HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY No. B42 of 2022

BETWEEN: **MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULUTRAL AFFAIRS**
Appellant

and

ROSS THORNTON
Respondent

APPELLANT'S SUBMISSIONS

Part I: CERTIFICATION

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

Part II: ISSUES

2. ***Appeal issue 1.*** Is s184(2) of the *Youth Justice Act 1992* (Qld) (**YJA**) a provision which engages s85ZR(2) of the *Crimes Act 1914* (Cth) (**Crimes Act**) - such that the Minister took into account an irrelevant consideration when making a decision pursuant to s501CA(4) of the *Migration Act 1958* (Cth) (**Migration Act**) by considering the "*conviction*" (the finding of guilt) and the facts and circumstances of the offending by the Respondent, in relation to offences committed while he was a minor, but for which no conviction was recorded, under ss183 and 184 of the YJA?

3. ***Appeal issue 2.*** Was there a realistic possibility that the decision of the Minister refusing to revoke the decision to cancel the Respondent's visa under s501CA(4) of the Migration Act could have been different if the Minister did not take into account any "*convictions*" as a minor for which no conviction was recorded?

Part III: SECTION 78B NOTICE

4. No notice is required to be given under s78B of the *Judiciary Act 1903* (Cth).

Part IV: CITATIONS

5. This is an appeal from the Full Court of the Federal Court of Australia (**FC**) in *Thornton v Minister for Immigration, Citizenship, Migrant Services & Multicultural Affairs* [2022] FCAFC 23; (2022) 288 FCR 10 (**FCJ**) which allowed an appeal from a

single judge of the Federal Court of Australia in *Thornton v Minister for Immigration, Citizenship, Migrant Services & Multicultural Affairs* [2020] FCA 1500 (**PJ**).

Part V: STATEMENT OF FACTS

6. ***Background.*** On 2 February 2018, the Respondent pleaded guilty and was convicted of "*Assaults occasioning bodily harm – domestic violence offence*" and sentenced to 24 months imprisonment.

7. On 21 February 2018, the Respondent's visa was cancelled pursuant to s501(3A) of the Migration Act because he did not pass the character test (ss501(6)(a) and (7)(c)) as he had a substantial criminal record and was subject to full-time imprisonment.

8. On 16 March 2018, (and after) the Respondent made representations pursuant to s501CA(4) of the Migration Act, seeking revocation of the cancellation decision.

9. On 26 April 2019, the Minister personally made the **Decision** under s501CA(4) of the Migration Act not to revoke the cancellation decision. The Minister was not satisfied that the Respondent passed the character test (s501CA(4)(b)(i)) or that there was "another reason" why the cancellation decision should be revoked (s501CA(4)(b)(ii)).

10. ***The Minister's Decision.*** The Minister considered all relevant matters, including the Respondent's acknowledgement and acceptance of his offences and criminal history,[1] recorded in the National Police Certificate. The Minister considered the sentencing Magistrate's comments, including that:

    (a) the Respondent and the victim had been in a "*disastrous relationship*";

    (b) the victim suffered a broken nose as a result of the domestic violence and was caused "*pain and suffering*" and "*mental anguish*";

    (c) as stated by another Court "*Domestic violence is an insidious, prevalent and serious problem in our society*"; and

    (d) obstructing police officers was "*abhorrent*".

11. The Minister observed[2] that domestic violence is a serious problem in our society and

[1] CAB at 89, [24] and 139, [14].
[2] CAB at 14, [31].

that the Respondent's offending was a serious example of such offending and that there is "*an ongoing risk that* (the Respondent) *will re-offend*" and should that occur, it could result in "*physical and psychological harm*" to members of the Australia community.[3]

12. The strength, nature and duration of the Respondent's ties to Australia were considered and the Minister accepted that the Respondent had a "*close relationship with his family*" in Australia.[4] However, he could not rule out the possibility of future offending by the Respondent which could expose the Australian community to harm. As such, the Respondent represented an unacceptable risk of harm to the Australian community and the protection of the Australian community outweighed any other consideration.[5] The Respondent sought judicial review of the Decision in the Federal Court of Australia.

13. ***The Federal Court Judgment.*** The primary judge dismissed the Respondent's application for review of the Decision. Relevantly, it was determined that the construction of s184(2) of the YJA was indistinguishable from s12(3) of the *Penalties and Sentences Act* 1992 (Qld) (**PSA**), and followed the decision of ***Hartwig*** *v Hack* [2007] FCA 1039 that s85ZR(2) of the Crimes Act was not referring to a provision regarding the non-recording of a conviction. Therefore, section 184(2) of the YJA was also not a law to which s85ZR(2) of the Crimes Act applied (PJ at [20]-[32]).[6]

14. ***The Full Court Federal Court Judgment.*** The FC agreed with the primary judge, that the other grounds of review were not established. However, the FC held that s184(2) of the YJA did engage s85ZR(2) (as explained in more detail below) and allowed the appeal on the basis that the Minister had taken into account an irrelevant consideration.

Part VI: ARGUMENT

Appeal issue 1: The construction of s85ZR(2) of the Crimes Act and s184(2) of the YJA

Overview

15. The FC accepted and held that s85ZR(2) of the Crimes Act applied to provisions which remove or disregard the conviction altogether, "*as a pardon might do*".[7] State

[3] CAB at 15, [44].
[4] CAB at 12, [15].
[5] CAB at 16, [50]-[52].
[6] CAB at 159-162, [20]-[32].
[7] CAB at 185, [36].

provisions which take away (that is *ab initio*) the fact of a conviction,[8] engage s85ZR(2). For the reasons developed below, there is no error in this construction.

16. Where the FC erred, was to hold that s184(2) of the YJA was a provision which completely removed or disregarded the conviction altogether, akin to a pardon and hence engaged s85ZR(2) of the Crimes Act (FCJ at [36]). However, the FC's conclusion meant that as the Minister considered offences committed for which no conviction was recorded under s184(2) of the YJA, he had taken into account an irrelevant consideration, because of s85ZR(2) of the Crimes Act (FCJ at [37]).

17. This construction was wrong: ***first*** because the FC erred in applying a different construction to s184(2) of the YJA, as to s12(3) of the PSA, the comparable provision concerning adult offenders;[9] and ***secondly***, in any event, s184(2) is not, on its proper construction, a provision which completely removes or disregards the conviction altogether; it does not deem a person to have never been convicted of the relevant offending. Section 184(2) is a sentencing mechanism, after the finding of guilt (or the fact of the conviction), which permits the non-recording of the conviction.

