their reasons sequentially; but that does not mean that they decide each factual issue in isolation from the others. Ordinarily they review the whole of the evidence, and consider all issues of fact, before they write anything. Expression of conclusions in a certain sequence does not indicate a failure to consider the evidence as a whole."

36 For similar reasons, the plaintiff contended that the summary of principle in *Minister for Immigration, Citizenship and Multicultural Affairs v McQueen*³ ("*McQueen*") "does not detract from the obligation [of the decision-maker] to consider a mandatory consideration" and, in the context of Direction 110, the delegate was required to "consider material relevant to a mandatory consideration within the relevant paragraphs of Direction 110, especially as that was the manner in which the material was presented by the plaintiff". In *McQueen* it was said that:⁴

"whilst there is no express statutory obligation to do so, the Minister, or his or her delegate, nonetheless 'must read, identify, understand and evaluate the representations' received. That is to say no more than that:

'[T]he decision-maker must have regard to what is said in the representations, bring their mind to bear upon the facts stated in them and the arguments or opinions put forward, and appreciate who is making them. From that point, the decision-maker might sift them, attributing whatever weight or persuasive quality is thought appropriate. The weight to be afforded to the representations is a matter for the decision-maker.'

1 (2003) 77 ALJR 1165; 198 ALR 59.

2 (2003) 77 ALJR 1165 at 1169 [14]; 198 ALR 59 at 63.

3 (2024) 282 CLR 1.

4 (2024) 282 CLR 1 at 9 [6(a)], quoting *Plaintiff M1/2021 v Minister for Home Affairs* (2022) 275 CLR 582 at 598-599 [24], 599 [26].

In that respect, the use in this context by judges of expressions such as 'active intellectual process' and 'proper, genuine and realistic consideration', in determining whether representations have been considered, does not invite a court to undertake any form of review of the merits of a decision."

Principles

37 The terms of Direction 110 do not undermine the importance of Gleeson CJ's observation in *Applicant S20* that, while decision-makers commonly express their reasons sequentially, that does not mean that they decide each factual issue in isolation from the others. The point Gleeson CJ was making is an aspect of the more general principle that deciding whether or not a decision-maker has complied with a statutory duty to "take into account", "consider" or "have regard" to a specified matter in a judicial review proceeding requires a court to determine "the facts as to what occurred in the making of the decision ... on the balance of probabilities by inferences drawn from the totality of the evidence".⁵ Subject to any statutory direction to the contrary, the "totality of the evidence" includes but is not limited to the whole of any reasons for decision the decision-maker has given. In evaluating those reasons for decision, moreover, certain settled propositions are to be applied including that: (i) a decision-maker's reasons must be read as a whole;⁶ (ii) "[t]he reasons for the decision under review are not to be construed minutely and finely with an eye keenly attuned to the perception of error";⁷ (iii) "in the absence of any statutory indication of the weight to be given to various considerations, it is generally for the decision-maker and not the court to determine the appropriate weight to be given to the matters which are required to be taken into account in exercising the statutory power";⁸ and (iv) a decision-maker is not obliged "to make actual findings of fact as an adjudication of all

5 *MZAPC v Minister for Immigration and Border Protection* (2021) 273 CLR 506 at 524 [38].

6 eg, *Plaintiff M64/2015 v Minister for Immigration and Border Protection* (2015) 258 CLR 173 at 196 [60]; *Farmer v Minister for Home Affairs* (2025) 99 ALJR 1408 at 1425 [62]; 425 ALR 116 at 134.

7 *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 272, quoting *Collector of Customs v Pozzolanic Enterprises Pty Ltd* (1993) 43 FCR 280 at 287.

8 *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at 41.

material claims made by an applicant".⁹ To be borne constantly in mind is that a court "has no jurisdiction simply to cure administrative injustice or error. The merits of administrative action, to the extent that they can be distinguished from legality, are for the repository of the relevant power and, subject to political control, for the repository alone".¹⁰

38 Direction 110 contains various provisions as to the relative weight to be given to certain considerations including as specified in para 7(2). Other than so doing and specifying the matters that the decision-maker must consider, Direction 110 does not stipulate how the decision-maker is to discharge their function or the terms in which the decision-maker must express the decision-maker's reasons for decision.

