FEDERAL COURT OF AUSTRALIA

Fraser v Minister for Immigration, Citizenship and Multicultural Affairs [2026] FCA 336

File number:	WAD 280 of 2025
Judgment of:	**COLVIN J**
Date of judgment:	25 March 2026
Catchwords:	**MIGRATION** - application for judicial review of decision by Assistant Minister - where Assistant Minister exercised their discretion under s 501BA of the *Migration Act 1958* (Cth) to set aside a decision of the Administrative Review Tribunal to revoke a visa cancellation - where applicant alleged jurisdictional error by the Assistant Minister failing to engage with, or misunderstanding, evidence about minor children - where applicant alleged the Assistant Minister failed to consider the legal consequence of s 501E when setting aside the cancellation revocation - whether the Assistant Minister when exercising the discretion conferred by s 501BA was required to advert to material provided by the applicant to the Administrative Review Tribunal or Minister's delegate for the purposes of s 501CA(4) - consideration of the principle stated in *NBMZ v Minister for Immigration and Border Protection* [2014] FCAFC 38; (2014) 220 FCR 1 - whether the effect of s 501E is the inevitable and immediate consequence of the Assistant Minister exercising the power conferred by s 501BA - application dismissed
Legislation:	*Migration Act 1958* (Cth) ss 501, 501BA, 501CA, 501E, 501G
Cases cited:	*BNGP v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCAFC 111; (2023) 298 FCR 609 *BTLD v Minister for Immigration and Multicultural Affairs* [2025] FCA 600; (2025) 310 FCR 606 *Chapman v Minister for Immigration and Multicultural Affairs* [2025] FCA 24 *CMP25 v Minister for Immigration and Multicultural Affairs* [2025] FCAFC 199 *Cotterill v Minister for Immigration and Border Protection* [2016] FCAFC 61; (2016) 240 FCR 29

	Deng v Minister for Immigration, Citizenship and Multicultural Affairs [2025] FCA 260 *DLJ18 v Minister for Home Affairs* [2019] FCAFC 236; (2019) 273 FCR 66 *GCRF v Minister for Immigration, Citizenship and Multicultural Affairs* [2025] FCA 415 *KFTJ v Minister for Immigration, Citizenship and Multicultural Affairs* [2025] FCA 958 *Manebona v Assistant Minister for Citizenship and Multicultural Affairs* [2025] FCA 1342 *Maxwell v Minister for Immigration and Border Protection* [2016] FCA 47; (2016) 249 FCR 275 *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 *Moli v Minister for Immigration and Citizenship* [2025] FCAFC 175; (2025) 313 FCR 385 *NBMZ v Minister for Immigration and Border Protection* [2014] FCAFC 38; (2014) 220 FCR 1 *Plaintiff M1/2021 v Minister for Home Affairs* [2022] HCA 17; (2022) 275 CLR 582 *Po'oi v Minister for Immigration and Citizenship* [2025] FCAFC 192 *Rano v Minister for Home Affairs, Minister for Cyber Security* [2024] FCA 1003 *Re Patterson; Ex parte Taylor* [2001] HCA 51; (2001) 207 CLR 391 *Taulahi v Minister for Immigration and Border Protection* [2016] FCAFC 177; (2016) 246 FCR 146
Division:	General Division
Registry:	Western Australia
National Practice Area:	Administrative and Constitutional Law and Human Rights
Number of paragraphs:	58
Date of hearing:	11 February 2026
Counsel for the Applicant:	Dr J Donnelly
Solicitor for the Applicant:	Zarifi Lawyers
Counsel for the Respondent:	Mr AF Solomon-Bridge
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ORDERS

WAD 280 of 2025

BETWEEN:	**GLENN RICHARD FRASER** Applicant
AND:	**MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS** Respondent

ORDER MADE BY:	**COLVIN J**
DATE OF ORDER:	**25 MARCH 2026**

THE COURT ORDERS THAT:

1. The application is dismissed.

2. The applicant pay the respondent's costs of the application to be taxed if not agreed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

COLVIN J:

1 Mr Glenn Fraser is a Canadian citizen who has been living in Australia. In 2023, his visa was cancelled under s 501(3A) of the *Migration Act 1958* (Cth) when he was sentenced to 4 years' imprisonment. In 2024, the Administrative Review Tribunal determined that the visa cancellation should be revoked. In those circumstances, the Minister has a personal discretion to set aside the Tribunal's decision and cancel the visa: see s 501BA. It is a discretion that arises if the Minister is satisfied, relevantly for present purposes, that the person whose visa has been reinstated has been sentenced to a term of imprisonment of 12 months or more and that the cancellation is in the national interest: s 501BA(2). The rules of natural justice do not apply to a decision under s 501BA(2): see s 501BA(3). However, reasons must be given for any exercise of the discretion: s 501G(1).

2 In July 2025, the Assistant Minister for Immigration decided to set aside the Tribunal's decision and cancel Mr Fraser's visa under s 501BA. For the purposes of the Act, the Assistant Minister is the Minister: *Re Patterson; Ex parte Taylor* [2001] HCA 51; (2001) 207 CLR 391 at [17]; and *Maxwell v Minister for Immigration and Border Protection* [2016] FCA 47; (2016) 249 FCR 275 at [19]-[21] (Perry J). In these reasons, I will refer to the Assistant Minister as the Minister.

3 Mr Fraser now seeks review of the decision made by the Minister on the basis of alleged jurisdictional error. He advances two grounds. *Ground 1* alleges that the Minister failed to engage with, or misunderstood, the substance of certain evidence that was before the Minister. The relevant evidence was in the form of letters that had been provided by Ms Lilith-Ingrid Bannister and concerned the nature of Mr Fraser's relationship with her six children. In oral submissions, counsel for Mr Fraser made clear that the nature of the error alleged was a failure to consider the merits of Mr Fraser's case by failing to engage with or misunderstanding that evidence.

4 *Ground 2* alleges that the Assistant Minister failed to consider a material legal consequence of the decision which was said to be the operation of s 501E of the *Migration Act*. Amongst other things, s 501E provides that where a person's visa has been cancelled under s 501BA, the person is not allowed to make an application for a visa whilst still in Australia. There are exceptions for protection visas and for those visas specified in the *Migration Regulations 1994*

(Cth). The consideration of that legal consequence of the Minister's decision was said to be a mandatory consideration.

5 As to Ground 1, the Minister's position was to the effect that the discretion conferred by s 501BA did not involve any form of consideration of a case advanced by the person who would be affected by the decision. Therefore, it was not apt to apply authorities that were concerned with instances where representations were to be made by the affected party. Rather, the discretion arises if (a) the Minister is satisfied that there has been a failure by the visa applicant to meet the character test of the kind specified; and (b) there is a reason, identified by the Minister, as to why the cancellation is in the national interest and the Minister is satisfied that cancellation for that reason is in the 'national interest'. In the alternative, the Minister contended that there was no basis to conclude that there had been a failure to engage with or understand the evidence of Ms Bannister relied upon to support the ground.

6 As to Ground 2, the Minister's position was to the effect that the operation of s 501E was not a 'direct and immediate' consequence of the decision that the Minister proposed to take and for that reason was not a legal consequence that was required to be taken into account by the Minister. Further, it was said that it was apparent from the reasons given by the Minister that the Minister appreciated that the consequence of his decision would be that Mr Fraser would not be permitted to remain in Australia (being the outcome that flowed from a cancellation of Mr Fraser's visa and the application of s 501E). Alternatively, if those submissions were not accepted, the Minister submitted that any failure to take into account a relevant consideration of the kind alleged was not material.

Summary of outcome

7 For the reasons which follow, the application must be dismissed. As to Ground 1, it proceeds upon a false premise as to the nature of the discretion conferred by s 501BA. Further, I do not accept that Mr Fraser has established that the Minister failed to engage with, or misunderstood, the evidence of Ms Bannister concerning the nature of Mr Fraser's relationship with her six children. As to Ground 2, the authorities concerning the need for decision-makers to take into account a material legal consequence of a decision do not support the demonstration of jurisdictional error in the circumstances of the present case.