The proper construction of s85ZR(2) of the Crimes Act

18. On its proper construction, s85ZR(2) is a provision of narrow scope. The construction applied in *Hartwig* and accepted by the FC (and the parties below) is that it applies to provisions in State legislation, the effect of which "*removes or disregards the conviction altogether*" (*Hartwig* at [11]). The Minister supports that construction.

19. In *Hartwig* s85ZR(2) was construed as applying to "*State legislation … which deems a person never to have been convicted of an offence*" such that "*[t]he effect of the provision must be … to take away the fact of the conviction, as a pardon might do*" (*Hartwig* at [8]). In *Hartwig* it was held that a provision which had the effect of expunging a conviction from a person's criminal history as opposed to treating the conviction as not having occurred was not captured by s85ZR(2) (at [11]).

20. That construction of s85ZR(2) is consistent with the narrow intention disclosed in the Second Reading Speech for the Crimes Legislation Amendment Bill 1989 and the

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[8] See *Hartwig* at [6]-[12] (Kiefel J, as the Chief Justice then was).
[9] ***R v SBY*** [2013] QCA 50; (2013) 228 A Crim R 334 at [63] (White JA, with whom de Jersey CJ and Muir JA agreed) and ***R v DBU*** [2021] QCA 51; (2021) 7 QR 453 at [29] (Lyons SJA, with whom Morrison and McMurdo JJA agreed).

Explanatory Memorandum.[10] That stated intention was to include a spent convictions scheme, (like that in Queensland in the *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) (**Rehabilitation Act**)) and to change the effect of a pardon given on the basis of a wrongful conviction.[11] Section 85ZR is within these changes and is designed to deal with pardons, in a standard way across jurisdictions, providing that "*[i]f it is subsequently found that a person was wrongly convicted and a pardon is granted on that basis, justice requires that the person should be put in the same position as if he or she had never been convicted at all*" (emphasis added).[12]

21. This represented a departure from the common law. The effect of a pardon, at common law, where a person was wrongly convicted was only that the person was relieved from the consequences of a conviction, not that they were taken never to have been in fact convicted of the offence.[13] Part VIIC of the Crimes Act was to modify that position.

22. The amendments to the Crimes Act achieved this by s85ZR(1). The Explanatory Memorandum explains[14] that s85ZR(1) is directed to a pardon because that person has been wrongly convicted, for a Commonwealth offence and makes clear, that such a person is taken never to have been convicted of the offence.[15] Section 85ZR(2) is then intended,[16] consistent with the broader scheme and subsection (1), to ensure that where, under a State law, a person is, in particular circumstances or for a particular purpose, taken never to have been convicted of an offence under a law of that State (say, by pardon), that person will also be treated, in corresponding circumstances or for a corresponding purpose as never having been convicted of the offence by a Commonwealth authority.[17]

23. Consistent with *Hartwig*, this context confirms that s85ZR(2) is directed to provisions

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[10] Commonwealth, *Hansard*, House of Representatives, 11 May 1989, 2543-2546 (Lionel Bowen, Attorney-General) and see Explanatory Memorandum, Crimes Legislation Amendment Bill 1989 (**Crimes Legislation EM**) at p. 4 and p. 16.
[11] Crimes Legislation EM at p. 4 and pp. 15-22 and Commonwealth, *Hansard*, House of Representatives, 11 May 1989, 2545-2546 (Lionel Bowen, Attorney-General).
[12] Commonwealth, Hansard, House of Representatives, 11 May 1989, 2546 (Lionel Bowen, Attorney-General) and similarly Crimes Legislation EM at p. 4 and p. 16.
[13] *Eastman v Director of Public Prosecutions (ACT)* [2003] HCA 28; (2003) 214 CLR 318 at [98] (Heydon J with whom Gleeson CJ, Gummow, Kirby, Hayne and Callinan JJ agreed), noting fn 64, and the express reference to s85ZR(1) of the Crimes Act, *R v Martens (No 2)* [2009] QCA 351; [2011] 1 Qd R 575 at [198]-[201] and [202] (Chesterman JA with whom Muir JA agreed) and see [35], fn29 (Fraser JA, although in dissent, not as to this point) and *R v Foster* [1985] QB 115 at 130 where Watkins LJ described a common law pardon as one which did not "*eliminate the conviction itself*".
[14] Crimes Legislation EM at p. 16.
[15] Crimes Legislation EM at p. 4 and p.16 [41].
[16] Crimes Legislation EM at p. 16 [42].
[17] Defined in s85ZL of the Crimes Act.

in State legislation by which the person is taken never to have been convicted of the offence and ensures the same recognition (in corresponding circumstances or corresponding purposes) at a Commonwealth level. That construction is also consistent with and supported by the text of s85ZR itself, as well as intrinsic aids such as the provision heading of s85ZR (*Pardons for persons wrongly convicted*), the Division 2 heading (*Pardons for persons wrongly convicted, and quashed convictions*), the Part VIIC heading (*Pardons, quashed convictions and spent convictions*)[18] and the subsequent section, s85ZS, which deals with the effect on a person if s85ZR applies (headed "*Effect of pardons for persons wrongly convicted*"). This context is also supported by s85ZP(4).

24. Further contextual support can be derived from other provisions in Part VIIC. Section 85ZT deals with quashed convictions. Section 85ZN defines "*quashed*" relevantly to include convictions, including findings of guilt (where no conviction is recorded), but the finding of guilt has been quashed or set aside.[19] The definitional provision of s85ZM of the Crimes Act (which applies to s85ZR(2)) also supports this construction. That section provides that a person shall be taken to have been "*convicted*" for the purposes of Part VIIC including where "*... the person has been charged with, and found guilty of, the offence but discharged without conviction*" (emphasis added).[20] Section 85ZM(1)(c) takes this further and applies where "*the person has not been found guilty of the offence...*". The Crimes Legislation EM explains that this definitional provision extends the definition of "*conviction*".[21]

25. Section 19B (inserted into the Crimes Act prior to Part VIIC[22]) provides that a court can discharge an offender who has been found guilty, without conviction.[23] Together

