FEDERAL COURT OF AUSTRALIA

Williams v Minister for Immigration, Citizenship and Multicultural Affairs [2026] FCA 341

File number(s):	QUD 700 of 2024
Judgment of:	**LONGBOTTOM J**
Date of judgment:	9 April 2026
Catchwords:	**MIGRATION** – Application for judicial review of decision of Assistant Minister for Citizenship and Multicultural Affairs made under s 501BA of the *Migration Act 1958* (Cth) – Whether the cancellation of the Applicant's visa was legally unreasonable, illogical or irrational – Whether the Assistant Minister's decision involved error – Whether the decision was affected by jurisdictional error – Whether the error was material to the exercise of discretion – Application dismissed.
Legislation:	*Migration Act 1958* (Cth), ss 198, 474, 500(1), 501, 501(3A), 501(6), 501(7), 501BA, 501BA(2), 501CA *Migration Regulations 1994* (Cth), Sch 5
Cases cited:	*Assistant Minister for Immigration and Border Protection v Splendido* [2019] FCAFC 132; (2019) 271 FCR 595 *Bale v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCA 646 *BTLD v Minister for Immigration and Multicultural Affairs* [2025] FCA 600; (2025) 310 FCR 606 *Carrascalao v Minister for Immigration and Border Protection* [2017] FCAFC 107; (2017) 252 FCR 352 *CKT20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 124; (2022) 294 FCR 318 *Djokovic v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 3; (2022) 289 FCR 21 *DLJ18 v Minister for Home Affairs* [2019] FCAFC 236; (2019) 273 FCR 66 *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12; (2024) 280 CLR 321 *Masi-Haini v Minister for Home Affairs* [2023] FCAFC 126; (2023) 298 FCR 277

	Minister for Immigration and Border Protection v Eden [2016] FCAFC 28; (2016) 240 FCR 158 *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* [1996] HCA 6; (1996) 185 CLR 259 *MZAPC v Minister for Immigration and Border Protection* [2021] HCA 17; (2021) 273 CLR 506 *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 *Plaintiff S157/2002 v Commonwealth of Australia* [2003] HCA 2; (2003) 211 CLR 476 *Singh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] FCA 1273 *Splendido v Assistant Minister for Immigration and Border Protection (No 2)* [2018] FCA 1158 *Stoneley v Minister for Immigration and Multicultural Affairs* [2025] FCA 143 *Taulahi v Minister for Immigration and Border Protection* [2016] FCAFC 177; (2016) 246 FCR 146
Division:	General Division
Registry:	Queensland
National Practice Area:	Administrative and Constitutional Law and Human Rights
Number of paragraphs:	84
Date of last submission/s:	11 July 2025
Date of hearing:	10 June 2025
Counsel for the Applicant:	Dr J Donnelly and Mr E Vuu
Solicitor for the Applicant:	Samuta McComber Lawyers
Counsel for the Respondent:	Mr B McGlade
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ORDERS

QUD 700 of 2024

BETWEEN:	**SPEECH TONY DENZIL WILLIAMS** Applicant
AND:	**MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS** Respondent

ORDER MADE BY:	**LONGBOTTOM J**
DATE OF ORDER:	**9 APRIL 2026**

THE COURT ORDERS THAT:

1. The further amended originating application filed 25 June 2025 is dismissed.
2. The Applicant pay the Respondent's costs to be assessed if not agreed.

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

REASONS FOR JUDGMENT

LONGBOTTOM J:

INTRODUCTION

1 The Applicant seeks a review of the decision of the **Assistant Minister** for Citizenship and Multicultural Affairs made pursuant to s 501BA of the *Migration **Act** 1958* (Cth) to set aside the decision of the Administrative Appeals **Tribunal** revoking the cancellation of his Class TY Subclass 444 Special Category (Temporary) **visa** and cancel the visa (**cancellation decision**).

2 The Applicant is a citizen of New Zealand. He came to Australia as an eight-year-old on 25 September 2004. On 15 December 2022, the Applicant was convicted of grievous bodily harm for stabbing a person five times, with one of the wounds creating such a serious injury to his victim's leg that life-threatening blood loss ensued. The Applicant was sentenced to a term of imprisonment of four years and six months, to be suspended for five years after serving eighteen months. There followed, on 18 May 2023, the mandatory cancellation of his visa on character grounds under s 501(3A) of the Act because the Applicant had a "substantial criminal record" within the meaning of the Act (**mandatory decision**): Act, s 501(6)(a) and s 501(7)(c).

