

**GRAHAM v MINISTER FOR IMMIGRATION AND BORDER PROTECTION**  
**(M97/2016)**

Date Special Case referred to Full Court: 14 November 2016

The plaintiff is a citizen of New Zealand who has been a resident of Australia since 1 December 1976. He was granted a class TY subclass 444 Special Category (Temporary) visa when he last entered Australia in 1996. This visa was cancelled by the defendant ('the Minister') on 15 June 2015. The Minister's decision was quashed by the Federal Court on 9 June 2016. Later that day, an authorised migration officer gave the Minister a submission inviting him to consider whether he wished to cancel the visa under s 501(3) of the *Migration Act* 1958 (Cth). The submission included an attachment ("Attachment ZZ") which has never been provided to the plaintiff.

At 12.12 pm on 9 June 2016, after considering the submission, including Attachment ZZ, the Minister decided to cancel the plaintiff's visa on the grounds that that the plaintiff failed the character test and that it was in the "national interest" to cancel his visa. The Minister provided a statement of reasons which referred to certain information which is protected from disclosure under s 503A of the Act. That information is the information in Attachment ZZ.

The plaintiff sought a writ of prohibition directed to the Minister to prevent action upon his decision made on 9 June 2016 to cancel the plaintiff's visa, and a writ of certiorari directed to the Minister quashing that decision. He contends that ss 501(3) and 503A(2) of the Act are invalid, in whole or in part, as they require a federal court to exercise judicial power in a manner which is inconsistent with the essential character of a court or with the nature of judicial power; and they so limit the right or ability of affected persons to seek relief under s 75(v) of the Constitution as to be inconsistent with the place of that provision in the constitutional structure.

On 14 November 2016 Gordon J referred the Special Case for consideration by the Full Court. Her Honour further directed that the Special Case in this matter be heard together with the Special Case in the matter of *Te Puia v. Minister for Immigration and Border Protection* (P58/2016).

Notices of Constitutional Matter have been served. At the time of writing the Attorneys-General for the Commonwealth, Victoria, Tasmania, New South Wales, Queensland, and South Australia have filed Notices of Intervention.

The questions in the Special Case include:

- Are either or both of s 501(3) and 503A(2) of the Act invalid, in whole or in part, on the ground that they:
  - a. require a Federal court to exercise judicial power in a manner which is inconsistent with the essential character of a court or with the nature of judicial power; or
  - b. so limit the right or ability of affected persons to seek relief under s 75(v) of the Constitution as to be inconsistent with the place of that provision in the constitutional structure?