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[18] All of which are part of the Act and can be used to interpret it: see *Acts Interpretation Act 1901* (Cth), s13(1) and also D. Pearce, *Statutory Interpretation in Australia* (LexisNexis, 9th ed, 2019) [4.71].
[19] That meaning of "*quashed*" is consistent with *Commissioner for Railways (NSW) v* ***Cavanough*** [1935] HCA 45; (1935) 53 CLR 220 at 225 and 227-8 and can be contrasted with the provision considered in *Re* ***Culleton*** *(No 2)* [2017] HCA 4; (2017) 263 CLR 176 at [27]-[30] (Kiefel, Bell, Gageler and Keane JJ), distinguished from the quashing provision in *Cavanough* and see also *Parker v Minister for Immigration & Border Protection* [2016] FCAFC 185; (2016) 247 FCR 500 at [56]-[58], which circumstances Griffiths and Perry JJ (Mortimer J agreeing) considered were "*far removed*" from *Cavanough.* See also: *R v* ***Rasmussen*** [2000] QCA 494; [2002] 1 Qd R 299 at [33]-[34] (Mackenzie J) which considered that s668E of the *Criminal Code* (Qld) which provided for the quashing and substitution of a sentence had effect only from the date of any order made.
[20] Which includes a finding of guilt without entry of conviction: ***Frugtniet*** *v Australian Securities and Investments Commission* [2019] HCA 16; (2019) 266 CLR 250 at [7] (Kiefel CJ, Keane and Nettle JJ).
[21] Crimes Legislation EM at p. 15. Also see, *Frugtniet* at [36] (Bell, Gageler, Gordon and Edelman JJ).
[22] Section 19B was originally included in the Crimes Act by the *Crimes Act 1960* (Cth) and was repealed and substituted with a provision substantially in its current form by the *Crimes Amendment Act 1982* (Cth).
[23] *Sillery v R* [1981] HCA 34; (1981) 180 CLR 353 at 358 (Murphy J); *Dixon v Commonwealth of Australia* (1981) 3 ALD 289 at 300, (Bowen CJ, Deane and Kelly JJ).

with s16A of the Crimes Act, it is the Commonwealth's equivalent to provisions like s12 of the PSA and s184 of the YJA, in that it permits findings of guilt, without a conviction being recorded.[24] Like the Queensland provisions, it is within the "*Sentencing…*" part of the Crimes Act. It is based on discretionary factors with some similarity to those found in Queensland. The inclusion, within the definition of "*conviction*" in s85ZM, of circumstances where a person is discharged without conviction is consistent with s85ZR not being directed towards the non-recording of, or discharge without, conviction as provided for in s19B of the Crimes Act, s12(3) of the PSA and s184(2) of the YJA (amongst others).

10 26. That is, the proper construction of s85ZR(2) is one directed to State legislation, the effect of which is that the person is taken to have never been convicted of an offence at all, such that in corresponding circumstances or for a corresponding purpose, that person will be deemed in a Commonwealth context to have never been convicted of that offence. It is not necessary for this appeal to determine whether s85ZR(2) only applies to a pardon. By its terms, with reference to s85ZM, s85ZR(2) is not a provision applying to a circumstance where there has been a mere non-recording of conviction.

The meaning of the term "conviction"

27. Conviction is a term with no fixed common law meaning.[25] In ***Parkinson*** *v Alexander* [2016] ACTSCFC 1; (2016) 11 ACTLR 190, after a survey of the authorities (at [21]-
20 [31]) concluded that "*conviction*" at common law may be "*used in a narrow way to refer to a finding of guilt (that an offence has been proved) or it may be used in the broadest sense, as meaning that criminal proceedings have been finalised in that the offender has been sentenced*" (at [32]).[26]

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[24] *R v Hooper; ex parte Cth DPP* [2008] QCA 308 at [1]-[2] (Mackenzie AJA, with whom Cullinane and Jones JJ agreed). Also see for comparisons of other State and Territory provisions *Commissioner of Taxation v Baffsky* [2001] NSWCCA 332; (2001) 192 ALR 92 at [12]-[13] (Spigelman CJ, with whom Simpson J and Einfeld AJ agreed); *Peverill v Crampton* [2011] ACTSC 175 at [31]-[35] (Refshauge ACJ); *Harrex v Fraser* [2011] ACTSC 172; (2011) 85 ATR 706 at [40] (Refshauge ACJ); *R v Yousef* [2005] SASC 203; (2005) 155 A Crim R 134 at [45]-[47] (Sulan and Layton JJ). See also Westlaw AU, *Australian Sentencing* (online at 3 November 2022) [600.1480], LexisNexis, *Halsbury's Laws of Australia* (online at 3 November 2022) [130-17225], LexisNexis, *Australian Encyclopaedic Legal Dictionary* (online at 3 November 2022), definition of "conviction" and Westlaw AU, *Ross on Crime* (online at 3 November 2022) [3.7330]. Prior to s12 of the PSA and ss183-184 of the YJA being introduced, the *Criminal Code* (Qld) contained s657A, a provision which provided for the discharge of an offender without conviction similarly to s19B of the Crimes Act.

[25] *Parkinson* at [21] (Murrell CJ, Refshauge and Wigney JJ), citing ***Maxwell*** *v The Queen* [1996] HCA 46; (1996) 184 CLR 501 at 507 (Dawson and McHugh JJ): "*what amounts to a conviction depends upon the context in which the question is asked*".

[26] See similar comments: *EVX20 v Minister for Immigration, Citizenship, Migrant Services & Multicultural Affairs* [2021] FCA 1079 at [1], [13]-[18] (Logan J). See also *Director of Public Prosecutions v Arab* [2009] NSWCA 75 at [31]-[35] (Beazley JA, with whom Macfarlan JA and Handley AJA agreed).

28. Their Honours held that a non-conviction order was not the opposite of a conviction (at [70]), but rather was a sentence made upon a finding of guilt or a guilty plea having been made or accepted by the court (at [71]). There were two stages to the process: the adjudicative stage which might end with a conviction (i.e. a finding of guilt or a guilty plea); and the sentencing stage which might result in no conviction being recorded in respect of a finding of guilt (*Parkinson* at [68]-[73]).[27]

29. The distinction between the fact of the "*conviction*" and the recording of a conviction, was also made in respect of s12(3) of the PSA in *R v* ***Gallagher*** [1999] 1 Qd R 200. McPherson JA considered that conviction meant "*the court's acceptance of the verdict or of the offender's plea of guilty*", but the process of not recording a conviction "*assumes that there has already been a conviction that is capable of being recorded*" (at 203).[28] This is consistent with the Second Reading Speech for the Juvenile Justice Bill 1992 (which became the YJA) referring to a decision to record a conviction as a "*further penalty*" to be imposed as a "*new and enhanced sentencing option*" for "*offenders*".[29]

30. That a conviction and the recording of it are different is also consistent with the concept of a "*conviction*" in the doctrine of *autrefois convict*. That doctrine applies to a conviction whether or not a conviction is recorded.[30] The basis of that doctrine is an aspect of double jeopardy, to prevent multiple charges for the same offending.[31]

31. It follows that, whilst the term conviction has no fixed common law meaning, there is a clear distinction between a conviction, being the fact of "*conviction"* (i.e. the finding of guilt or guilty plea, or the acceptance of those matters by the court) and the recording or the non-recording of a conviction (i.e. a sentencing act).