3 The Applicant requested a revocation of the mandatory decision. On 8 April 2024, a delegate of the Minister decided not to revoke the mandatory decision (**non-revocation decision**). The Applicant then applied to the Tribunal under s 500(1)(ba) of the Act for a review of the non-revocation decision. On 20 June 2024, the Tribunal set aside the non-revocation decision. The Tribunal substituted a decision that the cancellation of the visa be revoked (**Tribunal decision**).

4 On 23 September 2024, the Minister made the cancellation decision. The Assistant Minister found that the considerations against cancellation were outweighed by the serious national interest considerations. Relevantly, these included that the Applicant had committed serious crimes, the Australian community could be exposed to significant harm should he re-offend in a similar fashion, and the Assistant Minister could not rule out the possibility of further criminal or other serious conduct by the Applicant.

5 The Applicant contends the cancellation decision is affected by jurisdictional error: Act, s 474 and *Plaintiff S157/2002 v Commonwealth of Australia* [2003] HCA 2; (2003) 211 CLR 476.

The substance of his complaint, as outlined in the further amended originating application, can be distilled as follows:

(a) First, the Assistant Minister's treatment of the criminal history in dealing with the national interest. The Applicant contends the cancellation decision was legally unreasonable, illogical or irrational because:

  (i) the Assistant Minister said he would not have regard to offences in the criminal history for which no conviction was recorded, but did consider those "no conviction offences" in making the cancellation decision (Ground 1, Strand 1); and

  (ii) the Assistant Minister found that the "serious crimes" the Applicant had committed included affray and resist or hinder police in the execution of duty when there was no proper basis in the evidence to characterise those offences as serious or to reach a qualitative assessment that there was a risk to the Australian community, including should the Applicant re-offend (Ground 1, Strand 3); and

(b) Second, the way in which the Assistant Minister dealt with the legal consequences of the decision under s 501BA of the Act. The Applicant contends that the cancellation decision was legally unreasonable, illogical or irrational because the Assistant Minister found that cancelling the visa was an "intended consequence" of the operation of s 501 of the Act, when s 501BA of the Act confers a discretion and, alternatively, in making that finding, the Assistant Minister erred in the exercise of his discretion (Ground 1, Strand 2 and Ground 2).

6 The application will be dismissed. There **reasons** for the cancellation decision reveal missteps in logic by the Assistant Minister in dealing with the offences for which no conviction was recorded. I am also satisfied the Assistant Minister's finding with respect to the legal consequences of the decision was illogical and reflected a misconstruction of s 501BA of the Act. But those logical missteps and that misconstruction of s 501BA did not amount to jurisdictional error. That is because, for the reasons which follow, they were not material to the ultimate decision by the Assistant Minister to exercise the discretion to cancel the visa. Indeed, in one instance the misstep was not material to the conclusion the Assistant Minister reached with respect to a relevant consideration. I am persuaded that the cancellation decision would inevitably have been the same had those errors not been made.

NO CONVICTION OFFENCES IN THE CRIMINAL HISTORY

7 Ground 1, Strand 1 concerns entries in the Applicant's **criminal history** dated 11 July 2024 for offences for which no conviction was recorded. Those offences are: stealing property of value exceeding $5,000 (23 June 2015); contravention of a direction or requirement (18 September 2015); contravention of a domestic violence order (25 February 2020); breach of bail (7 August 2020); and contravention of a domestic violence order (5 May 2021) (**no conviction offences**).

How did the Assistant Minister say he would treat the no conviction offences?