Ground 1: Alleged failure to engage with, or misunderstanding of, the evidence

8 Ground 1 seeks to draw upon authorities concerning decisions made under s 501CA(4), principally the reasoning in *Plaintiff M1/2021 v Minister for Home Affairs* [2022] HCA 17; (2022) 275 CLR 582. Section 501CA(4) confers a power upon the Minister to revoke a visa cancellation decision that has been made under s 501(3A). Significantly, s 501CA(3) requires the Minister to invite a person to make representations to the Minister when a visa has been cancelled under s 501(3A). If representations are made, then the Minister may revoke the visa cancellation decision if satisfied of the matters specified in s 501(4)(b). So, as was explained in *Plaintiff M1/2021* at [22], the statutory scheme for determining whether the Minister is satisfied 'commences with a former visa holder making representations'. The Minister undertakes that assessment by reference to the case made in those representations. Consequently, 'there can be no doubt that [the Minister] must read, identify, understand and evaluate the representations': at [24].

9 The subsequent reference in *Plaintiff M1/2021* (at [27]) to overlooking or misunderstanding relevant facts and materials or a substantially and clearly articulated argument as matters that may give rise to jurisdictional error must be understood in that context. The terms in which those matters are expressed reflect, in part, their application to the exercise of a power that commences with the former visa holder making representations. The statutory context gives significance to matters raised in the representations made by the former visa holder.

10 As has been noted, the rules of natural justice do not apply to the exercise of the power conferred by s 501BA. Additionally, there is no equivalent provision to the scheme of s 501CA requiring representations to be invited before the exercise of the power. Consequently, as was observed in *Po'oi v Minister for Immigration and Citizenship* [2025] FCAFC 192 at [46], the statements of principle in *Plaintiff M1/2021* are not directly applicable to s 501BA.

11 In the present case, Mr Fraser was given an opportunity to comment on the possible cancellation of his visa in the exercise of the power conferred on the Minister by s 501BA. However, that did not mean that the representations, when made, were required to be read, understood and evaluated in the same manner as applied to representations invited according to the statutory scheme that applied to the exercise of the power under s 501CA(4). It certainly did not mean that the Minister, in exercising the power conferred by s 501BA, was required to consider the representations that had been made by Mr Fraser for the purposes of s 501CA or the materials that were before the Tribunal as part of the case put to the Tribunal by Mr Fraser.

The Minister was exercising a power that was enlivened where the Minister was satisfied that cancellation of Mr Fraser's visa was in the national interest. Ultimately, the nature of the power conferred by s 501BA was such that it was a matter for the Minister to determine what was relevant to the exercise of the power: see *Moli v Minister for Immigration and Citizenship* [2025] FCAFC 175; (2025) 313 FCR 385 at [16]. Consequently, the matters that might bear upon the Minister's exercise of the power conferred by s 501BA depended upon the Minister's view as to the aspect of Mr Fraser's circumstances that may give rise to a state of satisfaction that cancellation of his visa was in the national interest. The representations made by Mr Fraser had no part to play in identifying that national interest reason.

12 So, in order for the discretion to be enlivened, the Minister had to identify what was in the 'national interest'. Further, it was also necessary for there to be some legally reasonable and rational foundation for concluding that the 'national interest' reason that was identified by the Minister could sustain a state of satisfaction on the part of the Minister that the visa should be cancelled. Conceivably, the nature of the national interest reason might mean that material that had been presented as part of the representations for the purposes of s 501CA (and any additional material presented as part of the subsequent review before the Tribunal) was of little or no relevance to that national interest reason. In that instance, the material could not have any bearing on whether that national interest reason would sustain the exercise of the power conferred by s 501BA. However, it is also possible that, in a particular case, material known to the Minister by Departmental officers may be highly relevant to the national interest reason. That is especially so where, as here, the national interest reason is said to be matters that were the subject of the representations made for the purposes of s 501CA and the deliberations by the Tribunal.