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[27] See, in relation to s19B, *R v Luscombe* [1999] NSWCCA 365; (1999) 48 NSWLR 282 at [34] (Spigelman CJ, Dunford and Adams JJ) and also *R v Stringer* [2000] NSWCCA 293; (2000) 116 A Crim R 198 at [105] (Adams J, dissenting as to the outcome) and in South Australia, *Police (SA) v Hallett* [2010] SASC 256; (2010) 56 MVR 179 at [37]-[39] (Gray J), referring to *Miles v Police (SA)* [2009] SASC 181; (2009) 104 SASR 127 at [54]-[56] (Kourakis J, as he then was).

[28] The non- recording of a conviction as an aspect of sentencing was accepted under s184 in ***R v TX*** [2011] QCA 68; [2011] 2 Qd R 247 at [28]-[30] (Lyons J, with whom Muir JA and Wilson AJA). See also *Rasmussen* at [39] (Mackenzie J).

[29] Queensland, *Hansard*, Legislative Assembly, 18 June 1992, 5925 (Anne Warner, Minister for Family Services and Aboriginal and Islander Affairs). Also see, *R v Brown* [1993] QCA 271; [1994] 2 Qd R 182 at 184, drawing a distinction between the "*finding of guilt*" and "*recording of the conviction as a consequence"* (Macrossan CJ).

[30] *Maxwell* at 508-509, where Dawson and McHugh JJ said "*… the determination of guilt forms part of the judgment of the court <u>but it can occur otherwise than by the formal entry of the plea upon the record of the court</u>*" (emphasis added). Also *Director of Public Prosecutions v Nguyen* [2009] VSCA 147; (2009) 23 VR 66 at [60]-[61] (Maxwell P, Weinberg JA, Kyrou AJA).

[31] See *R v Carroll* [2002] HCA 55; (2002) 213 CLR 635 at 672 (McHugh J).

The proper construction of s184(2) of the YJA

32. For the following reasons, s184(2) of the YJA is not a provision which deems a person to have never been convicted of an offence, it is a sentencing mechanism, which provides for the non-recording of a conviction. The fact of the "*conviction"* remains.

33. ***First***, as to matters of context, s184 is not a provision located in the adjudicatory stage of the youth criminal justice process. It falls within Part 7 of the YJA, which concerns "*Sentencing*". It is applied, by s183(3), in circumstances where ss175, 176 or 176A apply, such provisions are within Division 4, headed "*Orders on children found guilty of offences".* Section 183(1) expressly refers to the circumstances in which a conviction will be recorded "*against a child who is found guilty of an offence*" (emphasis added). The exercise of the discretion and the effect of exercising that discretion not to record a conviction are then dealt with by s184 of the YJA.

34. ***Secondly***, s184(2) states the effect of the non-recording of a conviction. It provides that "*[e]xcept as otherwise expressly provided by this or another Act, a finding of guilt without the recording of a conviction is not taken to be a conviction for any purpose*". In so doing, s184(2) states the effect of the sentence of not recording a conviction which is distinct from and comes at a later stage of the process than the actual finding of guilt itself. As McPherson JA found in *Gallagher* in respect of the comparable provision in s12(3) of the PSA, whether or not a conviction is recorded is prefaced by there first being a conviction. The non-recording of a conviction is a provision which permits that person, in certain circumstances, not to disclose the conviction. That is consistent with the analysis in *R v TX* (at [28]-[30]) explaining that both s12(3) and s184(2) are analogous sentencing provisions.

35. ***Thirdly***, the language of s184(2), which focuses on a person "*is not taken*" operates prospectively.

36. The prospective operation as opposed to retrospective effect of a provision, was considered in *Culleton.* The High Court found that the relevant provision operated prospectively only, given the forward looking nature of the words "*as if*" such that, from the time the order was made, the person was deemed not to have been convicted.[32]

[32] See for example *Culleton* at [27] (Kiefel, Bell, Gageler and Keane JJ), referring to the prospective nature of the provision in that case, by use of "*as if*".

The effect being that "*the court holds that the accused was not lawfully convicted and that the conviction ought not to stand, not that there never was in fact a conviction*" (emphasis added).[33] It did not retrospectively change the fact of conviction up until the order was made.[34]

37. ***Fourthly***, the language of s184(2), including the defined term "*finding of guilt*" (Schedule 4 of the YJA), places the non-recording of a conviction at the second stage of the process and preserves the distinction, (like that drawn in *Parkinson*, *Gallagher* and *R v TX*), between the "*conviction*" being the guilty plea or finding of guilt and the recording of the conviction on a person's criminal record. The defined term maintains that a "*finding of guilt*" remains notwithstanding that a conviction is not recorded.

38. The definition of "*conviction*" in s85ZM of the Crimes Act is similar, extending to situations where an offender is discharged without conviction. That s85ZM of the Crimes Act contains a similar inclusion to the definition of "*finding of guilt*" recognises that the term "*conviction*", as used in s85ZR(2), includes a finding of guilt where the offender is discharged without conviction (that is, no conviction is recorded). In such circumstances, a person cannot, therefore, fall into a state of being "*taken never to have been convicted of [the] offence*".

39. For the foregoing reasons, s184(2) is not a provision pursuant to which a person is taken never to have been convicted of the offence.

The error in the Full Court's construction

40. The FC considered that s184(2) was a provision which engaged s85ZR(2). It applied the construction of s85ZR(2) from *Hartwig* (FCJ at [34]-[36]). However, it distinguished s184(2) of the YJA from s12(3) of the PSA (FCJ at [26]-[34]), concluding that s184(2) was a provision which engaged s85ZR(2), notwithstanding that it was accepted that s12(3) was not such a provision (at [34]).