8 The Assistant Minister referred to the no conviction offences in the reasons, stating that:

> 10. In the information I have considered there is reference to [the Applicant] engaging in conduct which resulted in the Brisbane Magistrates Court and Beenleigh Magistrates Court in June 2015, September 2015, February 2020, August 2020, and May 2021 ordering that no conviction is recorded … In circumstances where there is very limited information before me regarding that alleged conduct and where no conviction was recorded**, I have not had any regard to that information including: (a) any information about [the Applicant's] alleged conduct in relation to that incident; (b) the existence of any charges laid against [the Applicant] in relation to that alleged conduct; and (c) any relevant findings made by the AAT**.
>
> (Emphasis added)

9 The criminal history further identified that the Applicant had committed the following offences for which a conviction *was* recorded: affray (25 January 2017); resisting or hindering a police officer in the execution of duty (25 January 2017); receiving tainted property and fraud (dishonestly obtaining property from another) (30 April 2019); and grievous bodily harm (15 December 2022) (**conviction offences**).

10 The Applicant contends that, contrary to what is stated at [10] of the reasons, in making the cancellation decision the Assistant Minister had regard to the existence and the alleged conduct in relation to the no conviction offences and this was legally unreasonable, irrational or illogical: cf, ***Plaintiff M1/2021*** *v Minister for Home Affairs* [2022] HCA 17; (2022) 275 CLR 582 at [27] (Kiefel CJ, Keane, Gordon and Steward JJ) and ***Masi-Haini*** *v Minister for Home Affairs* [2023] FCAFC 126; (2023) 298 FCR 277 at [50]-[54] (Markovic, Meagher and Kennett JJ).

How did the Assistant Minister treat the no conviction offences?

Seriousness of the Applicant's criminal conduct

11 The first reference to the no conviction offences appears at [19]-[21] of the reasons where the Assistant Minister was dealing with the national interest and the seriousness of the Applicant's criminal conduct.

12 The reasons record:

> 19. The Australian government considers that all offending involving violence or sexual assault, particularly against women or children, or otherwise constituting family violence, is viewed very seriously by the Australian community.
>
> 20. Offending involving actual, threatened, or implied family violence is of special concern to the Australian community, because of the special vulnerability of victims who live in a domestic relationship with and/or are dependent on the perpetrator, and the very harmful impact of such conduct on family life, especially on children who experience or witness it.
>
> 21. **[The Applicant's] offending includes matters falling within the scope of the above considerations, as further detailed below**. The National Criminal History Check dated 11 July 2024 records that [the Applicant] has a criminal history which spans from January 2017 to December 2022.
>
> (Emphasis added)

13 The Applicant argues that the sentence at [21] of the reasons (in emphasis in the extract above) is to be read as a reference to the no conviction offences concerning the contravention of a domestic violence order. That is because they are the only entries in the criminal history that might concern "offending … against women or children", as referred to by the Assistant Minister at [19] of the reasons.

14 The Respondent refutes that the reasons should be so construed. That is because the Applicant's offending "as further detailed below" in the reasons (at [22]-[35]) solely concerned the conviction offences including, relevantly, grievous bodily harm, affray and resist or hinder police in the execution of duty. The Respondent argues those conviction offences can properly be characterised as "offending involving violence" (as referred to at [19] of the reasons), such that the impugned sentence at [21] of the reasons should be read as a reference to grievous bodily harm, affray and resist or hinder police.

15 I agree the reasons should be construed as the Respondent contends. The category of offending identified at [19] of the reasons was not confined to offending against women or children but extended to "all offending involving violence or sexual assault". At [21] of the reasons, the

Assistant Minister refers to a subset of that general category of offending, as "further detailed below".

16 There is *no* reference in what is "further detailed below" to the no conviction offence for the contravention of a domestic violence order. Rather, the Assistant Minister engaged in a detailed consideration of the circumstances surrounding the Applicant's conviction for grievous bodily harm. Notably, this included an overview of the particulars of the violence the subject of that offending, including the Applicant stabbing the victim five times and, together with his co-offenders, punching and kicking the victim in the head. That analysis concluded in the Assistant Minister finding that the nature of the grievous bodily harm offending was "very serious and unacceptable" and that "violent crimes are viewed very seriously by the Australian Government and the Australian community": reasons at [33]-[34]. The Assistant Minister also referred, albeit passingly, to the Applicant's convictions for affray and resist or hinder police in the execution of duty. Affray does, and resist or hinder police can, involve violence or a threat of violence. Thus, read in context, the Assistant Minister's statement that the Applicant's offending "includes matters falling within the scope" of "offending involving violence or sexual assault" (as identified at [19] of the reasons) is sensibly understood to be a reference to the conviction offences involving violence, most notably his conviction for grievous bodily harm.