39 Nothing in Direction 110 or s 501G(1) of the *Migration Act* requires a decision-maker to give reasons for their decision in a form which sets out the totality of the decision-maker's reasons by reference to each separate provision of Direction 110 including every piece of information evaluated and every finding of fact relevant to the decision-maker's assigning of weight to the specified matter which the provision requires the decision-maker to consider. Nor is it necessary for a decision-maker to repeatedly state in reasons for decision that the decision-maker is basing their evaluation of a specified matter on other aspects of the decision-maker's evaluation, either in terms or by cross-reference. It follows that it is not to be merely assumed from the form of a decision-maker's reasons that, in evaluating a matter which a provision of Direction 110 requires the decision-maker to consider, the decision-maker has not brought to bear other aspects of the decision-maker's evaluation on the specified matter to the extent relevant to the specified matter.

Delegate's reasons in context

40 In the present case, the delegate's reasons follow a logical structure. After explaining why the plaintiff failed the character test, the delegate dealt with the balance of the matter under the main headings "Discretion", "Conclusion" and "Decision". In the first section under the heading "Discretion", the delegate explained that they had "considered whether to exercise [their] discretion to refuse to grant [the plaintiff] a visa, taking into account factors that weighed against refusing to grant [the plaintiff] a visa, as well as factors in favour" and, in so doing,

9 *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Viane* (2021) 274 CLR 398 at 406 [14]. See also *Plaintiff M1/2021 v Minister for Home Affairs* (2022) 275 CLR 582 at 599 [24].

10 *Attorney-General (NSW) v Quin* (1990) 170 CLR 1 at 36.

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had regard to Direction 110. The delegate then dealt with the "primary considerations". In this context, the delegate referred to, amongst other information, the information in the plaintiff's statutory declaration and the psychologist's report, including that the plaintiff's family did not know that he is homosexual or HIV-positive or had been involved in drug offences and that the plaintiff had understood from a young age that his homosexuality "would not be accepted by his family or broader community [in Singapore] and that he lived in fear of rejection and social consequences".

41 The delegate next addressed the "other considerations". In this context, the delegate said that the delegate had considered: (i) information regarding the situation for LGBTQIA+ individuals in Singapore, including that same-sex relationships are not afforded full legal recognition and societal acceptance remains variable; (ii) the potential impacts of the plaintiff's homosexuality and history of drug offending on his ability to relocate to and sustain a living in Singapore; (iii) the plaintiff's submissions that he has no lawful work rights in Indonesia, has experienced significant financial hardship and has struggled to access HIV medication and medical treatment due to cost and availability in Indonesia, and that these circumstances had "contributed to severe anxiety, depression and ongoing psychological distress"; and (iv) a cleared police record from Indonesia, which indicated that the plaintiff was not residing unlawfully in Indonesia and was employed full time in Bali as a "senior recovery coach". The delegate said that the plaintiff "has expressed a preference to return to Australia in order to access HIV medication and treatment, given his familiarity with the healthcare providers and treatment regime available" but that there was "no information before [them] to indicate that [the plaintiff] would be unable to access appropriate HIV medication and treatment in Singapore". The delegate concluded that the plaintiff's "current situation reflects a personal choice not to pursue treatment at this time, rather than an absence of available medical care".

Determination

42 The consideration made relevant by para 9.2(1) of Direction 110 is "the extent of any impediments that the non-citizen may face if removed from Australia to their home country, in establishing themselves and maintaining basic living standards (in the context of what is generally available to other citizens of that country)" taking into account, amongst other things, the non-citizen's age and health. The delegate was not bound to consider whether the plaintiff would be able to access HIV, mental health and sobriety treatment in Singapore equivalent to the treatment he had obtained in Australia. To the extent the submissions for the plaintiff reflected that proposition (even implicitly), they must be rejected.

43 Moreover, the delegate's compliance with ss 54(1), 55(1) and 499(2A) of the *Migration Act* is not to be determined by reference to part only of the delegate's

reasons. The whole of the delegate's reasons must be taken into account. To the extent the submissions for the plaintiff relied on part only of the delegate's reasons, they must also be rejected.

44 In any event, the contention that the information in support of the grant of the RR visa included that the plaintiff's circumstances meant that he "*could not* receive the specialist treatment [for HIV] in Singapore, due to issues in access, availability and cultural safety" (emphasis added) is inaccurate. In fact, the aspect of that information on which the plaintiff relied states that:

"equivalent specialist treatment for [the plaintiff's] specific clinical profile (LGBTQ+ individual living with HIV, with PTSD and methamphetamine/GBL dependence in remission) is established and available in Sydney through the RPA Sexual Health Clinic and the Sydney NA fellowship ... but is *not* assumed to be available, accessible or culturally safe in Singapore. This is addressed further at section 22 below."