13 In the present case, the Minister expressed the matters of national interest that pertained to Mr Fraser in the following terms (para 15):

> I consider that matters of national interest include, amongst other things, the nature and seriousness of the criminal conduct and the disposition imposed by the court with respect to that criminal conduct. I also find that the matters of national interest include a consideration of the likelihood of person reoffending and the harm that may arise if such a likelihood eventuated. In this case, I had regard to the seriousness of Mr FRASER's criminal conduct namely his attempt to manufacture of prohibited drugs (methylamphetamine), the ongoing risk he poses to the Australian community through his facilitation of the commercialisation of illicit drugs and the expectations of the Australian community.

14 These were all matters in issue before the Minister's delegate in deciding whether to revoke the visa cancellation and were in issue before the Tribunal on review.

15 However, that did not mean there would be jurisdictional error by the Minister if material in the hands of Departmental officials that were relevant to those matters was overlooked or misunderstood. Those concepts apply where the nature of the statutory power (including any applicable principles of natural justice) requires the decision-maker to advert to materials presented by a party in support of the party's case. In such instances, it is the requirement to advert to those materials that means they must be read, identified, understood and evaluated. As I have explained, the discretion conferred by s 501BA and the pre-conditions that must be met for the discretion to arise are not of that character.

16 Therefore, with respect, Ground 1 was founded on a false premise as to the nature of the statutory provision conferring the discretion that was exercised by the Minister. For that reason, it cannot be upheld.

17 Additionally, the Minister did not overlook or misunderstand the material that was before the Minister concerning Mr Fraser's relationship with the children of Ms Bannister in forming the state of satisfaction that cancellation of his visa was in the national interest. As to that aspect, the Minister's reasons were as follows (para 80):

> The Tribunal also made reference to the six minor children of Mr FRASER's friend, Ms Lilith-Ingrid Bannister. It found that it would be in all of these children's best interests to have a connection with Mr FRASER provided that he was not involved in criminal sub-culture. **Attachments L2, L3** and **Attachment N** In absence of any further information which provides more clarity on the nature of Mr FRASER's relationship with LB's six children, I apply neutral weight with respect to this consideration.

18 As I will explain, the implicit finding that there was a degree to which the information lacked clarity as to the nature of Mr Fraser's relationship with the six children was open on the material before the Minister. The Minister's submission to that effect must be accepted. The information that was before the Minister was not so clear that the conclusion about insufficient clarity sustains a conclusion that the Minister overlooked or misunderstood the actual purport of the material. It follows that the Minister did not overlook or misunderstand the material that was before the Minister in forming the view that he did.

19 As to Mr Fraser's relationship with Ms Bannister's children, Attachment L2 was a letter from Ms Bannister to the Department which included the following (referring to Mr Fraser using his first name):

> Glenn has made a profoundly positive impact on my children, especially my older children who have Autism and other complex needs. He devoted his time to teaching them guitar, engaging in activities like lacrosse with my now 13-year-old, and offering companionship and stability. My family's background of domestic violence and systemic trauma has made it difficult for us to build trusting relationships, but Glenn has been a constant source of trust, comfort, and support. He was not only my close friend but also my next of kin and had the authority to make decisions on my behalf concerning my health and well-being.
>
> As a mother of eight children aged 23, 21, 17, 17, 13, 9, 8, and 5, including seven boys and one girl, I am deeply aware of the importance of stable, trusted relationships for my children, particularly those with Autism. Glenn is one of the very few people they trust, engage with, and even idolize. If he were allowed to stay in Australia, he could return to providing the support that has been so crucial to my family's well-being.

20 I note that Ms Bannister describes her relationship to Mr Fraser as 'a unique bond of friendship' that has subsisted for 10 years. In that context, the above statements do not indicate a relationship that is akin to a fatherly and adult familial relationship of the kind that might form if Mr Fraser was a member of the same household as the children. Relevantly, by the time of the Minister's decision four of the children were adults. Further, the statement is expressed in terms of support provided by Mr Fraser to Ms Bannister as well as her children. It is unclear whether the focus upon particular children living with Autism concerns children who were adults at the time of the decision. In circumstances where Mr Fraser is not said to be a member of the household or providing support akin to a relationship such as a fatherly relationship, it was open to the Minister to conclude that it was unclear as to the nature of the relationship that exists.