Ties to Australia

17 The second reference to the no conviction offences appears at [79] of the reasons where the Assistant Minister was dealing with the discretionary considerations that might support a decision not to set aside the Tribunal decision and cancel the visa, even though the Assistant Minister was satisfied that the Applicant did not pass the character test and it was in the national interest to cancel the visa.

18 Under the heading, "Ties to Australia", the reasons record:

> 78. [The Applicant] has resided in Australia for 19 years and 10 months, having arrived as a child of 8 years .. . I have taken into account the length of time that [The Applicant] has ordinarily resided in Australia, and have afforded particular weight to the fact that this period began when [The Applicant] was a child. Based on [the Applicant's] circumstances, including his arrival at a young age, completion of primary and secondary education and involvement in community groups, I consider it appropriate to interpret his formative years as referring to the period of time in his childhood years.

> 79. **I have also considered that [the Applicant] began offending 10 years after arriving Australia and for a period of 5 years, had repeatedly offended**.
>
> (Emphasis added)

19 The Applicant argues that [79] of the reasons is to be read as a reference to the no conviction offences in the criminal history between June 2015 and February 2020. That is because the period of "10 years after" the Applicant arrived in Australia was September 2014 and the "period of 5 years" from that date captures the entries in the criminal history for June and September 2015 and February 2020.

20 Again, the Respondent refutes that the reasons should be construed as the Applicant contends. The Respondent argues that [79] should be understood as the Assistant Minister stating the relevant period in a "brough, rough, rounded or approximate way" or "at worst, stating the relevant time period in an imprecise way": cf, *Minister for Immigration and Ethnic Affairs v* ***Wu Shan Liang*** [1996] HCA 6; (1996) 185 CLR 259 at 271-272 (Brennan CJ, Toohey, McHugh and Gummow JJ).

21 The Respondent emphasises the description of the Applicant's criminal history at [21] of the reasons as "span[ing] from January 2017 to December 2022". The Respondent argues that [79] of the reasons is to be read as referring to this period, which would capture only the conviction offences in the criminal history, commencing with the convictions for affray and resist or hinder police (on 25 January 2017), 12 years and eight months after the Applicant arrived in Australia.

22 The Respondent also notes that the material before the Assistant Minister included a psychologist's report of Dr Yoxall dated 16 January 2024 (**Yoxall Report**). The Yoxall Report records the Applicant's account of the offending the subject of his convictions for affray and resist or hinder police. The Applicant told Dr Yoxall he was "20 years old" at the time he committed those offences. The Applicant was born on 9 June 1996. The Respondent argues that the "offending" to which the Assistant Minister refers at [79] of the reasons is to the convictions for affray and resist or hinder police in the execution of duty because the Applicant turned 20 on 9 June 2016, so those offences could have been committed as early as 11 years and eight months after the Applicant arrived in Australia (on 25 September 2004).

23 I do not agree with the Respondent's construction of [79] of the reasons. I accept that the reasons are not to be read with "an eye keenly attuned to the perception of error": cf, *Wu Shan Liang* at 272. But it strains the words "began offending 10 years after arriving in Australia"

beyond sensible limits to contend that they are to be read as a reference to the first conviction offences for affray and resist or hinder police – which occurred *12 years and four months* after the Applicant arrived in Australia– rather than the first no conviction offence for stealing property – which occurred *10 years, eight months and 30 days* after the Applicant arrived in Australia on 25 September 2004. The Respondent's reliance on the reference in the Yoxall Report to the offences of affray and resist or hinder police in the execution of duty being committed when the Applicant was 20 and, therefore, possibly 11 years and eight months after he arrived in Australia, also does not assist. Eleven years and eight months is not 10 years after the Applicant arrived in Australia.

Was it legally unreasonable for the Assistant Minister to consider the no conviction offences in considering the Applicant's ties to Australia?

24 It follows that the reasons include an illogical step in that, having said at [10] of the reasons that he would not have regard to the no conviction offences, the Assistant Minister took them into account at [79] of the reasons when assessing the strength, nature and duration of the Applicant's ties to Australia relevant to the exercise of the discretion under s 501BA of the Act whether to cancel the visa.