41. The FC erred in concluding that s184(2) was a provision which engaged s85ZR(2). This is, ***first***, because s12(3) of the PSA and s184(2) of the YJA are relevantly the

[33] *Culleton* at [29] (Kiefel, Bell, Gageler and Keane JJ).
[34] *Culleton* at [29] (Kiefel, Bell, Gageler and Keane JJ).

same such that neither provision engages s85ZR(2) and ***secondly***, s184(2) is not, in any event, a provision which is engaged by s85ZR(2).

First: s12(3) of the PSA and s184(2) of the YJA are materially the same

42. The FC held that s184(2) was a provision to which s85ZR(2) applied because s184(2) was different in terms of its text, context and purpose, when compared to s12(3) which was a provision to which s85ZR(2) did not apply. However, such reasoning does not withstand scrutiny. ***First,*** the Queensland Court of Appeal has observed that the two provisions are identical[35] and it has accepted that such provisions are directed towards the same aim: the recording or not of a conviction as part of the sentence imposed by the court following a finding of guilt.[36]

43. ***Secondly***, as to textual differences, the primary of which identified by the FC was that s12(3) uses the term "*conviction*" whereas s184(2) uses the term "*finding of guilt*". However, when each definition is read into each provision, as required by principle,[37] no substantive difference arises.[38] The essential similarities emphasise the FC's error.

44. In addition, the difference from the inclusion of the words "*whether or not a conviction is recorded*" in the YJA definition of "*finding of guilt*" emphasises that the finding of guilt or plea of guilty[39] has an existence separate and distinct from the recording of it.

45. The other textual difference accepted by the FC relates to the use of a definite or indefinite article. No consequence was said to flow from this difference. This difference enables the provisions to make grammatical sense and does not have regard to the definite article directly before "*the recording of a conviction*" in the YJA.

46. ***Thirdly***, the FC held that contextual differences supported a different construction of s184(2) (as compared to s12(3)).[40] The FC relied upon a "*child-centric*" approach to juvenile justice (FCJ at [31]) and that the intention of Parliament was that child

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[35] *R v SBY* at [63] (White JA, with whom de Jersey CJ and Muir JA agreed) and *R v DBU* at [29] (Lyons SJA, with whom Morrison and McMurdo JJA agreed).
[36] *R v TX* at [28]-[30] (Lyons J, with whom Muir JA and Wilson AJA agreed). Applied in ***R v MDD*** [2021] QCA 235; (2021) 283 A Crim R 14 at [44(a)] (McMurdo JA, with whom Fraser JA agreed), see also ***R v SCU*** [2017] QCA 198 at [93] (Sofronoff P).
[37] *Kelly v The Queen* [2004] HCA 12; (2004) 218 CLR 216 at [103] (McHugh J), see also *Allianz Australia Insurance Ltd v GSF Australia Pty Ltd* [2005] HCA 26; (2005) 221 CLR 568 at [12] (McHugh J).
[38] See YJA, Schedule 4 and PSA, s4.
[39] Being part of the definition of "*conviction*" at common law, referred to in paragraph 27 above.
[40] That is not to say that there are no differences between the contexts of these provisions in the YJA and the PSA. There are differences, however, those differences do not support a different effect of not recording a conviction.

offenders should, as a rule, be treated as never having been convicted of an offence (FCJ at [26]). This failed to consider the differences being at the antecedent step, of whether or not to record the conviction, not the effect of the non-recording of a conviction. The starting points are different, s183 of the YJA commences from a conviction not being recorded, whereas s12(1) starts from a conviction being recorded. The factors relevant to the exercise of that discretion are also more liberally applied for a youth offender.[41] However, where part of the sentence imposed is that a conviction is not recorded, the effect is the same.

47. In *R v TX* (at [29]-[30]) it was explained that ss183 and 184 of the YJA were sentencing provisions like "*the analogous power … conferred by s12 of the [PSA]*", adopting observations in *R v* ***Briese*** [1997] QCA 10; [1998] 1 Qd R 487.[42] In *Briese* it was held that the purpose of s12 was to "*seriously limit public access to information in which the public might have a legitimate interest in knowing that a person has been convicted of a certain offence*" and that "*the more serious the offence, the greater the legitimate public interest*" (at 498). That purpose was adopted with respect to s184 of the YJA in *R v L* [2000] QCA 448 (at pp.9-10): "*that the non-recording of a conviction gives an offender the right to conceal the truth about what has happened in the criminal Courts and that there are many public groups that have an interest in knowing the truth*" but that, in an apparent recognition of the different starting point in s183 "*the factor of this public interest in having a conviction recorded arises less readily in the case of juvenile offenders than in the case of an adult offender*" (at p.10).[43]

48. The FC also did not consider the contextual matter of the Rehabilitation Act which supports a construction that the effect of not recording a conviction pursuant to either s12(3) and s184(2) is the same. The Rehabilitation Act provides for the rehabilitation of persons convicted of offences in Queensland and applies to youth and adult offenders.[44] It also deals with disclosure of convictions "*not part of the person's*

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[41] Differences were expressly noted in *R v MDD* at [21]-[24] (McMurdo JA, with whom Fraser JA agreed).
[42] That "*… the decision whether to record or not to record a conviction [under s12 of the PSA] affects the offender, and is part of the sentence*": *Briese* at 490 (Dowsett J). Applied in *R v MDD* at [44(a)] (McMurdo JA, with whom Fraser JA agreed), see also *R v SCU* at [93] (Sofronoff P).
[43] See also *R v MDD* at [22] (McMurdo JA, with whom Fraser JA agreed), citing *Briese* at 498 (Dowsett J).
[44] These provisions have been applied to convictions under the YJA: see *R v Cunningham* [2014] QCA 88; [2014] 2 Qd R 285 at [76] (Daubney J, with whom Holmes and Gotterson JJA agreed), *R v Patrick* [2020] QCA 51; (2020) 3 QR 578 at [59] (Sofronoff P, with whom Fraser JA and Boddice J agreed) and *R v HCC* [2020] QCA 178 at p. 7 (Henry J, with whom Sofronoff P agreed).

criminal history" (s5(2)).[45] Section 5(2) is not expressed to apply differently depending on whether the offender is an adult or juvenile. This reinforces that the two provisions are intended to have the same effect on an underlying conviction, i.e. permitting its non-disclosure, but not taking away the fact of it.[46]

49. The FC also placed contextual reliance on what was observed to be the "*virtually identical language*" (FCJ at [26]) of s184(1) and s12(2), such that the different language in s12(3) and s184(2) evinced an intention of different operation. However, those provisions are not "*virtually identical*":

(a) s184(1)(b) of the YJA, refers to "*age*" and "*any previous convictions*", whereas s12(2) of the PSA refers to the "*offender's character*" and "*age*". That "*character*" is to be broadly considered (s11 of the PSA) to include "*any significant contributions made to the community by the offender*"; and

(b) s184(1)(c)(i) of the YJA, refers to "*the child's chances of – (i) rehabilitation generally*", whereas s12(2) refers to "*economic or social wellbeing*".