21 Attachment L3 is a further letter from Ms Bannister to the Department which provided additional information to the effect that five of Ms Bannister's children were living with disabilities and receiving NDIS support. Those statements were relied on to support a representation to the effect that if Mr Fraser was allowed to stay in Australia he could 'resume paid work with us under our NDIS plan'. It suggested that Mr Fraser's role was as a provider of support for the purposes of the NDIS. This information was of a general nature and did not specify the work that Mr Fraser did as an NDIS support worker.

22 Attachment N is the reasons of the Tribunal. The Tribunal's reasoning did not bind the Minister as to the factual conclusions that might be reached for the purposes of the exercise of the power under s 501BA.

23 Finally, some but not all the children were minor children. That aspect could be viewed by the Minister as introducing some lack of clarity as to the extent to which the statements in the materials concerned minor children.

24 Taking all these matters into account, it was open to the Minister to conclude that the nature of Mr Fraser and the minor children of Ms Bannister was unclear.

25 For those reasons, I accept the submission for the Minister that Mr Fraser has not established that the Minister overlooked the materials relied upon by Mr Fraser or that he misunderstood them.

Ground 2: Alleged failure to consider legal consequences

The relevant principles

26 When interpreting the nature and extent of a statutory discretion, regard to the subject matter, scope and purpose of the legislation may cause the Court to conclude that a valid exercise of the discretion requires that certain considerations be taken into account in deciding whether to exercise the power : *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at 39-40 (Mason J). In *NBMZ v Minister for Immigration and Border Protection* [2014] FCAFC 38; (2014) 220 FCR 1 at [9] (Allsop CJ and Katzmann J) concluded that 'to make a decision without taking into account what Parliament has prescribed by way of legal consequence is to fail to take into account the legal framework of the decision'.

27 *NMBZ* concerned a decision to refuse to grant a protection visa on the basis that the person did not pass the character test. The decision was made in circumstances where it was accepted that Australia owed protection obligations to the person concerned which were required to be observed. As the law stood at the time, in the absence of the exercise by the Minister of some other statutory power to grant a visa (there being no indication that such exercise was in contemplation), the consequence was that the person would be indefinitely detained. In those circumstances, their Honours concluded (at [10]):

> The Minister was required to take into account the legal consequences of his decision. These consequences (indefinite detention) flowed from Australia's obligation of non-refoulement and the terms of the Act.

28 Their Honours distinguished other cases which were to the effect that there was nothing in the legislation to indicate that a potential difficulty with removing a non-citizen must be taken into account.

29 Ground 2 seeks to apply the principle expressed in *NMBZ* to a decision made to exercise the power conferred by s 501BA.

30 As I have indicated, in *Po'oi* it was concluded that there are no 'mandatory relevant considerations' in relation to forming the required satisfaction concerning the national interest and the exercise of the Minister's discretion for the purposes of s 501BA: at [54] (Kyrou and Needham JJ, Snaden J agreeing). However, in that case, the Full Court was not directly considering whether the Minister must consider the legal consequences of the exercise of s 501BA. The question was raised in *CMP25 v Minister for Immigration and Multicultural Affairs* [2025] FCAFC 199 but was not resolved because the Court disposed of the appeal on another point: see at [18]-[19] (Perry, Cheeseman and Shariff JJ).

31 Single judges of the Court have accepted that there is a duty to consider the legal consequences of an exercise of the discretion conferred by s 501BA in deciding whether to do so: see, for example, *KFTJ v Minister for Immigration, Citizenship and Multicultural Affairs* [2025] FCA 958 at [99] (Wigney J); *BTLD v Minister for Immigration and Multicultural Affairs* [2025] FCA 600; (2025) 310 FCR 606 at [21] (Burley J); *GCRF v Minister for Immigration, Citizenship and Multicultural Affairs* [2025] FCA 415 at [63] (Bennett J); and *Chapman v Minister for Immigration and Multicultural Affairs* [2025] FCA 24 at [26] (Lee J).