25 However, I am not satisfied that the cancellation decision was infected by illogicality or irrationality in the sense described by the Full Court in ***Djokovic*** *v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 3; (2022) 289 FCR 21 at [33]-[34] (Allsop CJ, Besanko and O'Callaghan JJ), such that it constitutes jurisdictional error.

26 The conclusion reached by the Assistant Minister at [105] of the reasons was that:

> 105. I have considered the strength, nature and duration of [The Applicant's] ties to Australia and find that on balance, they weigh very strongly against the cancellation of his visa.

27 That conclusion, which was favourable to the Applicant, could have been reached logically or rationally on the available material, irrespective of the misstep with respect to the no conviction offences. Indeed, as much is made clear by the preceding paragraph of the reasons in which the Assistant Minister states:

> 104. I have taken into consideration the length of time that [The Applicant] has been ordinarily resident in Australia, regardless of his criminal history. Based on his circumstances overall, including his arrival at a young age, completion of his primary and secondary education, and his involvement in the community, I consider he has spent a significant portion of his formative years in Australia.

> I also note that he has spent a period time in the community and had significant ties and has contributed positively through his work life and community activities.

28 Thus, the illogicality with respect to the criminal history was not material to the Assistant Minister's conclusion with respect to the strength of the Applicant's ties to Australia, let alone the ultimate decision by the Assistant Minister to exercise the discretion under s 501BA adversely to the Applicant because the national interest considerations outweighed the considerations against cancellation of the visa: cf, *Djokovic* at [30]-[34]; see also, *Masi-Haini* at [50] and [54].

29 Ground 1, Strand 1 is not established.

ASSESSMENT OF OFFENDING AND RISK

30 Ground 1, Strand 3 concerns the Assistant Minister's findings that the Applicant's convictions for affray and resist or hinder police in the execution of duty were "serious" or "very serious", that there was a likelihood that the Applicant would re-offend, and that there was a risk to the Australian community should the Applicant re-offend in a similar fashion and continue to breach the law.

What did the Assistant Minister find?

31 In dealing with the national interest, the Assistant Minister considered the Applicant's criminal past relevant to the seriousness of his offending, the risk to the Australian community and societal expectations as to whether a non-citizen with his criminal history should be permitted to remain.

32 As detailed above, the focus of that consideration was the nature of the Applicant's grievous bodily harm offending. But the Assistant Minister also found that the Applicant's conviction "in relation to his offences against a police officer in the execution of duty should also be viewed very seriously" (at [35]) and found with respect to the national interest that:

> 65. In the specific case of [The Applicant], his criminal conduct has included, relevant and amongst other things, grievous bodily harm and acts of violence against a member of the Australian public and a crime against government officials (police officers) in the execution of their duties. I have identified the protection of the Australian community, nature and seriousness of his offences, and his criminal history in the 5-year period between 2017 to 2022 to be very serious. I also placed significant weight on my finding that there is a likelihood of [the Applicant] reoffending, as well as my finding that it is the expectation of the Australian community that a non-citizen in [the Applicant's] position should not hold a visa.

33 Those intermediate findings culminated in the concluding analysis by the Assistant Minister that:

> 126. I have given very significant weight to matters weighing in favour of cancellation. In doing so, I considered the very serious nature of the crimes committed, and have noted the factors that had contributed to [the Applicant's] commission of the offences.
>
> 127. [The Applicant] has committed serious crimes, including that of *grievous bodily harm, affray and resist or hinder police officer in the execution of duty*. [The Applicant] has a history of offending causing great harm and great cost to the Australian community. Non-citizens such as [the Applicant] who have a criminal history of such offences should not generally expect to be permitted to remain in Australia.
>
> 128. I find that the Australian community **could be exposed to significant harm should [the Applicant] reoffend in a similar fashion, and continue to breach the law**. I could not rule out the possibility of further criminal or other very serious conduct by [the Applicant]. **The Australian community should not tolerate any risk of further harm**.
>
> 129. Noting that [the Applicant] has lived in Australia for most of his life from a young age, I have taken into account that the Australian community may afford a higher level of tolerance of criminal or other serious conduct by [the Applicant] than it would otherwise. However, I also recognise that where great harm could be inflicted on the Australian community, even strong countervailing considerations are generally insufficient to warrant not cancelling the visa.
>
> 130. In addition to the need to protect the Australian community from risks of harm, I have also considered what the community would expect in relation to non-citizens. I am of the view that the Australian community generally would expect non-citizens who have a **very serious criminal history involving violence**, not to continue to hold a visa, **especially where the non-citizen continues to pose a significant risk to the Australian community**.
>
> (Emphasis added)

What does the Applicant say about the findings?