50. The FC also drew support for its conclusion, as a matter of context, from there being a broader range of express circumstances in which a non-recorded conviction under s12(3) of the PSA might be referred to as compared to one under s184(2). However, s85ZR(2) is engaged only where the effect of the State provision is such that a person is taken never to have been convicted of the offence. The legislative context, for both adult or juvenile offenders, provides residual work for the fact of the conviction to do, telling against such provisions being that the person is taken never to have been convicted of the offence. Section 184(3) provides expressly for a non-recorded conviction to be relied on to prevent a subsequent proceeding for the same offence from continuing,[47] which is consistent with *autrefois convict* (see paragraph 30 above).

51. The FC's reliance on s148 of the YJA (FCJ at [28] and [34]), to support its construction of s184(2) was also misplaced. Section 148 expressly prevents a non-recorded

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[45] As Dowsett J acknowledged in *Briese*, that there is no express link between the Rehabilitation Act and the PSA (at 497), but he perceived an intention that a non-recorded conviction under the PSA fell within the scope of the Rehabilitation Act (at 498). That reasoning found favour with Lyons SJA (with whom Morrison and McMurdo JJA agreed) in *R v DBU* (at [30]-[31]) in respect of the YJA. Section 148(2) of the YJA contemplates an operation alongside the Rehabilitation Act, noting that the prohibition on admission of evidence of a finding of guilt against an adult of an offence committed as a child where no conviction was recorded applies even though the evidence would otherwise be admissible under the Rehabilitation Act.

[46] *Gallagher* at 204-205 (McPherson JA), applying the provisions of the PSA.

[47] A similar provision is found in s12(4)(b) of the PSA.

conviction from, in certain circumstances, being admissible in evidence. It would not be necessary if the effect of s184(2) was to take away the fact of the conviction or deem an offender never to have been convicted of the offence.

52. ***Fourthly***, as to purposive differences, the FC also sought to rely on perceived different '*mischiefs*' of each Act (FCJ at [34]), without identifying those mischiefs. Instead, it made some reference to a limited selection of the objects/purposes in s2 of the YJA and s3 of the PSA. Once focus on each Act as a whole is done, with all of the Youth Justice Principles, the sentencing provisions and principles in s150 of the YJA and s9 of the PSA, the purposes of the Acts, as concern sentencing, largely align.[48]

10 53. It follows that, contrary to the conclusion of the FC, the suggested textual, contextual and purposive differences do not survive analysis. Properly, neither s12(3) of the PSA or s184(2) of the YJA engage s85ZR(2) of the Crimes Act.

Second: In any event, s184(2) is not a provision which engages s85ZR(2)

54. Section 85ZR(2), as the above explains, applies to a narrow range of State provisions; being those equivalent to s85ZR(1), the effect of which is that an offender in particular circumstances or for a particular purpose is taken never to have been convicted of the offence, thus prospectively and retrospectively obliterating the conviction.

55. The FC, in concluding that s184(2) did engage s85ZR(2), had no regard to s184(2):

(a) being within the sentencing provisions of the YJA (see paragraph 33 above);

20 (b) being focused on the decision to record or not record a conviction which is necessarily after the finding of guilt (see paragraph 34 above);

(c) being in prospective terms, such that it does not retrospectively obliterate the fact of a finding of guilt or a guilty plea (see paragraphs 35 and 36 above); and

(d) using the term and definition "*finding of guilt*" in the YJA, which expressly contemplates that the finding of guilt or guilty plea continues to exist whether or not a conviction is recorded (as discussed in paragraphs 37 and 38 above).

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[48] For example, both contain provisions for restitution and compensation (Pt 3, Div 4, PSA and Pt 7, Div 11, YJA), fines (Pt 4, PSA and Pt 7, Div 6, YJA), probation (Pt 5, Div 1, PSA and Pt 7, Div 7, YJA), Community service orders (Pt 5, Div 2, PSA and Pt 7, Div 8, YJA), Intensive correction/supervision orders (Pt 6, PSA and Pt 7, Div 9, YJA) and imprisonment/detention (Pt 9, PSA and Pt 7, Div 10, YJA).

56. Those matters of construction all support s184(2) being a provision which does not engage s85ZR(2) because it is not a provision which obliterates the fact of a conviction or treats it as having been avoided *ab initio* so as to render the offender being taken "*never to have been convicted of the offence*".

57. In addition, the FC's construction paid no regard to the phrases "*particular circumstances or for a particular purpose*" and "*in corresponding circumstances or for a corresponding purpose*" in s85ZR(2). Those words must be given work to do. These words direct attention not to the circumstances and purposes of s85ZR(2), but to the circumstances and purpose of the State law under which a person is taken never to have been convicted of an offence and then to the circumstances and purpose in which the Commonwealth authority purports to have regard to the conviction. This calls for a comparison between the circumstances and purposes of s184(2) of the YJA and the Minister's pursuant to s501CA(4) of the Migration Act.

58. The purpose of not recording a conviction, as part of the sentencing stage, are effectively rehabilitative, limiting the public availability of information which the community ought otherwise be entitled to know.[49] That purpose, and the circumstances in which it arises, i.e. as part of the sentence which the court can impose, differ from the purposes and circumstances in which an offender comes within the scope of the character provisions in the Migration Act. The character provisions are directed towards regulating the entry into and removal from Australia of non-citizens[50] whose character ("*enduring moral qualities*") are such as to justify such a position. As was said in *Minister for Immigration & Citizenship v Haneef* (2007) 163 FCR 414 (at [127]), the term "*character test*" in the Migration Act "*suggests a legislative purpose directed to the exclusion or removal from Australia of people whose character, a reference to their enduring moral qualities, is at least questionable*".[51] It is directed to persons who pose a "*danger to the Australian community*" because of concerns about their character (at [127]). The purposes and circumstances clearly differ.