32 Where *NBMZ* has been applied, it has been said to require the Minister to take into account the practical consequences or practical realities of the decision: see *Cotterill v Minister for Immigration and Border Protection* [2016] FCAFC 61; (2016) 240 FCR 29 at [107] (North J), [129] (Kenny and Perry JJ); recently applied in *Deng v Minister for Immigration, Citizenship and Multicultural Affairs* [2025] FCA 260 at [12], [14], [17] (Shariff J); and *Rano v Minister for Home Affairs, Minister for Cyber Security* [2024] FCA 1003 (Feutrill J) at [4]-[6]. In *KFTJ*, Wigney J referred to 'likely practical consequences': at [117].

33 It has been said that the statutory framework requires the Minister to take into account the 'direct and immediate statutorily prescribed consequences' of the decision in contemplation: *Taulahi v Minister for Immigration and Border Protection* [2016] FCAFC 177; (2016) 246 FCR 146 at [84] (Kenny, Flick and Griffiths JJ). In that decision, their Honours expressed the

principle in *NBMZ* as giving effect to a requirement that 'in making any decision in exercise of a statutory power, the legal framework in which that decision is made must be taken into account'.

34 In *BTLD*, Burley J reasoned that the Minister's duty to have regard to legal consequences in the exercise of discretion under s 501BA is limited to direct consequences: at [21]. However, it was observed by Feutrill J in *Rano* that the Full Court in *Taulahi* did not expressly exclude indirect and non-immediate legal consequences from also being mandatory considerations: at [4]. Accordingly, the 'subject matter, scope and purpose of the legislation may well require a decision-maker to take into account indirect and non-immediate legal consequences that form part of the legal framework of a discretionary decision under that legislation where those consequences flow from the decision by operation of the Act': *Rano* at [6] (noting that *Rano* concerned s 501CA, not s 501BA).

35 Further, the view has been expressed that the principle only applies to legal consequences that are 'inevitable or certain' and not to those that are 'merely probable or arguable': *BNGP v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCAFC 111; (2023) 298 FCR 609 at [101] (Perry J, Bromwich and Kennett JJ agreeing). However, a different approach appears to have been taken in *Cotterill*. There, it was observed that in *NBMZ* it was 'virtually certain' on the facts that, if the Minister refused to grant a visa that the unsuccessful visa applicant would be kept in detention for an indefinite time. Even so, it was concluded in *Cotterill* that the legal consequence of indefinite detention was a mandatory consideration if it was 'a real possibility'.

36 Therefore, regard to the authorities appears to indicate a conflict in views as to the degree of likelihood of those legal consequences that must be taken into account for there to be a valid exercise of a statutory discretion. For the following reasons, the difference in views may reflect the nature of the principle.

37 As has been mentioned, regard to the subject matter, scope and purpose of an Act may lead to the conclusion, as a matter of construction, that certain considerations are considerations that must be taken into account for the valid exercise of the discretion. The authorities link the principle that is concerned with the legal consequences of a decision with the principle that a broad statutory discretion is limited by the subject matter, scope and purpose of the Act: see *NMBZ* at [9]; and *Taulahi* at [84]. That is to say, it is an approach to statutory construction of the same kind as that explained in *Peko-Wallsend* (an approach that is often applied).

Conceptually, the limits of the construction principle concerning legal consequences must accord with its character as a tool of statutory construction. Accordingly, it appears that the principle is properly stated in the following terms; namely, regard to the legal consequences which flow from the exercise of a statutory discretion in the legal framework within which the discretion is conferred may lead to the conclusion, as a matter of statutory construction, that the legal consequences must be taken into account for there to be a valid exercise of the discretion.

38 Consequently, in a particular case, the legislative framework may be such that a legal consequence that is not direct or certain is, nevertheless, a consequence of a kind which must be taken into account if there is to be a valid exercise of power. All will depend on the circumstances. It follows that, with respect, I agree with Feutrill J that the 'subject matter, scope and purpose of the legislation may well require a decision-maker to take into account indirect and non-immediate legal consequences that form part of the legal framework of a discretionary decision under that legislation where those consequences flow from the decision by operation of the Act'. Less obvious, less certain and less substantial legal consequences are unlikely to be a basis for the application of the principle. It should be remembered that in *NMBZ* the consequences were both certain and significant, namely indefinite detention. Nevertheless, all depends on the particular statutory context.

