



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

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IN THE HIGH COURT OF AUSTRALIA  
BRISBANE REGISTRY

B 43 of 2020

BETWEEN:

**MINISTER FOR IMMIGRATION AND  
BORDER PROTECTION**

Appellant

and

**EFX17**

Respondent

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### **APPELLANT’S OUTLINE OF ORAL SUBMISSIONS**

#### **Part I: Certification**

1. This outline is in a form suitable for publication on the Internet.

#### **Part II: Outline**

##### 2. Construction of s 501CA(3):

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- a. The Minister is not required to have regard to “capacity matters”.
- b. Actual understanding of the cancellation decision, particulars and invitation by the former visa holder is not required: AS [3]-[4].

3. *Section 501CA(3)(a)*: The text requires the Minister to “give” the former visa holder the two things clearly identified in sub-paragraphs (i) and (ii): “a written notice that sets out the original decision” and “particulars of the relevant information” (defined in s 501CA(2)). To physically deliver those things is to “give” them. That is the ordinary sense of the word: AS [36]; Reply [2]-[4]; *cf* Greenwood J at CAB 193-194 [89], 206-207 [132]-[133], Rares J at CAB 218-219 [171], 220 [175].

- a. *WACB* (2004) 79 ALJR 94 (**WACB**) at 101 [37].

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4. The Act does not distinguish between notification to persons with differing levels of education or literacy: AS [37]-[39], [43]-[44]; Logan J at CAB 236-237 [231].
  - a. *WACB* at 102 [43].

5. If capacity matters are required to be considered, or if actual understanding is required, different words would have been used: AS [42], [44]. *cf* s 57(2)(b): AS [49]. *WACB* is not relevantly distinguishable: Reply [5].
6. Neither *context* nor *purpose* produces a different result.
  - a. There are other provisions of the Act that also require documents to be “given” – e.g., s 57(2)(a): AS [42] fn 9.
  - b. Section 501(5) does not aid the majority’s construction: AS [40]. Section 501CA presupposes a cancellation decision having already been made.
  - 10 c. The fact that compliance with s 501CA(3) is necessary before the person can make representations does not mean that it is to be interpreted as requiring more than its terms provide: AS [40]; Reply [7].
  - d. Extrinsic material does not support the majority’s construction, which departs from *WACB* and the actual text used: AS [41].
7. The words “in the way that the Minister considers appropriate in the circumstances” are concerned with the physical method or manner of “giving”. They do not add a requirement to explain or ensure understanding: AS [46]-[47]; Reply [5].
  - a. That is similarly consistent with context and purpose. Other provisions in the Act use similar language: e.g., ss 359A(1)(a), 424A(1)(a), 501C(3)(a).
- 20 8. The implication of an obligation to consider capacity matters or ensure understanding is too large a departure from the words actually used: *Taylor v Owners - Strata Plan No 11564* (2014) 253 CLR 531 at 548 [38] (AS [48]).
9. *Section 501CA(3)(b)*: The same considerations apply to the majority’s construction of s 501CA(3)(b). That sub-section also applies “indifferently” to persons with differing literacy / comprehension capacities: AS [54]; Reply [9]; Logan J at CAB 240 [245]; *cf* Greenwood J at CAB 194 [90], 208-209 [136]-[138], Rares J at CAB 219-220 [173], [175].
  - a. *WACB* at 102 [43] is still a complete answer.
  - b. Sections 360 / 425 are not analogous and do not impact s 501CA(3): AS [55]-[56]; Reply [8].
- 30 10. The majority’s construction would also cause uncertainty, unworkability or a significant burden that Parliament is unlikely to have intended: AS [45], [50]-[53]; Reply [6].

11. Onus: If the Minister succeeds on construction, this issue does not arise. Otherwise, the respondent did not discharge his onus to show that the Minister was aware of, but did not consider, capacity matters: AS [5], [58]-[61]; Reply [10]-[12].

12. Section 497:

- a. The steps described in s 501CA(3)(a) and (b) are “tasks” for the purposes of s 497(2) and the person performing them did not need a delegation under s 496(1): AS [62]-[71]; Reply at [13]; Logan J at CAB 242 [255]; *cf* Greenwood J at CAB 212-213 [149]-[153], 215-216 [162]-[163], Rares J at CAB 220 [179].
  - b. Section 497(2) draws no distinction between “mere” tasks and those that affect substantive rights or obligations: AS [67]-[68]; Reply [14]; *cf* Greenwood J at CAB 212-213 [151]-[153], 215-216 [162], Rares J at CAB 220 [179].
  - c. The word “task” in s 497(2) applies to all tasks “in connection with the cancellation” (save for the decision to cancel itself): AS [65]; Reply [16].
  - d. In any event, the steps in s 501CA(3) can be characterised as administrative tasks: AS [69].
  - e. It cannot have been intended by Parliament that the steps in s 501CA(3) need to be performed by some other delegate; otherwise, s 497(2) would be rendered superfluous: AS [64], [70]; Reply [15]; *McCulloch* [2019] FCA 54 at [44]; *cf* Greenwood J at CAB 211-212 [147].
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- 20 13. Notice of contention: This is addressed at Reply [17]-[20]. The invitation under s 501CA(3)(b) was valid despite the statement at CAB 11, for the reasons given at Reply [18] or, alternatively, [19].

Dated: 4 December 2020

**Geoffrey Johnson SC**

**Bora Kaplan**