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[49] *Briese* at 491 (Thomas and White JJ) and 496 (Dowsett J), accepted, in the context of the YJA, in *R v DBU* at [29] (Lyons SJA, with whom Morrison and McMurdo JJA agreed); *R v MDD* at [22] (McMurdo JA, with whom Fraser JA agreed). See also *R v Cay* [2005] QCA 467; (2005) 158 A Crim R 488 at [45] (Keane JA); *R v MCG* [2015] QCA 184 at [22] (Jackson J, with whom Fraser and Gotterson JJA agreed); and *R v BCN* [2013] QCA 226 at [32]-[36] (Boddice J, with whom Gotterson and Morrison JJA agreed).

[50] Migration Act, s4.

[51] See also *Minister for Immigration & Border Protection v Makasa* [2021] HCA 1; (2021) 270 CLR 430 at [48] (Kiefel CJ, Gageler, Keane, Gordon and Edelman JJ).

59. So too do the circumstances. The character provisions arise in connection with the ability of a non-citizen to enter, or remain in, Australia. Whereas s184(2) (and its context) are part of the sentences which a court a can impose on a juvenile offender.

60. For all these reasons, s184(2) does not engage s85ZR(2) of the Crimes Act and the FC erred in holding otherwise. As such, the Minister in considering any aspect of the Respondent's juvenile offending did not take into account an irrelevant consideration.

Appeal issue 2: Materiality

61. Section 501CA(4) is to be construed as incorporating a threshold of materiality, in the event of non-compliance,[52] including where the decision is made upon the taking into account of an irrelevant consideration.[53] Proving materiality, as a matter of principle, involves "… *a realistic possibility that the decision in fact made could have been different had the breach of the condition not occurred*" (emphasis added).[54] Except where the decision is the only decision legally available,[55] no different approach applies to materiality depending on the error alleged.[56] However, the application of the test is necessarily context specific.[57]

62. To find that the non-compliance alleged was material the court must:[58]

(a) ***first***, determine, by reference to the proof of "*historical facts on the balance of probabilities*", "*the basal factual question of how the decision that was in fact made was in fact made*"; and

(b) ***secondly***, and from those facts, "*consider whether the decision that was in fact made could have been different had the relevant condition been complied with 'as a matter of reasonable conjecture within the parameters set by the historical*

[52] ***Hossain*** *v Minister for Immigration and Border Protection* [2018] HCA 34; (2018) 264 CLR 123 at [29]-[30] (Kiefel CJ, Gageler and Keane JJ); ***MZAPC*** *v Minister for Immigration and Border Protection* [2021] HCA 17; (2021) 390 ALR 590 at [31] (Kiefel CJ, Gageler, Keane and Gleeson JJ); ***Nathanson*** *v Minister for Home Affairs* [2022] HCA 26; (2022) 96 ALJR 737 at [30] (Kiefel CJ, Keane and Gleeson JJ).
[53] *Hossain* at [29] (Kiefel CJ, Gageler and Keane JJ), *Minister for Immigration & Border Protection v* ***SZMTA*** [2019] HCA 3; (2019) 264 CLR 421 at [44]-[45] (Bell, Gageler and Keane JJ), *MZAPC* at [1] (Kiefel CJ, Gageler, Keane and Gleeson JJ) and *Nathanson* at [30] (Kiefel CJ, Keane and Gleeson JJ).
[54] *MZAPC* at [2] also see [39]-[40], *SZMTA* at [45] and *Nathanson* at [1] and [32].
[55] *SZMTA* at [46].
[56] ***PQSM*** *v Minister for Home Affairs* [2020] FCAFC 125; (2020) 279 FCR 175 at [142] (Banks-Smith and Jackson JJ).
[57] *PQSM* at [141] and [143] (Banks-Smith and Jackson JJ), *Dunasemant v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 13 at [31] (Davies, Rangiah and Cheeseman JJ).
[58] *Nathanson* at [32], citing *MZAPC* at [38] and [39].

facts that have been determined'". This is objectively evaluated[59] and from the position of the decision-maker.

63. The plaintiff bears the onus of proof of the historical facts necessary to enable the court to assess whether the alleged non-compliance was material and whether the decision *could* have been different, absent the non-compliance.[60]

64. The standard of proof is "*undemanding*",[61] however, the alleged non-compliance will not be material if, applying the objective backward-looking analysis, the court considers that the "*information, objectively evaluated [was] of such marginal significance to the issues which arose in the review that the [decision-maker's] failure to take it into account could not realistically have affected the result*".[62]

65. To properly consider and apply the requirements of materiality a court, being careful not to intrude into the fact-finding function of the decision-maker,[63] must provide sufficient reasons to allow the parties to be apprised of the court's reasoning[64] and understand why the error was found to be material.[65]

66. The FC considered the Respondent's history of criminal offending (FCJ at [39]-[40]) in its own terms. Then, it considered some (but not all) of the Minister's reasons for the Decision. The FC identified that, in fact, the impugned information, being the Respondent's juvenile offending, was taken into account (FCJ at [42] and [44]).[66] After express reference to three particular paragraphs of the Minister's reasons, the FC set out the conclusionary passages of the Decision (FCJ at [45])[67] and held that "*there is a realistic possibility that, had the Minister's reasoning not been tainted by [the Respondent's] criminal history as a child, a different decision could have been made*

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[59] *SZMTA* at [48], *MZAPC* at [37].
[60] *MZAPC* at [2], [39] and [60], *SZMTA* at [4] and [46], *Nathanson* at [1] and [32].
[61] *Nathanson* at [33], *PQSM* at [143].
[62] *SZMTA* at [48] and see [72], see also *Hossain* at [30] and *Nathanson* at [53] and *PQSM* at [142], [143].
[63] *SZMTA* at [48].
[64] *Soulemezis v Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 at 273 (Mahoney JA).
[65] *Beale v Government Insurance Office (NSW)* (1997) 48 NSWLR 430 at 442 (Meagher JA), recently applied in *Makeham v Sheppard* [2020] VSCA 242 at [40] (Priest JA, with whom Kyrou and Weinberg JJA agreed). See also *DL v The Queen* [2018] HCA 26; (2018) 266 CLR 1 at [32]-[33] (Kiefel CJ, Keane and Edelman JJ). *Hunter v Transport Accident Commission* [2005] VSCA 1; (2005) 43 MVR 130 at [21] (Nettle JA, with whom Batt and Vincent JJA agreed), also, *Return to Work Corporation of South Australia v Opie* [2022] SASCA 12 at [49] (Doyle, Livesey and Bleby JJA).
[66] CAB at 186.
[67] CAB at 187.

by the Minister" (FCJ at [46]).[68] The FC's judgment does not demonstrate how that conclusion was reached.