39 Therefore, there will be instances where the degree of remoteness of the legal consequence is to be evaluated in determining whether it is a matter that must be taken into account for a valid exercise of discretion. An example is the reasoning of Bromberg J in *DLJ18 v Minister for Home Affairs* [2019] FCAFC 236; (2019) 273 FCR 66 where his Honour said at [28]:

> … I do not accept that a lack of certainty as to whether and when the appellant may seek to return to Australia justifies a conclusion that the legal consequence of the appellant being precluded from returning to Australia is 'too remote' and consequently need not have been taken into account. Considered through the prism of the subject-matter, scope and purpose of the *Migration Act* and, bearing in mind that the legal consequence in question flows directly from regulations made to give effect to that Act, the consequence for a person the subject of a non-revocation decision that he or she would be precluded from returning to Australia is, in my view, clearly within the ambit of the statutory framework that the maker of a non-revocation decision has to have regard to.

40 In *Manebona v Assistant Minister for Citizenship and Multicultural Affairs* [2025] FCA 1342, Wheatley J considered that the legal consequence of s 501E depended on 'speculation as to whether or not an application for a particular kind of visa might be made': at [88]. For that

reason, her Honour doubted that the legal consequence of s 501E was a mandatory consideration in the exercise of s 501BA (at [88]):

> The direct and immediate consequence, prescribed by the Act of the Minister's decision under s 501BA, is that when an applicant's visa is cancelled, they will be detained as an unlawful non-citizen and will, as soon as reasonably practicable, be removed from Australia. It seems to be argued that a direct and immediate consequence is that an applicant may be unable make an application for a visa which is not a valid application for a visa, and hence is not to be considered, due to the operation of s 45, s 46(1)(d)(vi), s 47 and s 501E of the Act. However, s 501E(2) provides that subsection (1) does not prevent a person, at the time of application, making an application for a protection visa or a visa specified in the regulations for the purposes of the subsection. Hence, the consequences of the section are not direct and immediate, as it is dependent on the actions of an applicant, in terms of what visa they apply for. As s 501E of the Act is not a complete absolute bar to the making of a visa application, such that as a direct consequence of the decision under s 501BA, the application for a visa will not be considered a valid application for a visa, in all circumstances. This is also apparent because s 501E(1A) provides for what occurs in relation to the Minister's decision to refuse to grant a visa to the person, as mentioned in paragraph (1)(a) of that section.

41 Wheatley J placed reliance upon the reasoning in *DLJ18* in reaching that conclusion: see *Manebona* at [79]-[86].

42 There is a further issue that arises concerning the application of the construction principle regarding legal consequences, namely does the principle require regard by the decision-maker exercising the discretion to the specific statutory mechanism which gives rise to the legal consequence? If there is actual regard to the legal consequence (albeit not framed by reference to the precise legislative provisions that give rise to the consequence) then it seems to me that such regard would meet the requirement. Even if that is not so, issues must arise as to materiality in such a case: see, for example, *DLJ18*.

The contentions advanced to support Ground 2

43 Mr Fraser says that a legal consequence of the decision by the Minister to cancel his visa in the exercise of the power conferred by s 501BA was the operation of the bar imposed by s 501E upon making an application for a visa whilst in the migration zone (other than the limited exceptions that do not apply to Mr Fraser). He says that the reasons given by the Minister addressed the legal consequences of his decision (at para 98), but that part was 'silent as to 501E'. At that point, the Minister said:

> **Legal consequences of the decision**
>
> Mr FRASER has not made any claims which require assessment in relation to Australia's international non-refoulement obligations, nor does the other available evidence indicate that such an assessment is necessary in this case. Further, Mr FRASER is not covered by a protection finding as defined in s197C of the Act.

44 At the outset of the Minister's reasons, the Minister said (paras 1-2):

> This statement relates to my decision under s501BA of the *Migration Act 1958* (the Act) to set aside a decision made by the Administrative Review Tribunal (ART) and to cancel the Class BB Subclass 155 Five Year Resident Return visa held by Mr FRASER at the time of my decision.
>
> Mr FRASER does not hold, and has no outstanding application for, a protection visa or any other visa prescribed by the *Migration Regulations 1994* (Cth). As a result of my decision, Mr FRASER therefore no longer holds any visa, and all applications for any other visa have been finalised.