(Emphasis in original)

45 The material contained in "section 22" is largely to the same effect as that to which the delegate expressly referred in the reasons for decision, being that: (i) Singapore does not recognise same-sex relationships; (ii) discrimination against homosexuality is "quietly tolerated" in Singapore; (iii) HIV-positive status carries additional, distinct social stigma in Singapore, compounding the difficulties faced by gay HIV-positive returnees, the plaintiff having stated that he "would not be able to disclose [his] HIV status comfortably to medical professionals without fear of the social consequences"; and (iv) the psychologist's report referring to the plaintiff having concealed his homosexuality in Singapore due to fear of stigma and negative consequences, and that the plaintiff would experience "increased isolation and emotional distress" if he returned to Singapore.

46 None of this information is to the effect that the plaintiff could not obtain HIV treatment in Singapore.

47 Insofar as other aspects of the information are concerned, the psychologist's report dealt only with the plaintiff not having had reliable access to HIV treatment in Bali "due to availability, cost, and concerns about disclosure" and did not suggest that HIV treatment would be unavailable to the plaintiff in Singapore, saying no more than that "in an environment where [the plaintiff] does not feel safe to disclose his identity, it is likely that he would experience increased isolation and emotional distress", that this "would reduce his ability to seek support, engage in treatment, and maintain the stability he has developed", and that he "may also have difficulty accessing mental health care and consistent HIV treatment in that setting". The plaintiff's statutory declaration, to the extent relevant to his HIV

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status, focused on his circumstances in Bali and said nothing to the effect that he would not be able to obtain treatment in Singapore. Rather, the plaintiff said that in Singapore: (i) his family could not help him access HIV treatment as they did not know he was homosexual or his HIV status; and (ii) he would not be able to disclose his HIV status to medical professionals "comfortably" and "without fear of the social consequences". The plaintiff said also that he feared being displaced to Singapore would put his sobriety and mental health at "very serious risk".

48 That is, the information in support of the application, as the delegate concluded, did not indicate that the plaintiff would be unable to access appropriate HIV medication in Singapore. Otherwise, the delegate accepted that the plaintiff's inability to return to Australia had "contributed to severe anxiety, depression and ongoing psychological distress" for the plaintiff.

49 That the information submitted in support of the grant of the RR visa included detailed submissions in respect of para 9.2(1) of Direction 110 did not mean that the delegate was required to refer to all of that material under that part of the delegate's reasons dealing with that paragraph. Moreover, that the delegate did not do so in the delegate's reasons for decision does not support the inference that the delegate did not consider the material.

50 It was reasonably open to the delegate to conclude that the plaintiff's current situation in respect of HIV treatment in Bali was a "personal choice", given that the plaintiff was in full-time employment in Bali and explained the irregularity of his accessing HIV treatment by reference only to cost, the limited availability of the specific drug he had been taking in Australia, and the "difficulty" of disclosing his HIV status in an environment where he could not be "open about [his] sexual orientation".

51 Finally, and to the contrary of the plaintiff's case, the very conclusions that the delegate drew (that there was no information that the plaintiff could not obtain HIV treatment in Singapore and that the plaintiff's circumstances in respect of HIV treatment in Indonesia reflected a personal choice) disclose that the delegate must have given consideration to all of the information which had been provided and thereby could not have failed to comply with the obligation in s 54 or s 55 of the *Migration Act* or denied the plaintiff procedural fairness by failing to respond to a substantial and clearly articulated argument.

52 For these reasons, ground one is unsustainable.

Ground two

Plaintiff's case

53 The plaintiff noted that the delegate: (i) had accepted the opinion in the psychologist's report that the plaintiff "currently presents a low risk to the community" and concluded that "on balance ... there [is] a low likelihood that [the plaintiff] will reoffend or further engage in serious conduct"; and (ii) had not found the plaintiff's offending to be "very serious" (which the plaintiff submitted was because his offending was not within para 8.1.1(1)(a) of Direction 110). According to the plaintiff, this meant that the delegate was not entitled to make a decision on the basis that any risk of re-offending by the plaintiff would be an unacceptable risk.