67. The FC did not, in accordance with the first stage of the materiality enquiry, find all of the necessary facts for how the decision was in fact made. Apart from a reference by the FC to paragraph 30 and the conclusion of the Decision,[69] the FC focused its consideration of how the decision was in fact made on establishing that the impugned information was taken into account, not how and to what end it was taken into account, in the context of the Decision as a whole. Although that step undertaken by the FC is necessary, it is insufficient.[70] The first stage requires findings of all of the historical facts, to determine not only what was considered but how the decision was in fact made as required by the first stage and because those findings inform the second stage.

68. In the absence of all necessary facts, the FC did not (and could not) objectively undertake a backward looking analysis to consider, as a matter of reasonable conjecture, whether the decision in fact made could have been different had the impugned information not been taken into account.[71] The FC was required to objectively consider whether the impugned information was of "*such marginal significance*" to the decision in fact made such that, if regard had not been had to it, it could not be said that the outcome would have differed.

69. The FC should have found, at the first stage, that the Minister found the Respondent:

(a) did not pass the character test, because of a substantial criminal record, on the basis that he was convicted of offences including assaults occasioning bodily harm – domestic violence and sentenced to two years imprisonment;[72]

(b) arrived in Australia as a young person, having lived most of his life in Australia and as such the Australian community may afford a higher tolerance to his criminal conduct although that was countervailed by his offending having commenced as a minor. He had a close relationship with his family, many of whom were in Australia and he would experience substantial emotional and

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[68] CAB at 187.
[69] CAB at 186, [42]-[44] and at 187, [45], described as the Minister's "*summation*".
[70] *MZAPC* at [65]
[71] *MZAPC* at [37], *SZMTA* at [48].
[72] CAB at 10-11, [4]-[9].

practical hardship from non-revocation. The Respondent, by productive employment, had made some positive contributions;[73]

(c) would face significant hardships in establishing himself in the UK, although there would be no language barrier, very little cultural differences and there is a comparable public health system;[74]

(d) had engaged in very serious violent offences, in the context of domestic violence, which is a serious problem in our society and the Respondent's offending in this regard, was a serious example of such offending, with the victim suffering a broken nose, pain and suffering and mental anguish. At the time of that offending, the Respondent was on bail from an earlier domestic violence offence and he had repeatedly committed offences of or related to domestic violence. The sentences he had received, including incarceration all reflected the seriousness of the last offending. As a minor the Respondent had appeared in juvenile courts, mainly for drug-related and violent offences and other assault offences added gravity to his offending;[75]

(e) represented an ongoing risk, as if he re-offended in a similar manner, it could result in physical and psychological harm to members of the Australian community;[76] and

(f) represented an unacceptable risk of harm to the Australian community, as further offending by the Respondent could not be ruled out. As such, protection of the Australian community outweighed any other consideration.[77]

70. In light of those findings, and having regard objectively to how in fact the Minister's decision as a whole was made,[78] the decision could not have been any different. The Minister's decision bears out his significant focus upon the Respondent's convictions and imprisonment for serious domestic violence offences as an adult and the seriousness of such offences in Australian society (Decision at [27], [29]-[32], [49],

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[73] CAB at 11-12, [13]-[19].
[74] CAB at 12-13, [20]-[25].
[75] CAB at 13-14, [26]-[32].
[76] CAB at 14-15, [33]-[44].
[77] CAB at 15-16, [45]-[53].
[78] *Minister for Immigration & Ethnic Affairs v Wu Shan Liang* [1996] HCA 6; (1996) 185 CLR 259 at 271-272 (Brennan CJ, Toohey, McHugh and Gummow JJ) and 291 (Kirby J) and *Minister for Home Affairs v Omar* [2019] FCAFC 188; (2019) 272 FCR 589 at [34(b)] (Allsop CJ, Bromberg, Robertson, Griffiths and Perry JJ).

[50] and [52]).[79] In contradistinction, the references to the Respondent's juvenile offending were of "*marginal significance*".

71. It follows that any reference to the juvenile offending, objectively considered, could not have realistically affected the result. If the FC had properly undertaken the requisite evaluation, supported by sufficient reasons, it would not have erred and would have held that the non-compliance was not material.

Part VII: ORDERS SOUGHT

72. The Appellant seeks the following orders:

(1) The Appeal be allowed;

(2) Orders 1 and 3 of the Orders of the Full Court of the Federal Court of Australia made on 25 February 2022 be set aside and in lieu thereof it be ordered that:

1. The appeal from the judgment of the Federal Court of Australia given on 19 October 2020 be dismissed;

2. Order 2 of the Federal Court of Australia given on 19 October 2020 be set aside and in lieu thereof it be ordered that:

(a) The respondent pay the applicant's costs of the application.

Part VIII: TIME ESTIMATE

73. The appellant estimates that 1.5 hours will be required for oral argument, with 10 minutes reserved for reply.

Dated: 4 November 2022

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[79] CAB at 13-14.

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY No. B42 of 2022

BETWEEN: **MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULUTRAL AFFAIRS**
Appellant

and

ROSS THORNTON
Respondent

ANNEXURE OF STATUTORY PROVISIONS

1. *Migration Act 1958* (Cth), ss4, 5C, 501, 501CA (compilation number 144, as at 26 April 2019)

2. *Crimes Act 1914* (Cth), ss19B, 85ZL, 85ZM, 85ZN, 85ZP, 85ZR, 85ZS, 85ZT (compilation number 127, as at 17 January 2019)

3. *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) (compilation number 41, as at 27 October 2017)

4. *Penalties and Sentences Act 1992* (Qld), ss3, 4, 9, 12, Part 3, Division 4, Part 4, Part 5, Divisions 1 – 2, Part 6 (compilation number 10, as at 11 April 2019)

5. *Youth Justice Act 1992* (Qld), ss2, 148, 150, 175-176A, 183, 184, Part 7, Division 6, 7, 8, 9, 10 and 11, Part 7, Divisions 6, Part Schedule 1 and 4 (compilation number 10, as at 11 April 2019)