45 Mr Fraser contended that this part of the reasons did not engage with the distinct operation of s 501E which concerned his ability to apply for another visa whilst in the migration zone.

46 It was submitted that the failure to engage with s 501E was material because consideration of the legal consequence could realistically have altered the balance.

Ground 2 is not established

47 For visa applicants who are unable to seek a visa pursuant to the exceptions provided for by s 501E, the statutory bar imposed by s 501E is the inevitable and immediate consequence of the Minister exercising the power conferred by s 501BA. Whether the person seeks to apply for a protection visa has no bearing on the fact they are barred from all other visas once the Minister exercises s 501BA. Put another way, the bar is not dependent upon the making of a visa application. The framework of the legislation is such that s 501E imposes the consequence expressed in s 501E upon the cancellation of a visa in the exercise of the discretion conferred by s 501BA. Therefore, respectfully to those who have expressed a different view, I would characterise the legal consequence of the exercise of the discretion conferred by s 501BA that I have described as direct and immediate. Consequently, it was a legal consequence to which the principle relied upon by Mr Fraser applied.

48 However, for the following reasons, it was a consequence that the Minister did take into account in his reasoning.

49 The Minister had regard to the expectation of the Australian community which he framed in the following terms (para 64):

> The Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has engaged in serious conduct in breach of this expectation, or where there is an unacceptable risk that they may do so, the Australian community, as a norm, expects the Government to not allow such a non-citizen to enter or remain in Australia.

50 The Minister attributed that consideration 'significant weight towards a finding that it is in the national interest to cancel MR FRASER's visa' (para 68). In doing so, he approached his decision-making task on the basis that a legal consequence of his decision would be that Mr Fraser would not be allowed to remain in Australia.

51 The Minister's reasons also considered the consequences for the best interests of minor children if Mr Fraser's visa was cancelled. The reasoning was undertaken on the basis that a consequence of the cancellation would be his removal to Canada (para 78).

52 Elsewhere, the Minister considered the hardship to others if Mr Fraser 'is unable to remain in Australia' (para 91). This reasoning proceeded on the basis that a legal consequence of a decision to cancel his visa under s 501BA would be that Mr Fraser would be unable to remain in Australia.

53 In expressing his conclusion, the Minister reasoned as follows (at para 115):

> Mr FRASER has committed very serious crimes, involving the attempted manufacturing of drugs and repeated drug offending causing great harm and great cost to the Australian community. Non-citizens such as Mr FRASER who have a criminal history of such offences should not generally expect to be permitted to remain in Australia.

54 Elsewhere in his conclusion it was necessarily implicit in the reasoning of the Minister that a legal consequence of a decision to cancel Mr Fraser's visa in the national interest was that he would not be permitted to remain in Australia.

55 Therefore, it was apparent from the reasons given by the Minister that the Minister appreciated that the legal consequence of his decision would be that Mr Fraser would not be permitted to remain in Australia (being the relevant outcome that flowed from a cancellation of Mr Fraser's visa and the application of s 501E).

56 For those reasons, Ground 2 has not been made out.

57 Therefore, it is not necessary to consider the Minister's alternative contention based on materiality. However, if (contrary to the conclusion I have reached) the above reasoning is insufficient to meet the requirement that the Minister take into account the legal consequence effected by s 501E that Mr Fraser could not apply for a visa in the migration zone, then, this is a case where the error would not have been material: *DLJ18* at [16] (Flick J), [37]-[38] (Bromberg J), [90]-[91] (Snaden J). Section 501E was part of the legal basis for the consequence that the Minister had in view, namely that Mr Fraser would be removed from

Australia if his visa was cancelled. Express regard to s 501E and its consequences would not have altered the basis upon which the Minister's decision was made.

Conclusion and orders

58 For the reasons given, the application must be dismissed. It was accepted that costs should follow the event. There should be orders accordingly.

I certify that the preceding fifty-eight (58) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Colvin.

Associate: 

Dated: 25 March 2026