54 The plaintiff also contended that the delegate failed to take into account the nature of the plaintiff's relapse from 2020 to 2022, which involved drug possession for personal use, and that there was no evidence that the plaintiff's offending in 2015 had involved physical, psychological or financial harm to members of the Australian community as he intended to use the drug imported for personal use, given his heavy addiction at that time. It followed, the plaintiff submitted, that the delegate's conclusions that: (i) if the plaintiff were to engage in "similar conduct again, it may result in physical[,] psychological and financial harm to members of the Australian community"; (ii) the plaintiff "represents a risk of harm to the Australian community which is unacceptable"; and (iii) "where significant harm could be inflicted on the Australian community, any risk of reoffending may be considered unacceptable", were legally unreasonable, irrational and not logically based on the material before the delegate.

Determination

55 Insofar as the plaintiff's submissions are based on the terms of Direction 110, they must be rejected. No provision of Direction 110 supports the notion that a decision-maker is precluded from concluding that "[s]ome conduct and the harm that would be caused, if it were to be repeated, is so serious that any risk that it may be repeated may be unacceptable" unless the past conduct is able to be characterised as "very serious" because it falls within para 8.1.1(1)(a) of Direction 110. That would be inconsistent with Direction 110 insofar as: (i) both paras 8.1.1(1)(a) and 8.1.1(1)(b) commence with the words "without limiting the range of conduct that may be considered" either "very serious" or "serious", respectively; (ii) para 8.1.2(1) leaves it to the decision-maker to evaluate whether the "harm" is "so serious" that "any risk" of it being repeated is "unacceptable"; and (iii) no provision of Direction 110 provides that a decision-maker is unable to conclude that any risk of harm being repeated is unacceptable unless that harm has

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been found to be "very serious" either generally or by reason of being referred to in para 8.1.1(1)(a).

56 The decision on which the plaintiff relied, *BMX15 v Minister for Immigration and Border Protection*,¹¹ also provides no support for the plaintiff's submission.

57 The delegate's reasoning was not legally unreasonable or irrational and was logically based on the material before the delegate. The delegate accepted that there was a low risk of the plaintiff re-offending or engaging again in serious conduct. The delegate's conclusion that if the plaintiff did re-offend "it may result in physical[,] psychological and financial harm to members of the Australian community" was soundly based on the material before the delegate to which the delegate referred. It was also reasonably open to the delegate to characterise this harm as "significant". The relevant material included, for example, that the sentencing judge in respect of the plaintiff's 2015 conviction found that: (i) the plaintiff's offending involved planning and premeditation and constituted a serious example of drug importation; and (ii) the plaintiff's prior exposure to the criminal justice system had not deterred him from re-offending and his criminality had escalated to the 2015 conviction. The delegate added to this that neither the 2015 conviction, the associated sentence of imprisonment, the 2016 visa cancellation, nor the warning letter that the plaintiff had been given about the risk of further visa cancellation deterred the plaintiff from committing numerous further drug offences between 2020 and 2022. In that period the plaintiff was also convicted of driving recklessly or in a dangerous manner.

58 These circumstances amply supported the delegate's conclusion that if the plaintiff re-offended in a similar manner to his past offences it may result in physical, psychological and financial harm to members of the Australian community sufficient to make that risk unacceptable. That the more recent drug offences concerned possession and not commercial importation did not mean that the delegate was bound to conclude that recurrence of those offences would involve no or only a low risk of physical, psychological and financial harm to members of the Australian community. The unavoidable facts confronting the delegate were that the plaintiff had arrived in Australia as an adult in 2005 and had multiple drug-related convictions for a lengthy period between 2006 and 2011, the commercial importation conviction in 2015, the multiple drug-related convictions between 2020 and 2022, and the reckless or dangerous driving conviction in the same period. The delegate gave close and sympathetic consideration to the reasons underlying the plaintiff's extensive criminal history and the plaintiff's sobriety since June 2022, but ultimately those considerations did not outweigh, in the

11 (2016) 244 FCR 153 at 162-163 [26]-[27].

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delegate's view: (i) the seriousness of the plaintiff's repeated offending; (ii) the expectation of the Australian community that the Government not allow non-citizens who have engaged in serious drug offending, including the importation of prohibited substances and repeated drug offending, to enter Australia; (iii) the need to give the highest priority to the safety of the Australian community and the need to protect its safety; and (iv) the fact that the delegate considered that the plaintiff represented a risk of harm to the Australian community by reason of re-offending which was unacceptable. This reasoning is without legal error.

59 For these reasons, ground two is unsustainable.

Orders

60 The orders to be made are:

- (1) The plaintiff is granted an extension of time to file the application for a constitutional or other writ.
- (2) The application for a constitutional or other writ is dismissed with costs.