34 This ground evolved during the hearing. In oral submissions, the Applicant made a series of complaints about the Assistant Minister's findings regarding the seriousness of his offending. Those complaints were many and varied, ranging from the use of the plural "officials" in [65] of the reasons to refer to the offence of resist or hinder police (singular) in the execution of duty, to the use of the label "serious crimes" at [127] to refer collectively to grievous bodily harm, affray and resist or hinder police.

35 Following the hearing, with the consent of the Respondent, the Applicant filed a further amended originating application. The substance of the complaint there pleaded is to the findings at [35] and [65] and those at [128] and [130] of the reasons (in emphasis above). The

Applicant contends that those findings are without a proper evidentiary basis capable of rationally supporting each individual finding or, alternatively, when taken together, found a predictive finding concerning the Applicant's future risk of re-offending and/or the risk that he poses to the Australian community.

36 Those submissions are founded in ***Splendido*** *v Assistant Minister for Immigration and Border Protection (No 2)* [2018] FCA 1158, in which Steward J decided that a finding by a decision-maker that "there existed a 'likelihood' that the applicant would re-offend and, accordingly, that he represented an 'unacceptable risk of harm to the Australian community'" could not rationally be grounded, in and of themselves, on the applicant's national police certificate, "which recorded basal information about each offence for which he was convicted": at [12] and [31]. The Full Court of the Federal Court upheld that decision on appeal: *Assistant Minister for Immigration and Border Protection v Splendido* [2019] FCAFC 132; (2019) 271 FCR 595 (***Splendido FC***) at [71]-[78] (Mortimer J with whom Moshinsky J (at [113]) and Wheelahan J (at [132]) agreed).

First limb: affray and resist or hinder police in the execution of duty

37 The first limb of this complaint is the Assistant Minister's characterisation of the convictions of affray and resist or hinder police in the execution of duty as "serious" or "very serious". The Applicant was convicted in absentia for those offences. The Applicant does not seek to go behind those convictions to argue, in effect, that the offences were not committed. The Applicant also accepts that affray involves an act of violence against another person. Notwithstanding he argues there was a "paucity of evidence" to suggest the factual circumstances for the convictions were serious, particularly when compared to his conviction for grievous bodily harm.

38 The Applicant also relies on the following narrative of the offending as recorded in the Yoxall Report:

> [The Applicant] acknowledged that the affray conviction arose from a situation wherein he and two friends were out in Sydney during a trip that he took to Sydney to visit his father. He was 20 years old. He said that he was intoxicated by alcohol**. He said that his friends got into a fight and he became involved and was assaulted. He said that police broke up the fight and he was arrested as he was involved. He said that when police arrested him, he was 'wriggling about' and not cooperating and was subsequently also charged with resist arrest.** He said that his offending was 'stupid' and 'immature' and he regrets it. He realises now that his association with others who were 'doing the wrong thing' has contributed to his offending history.
>
> (Emphasis added)

39 The Yoxall Report formed part of the material before the Assistant Minister. The Applicant submits there is a "conspicuous absence" of any reference to this narrative in that part of the reasons where the Assistant Minister is dealing with the seriousness of the offending for affray and resist or hinder police. He argues that the "obvious inference" is that the Assistant Minister had no regard to the Yoxall Report insofar as it related to that narrative, which the Applicant characterises as supporting the conclusion that the offending was of "low objective seriousness".

Were the findings by the Assistant Minister as to the seriousness of the convictions for affray and resist or hinder police in the execution of duty rationally supported by the evidence?

40 The findings by the Assistant Minister that the convictions for affray and resist or hinder police in the execution of duty were rationally founded in the evidence. That is for the following reasons.

41 First, irrespective of where the offending sat on the range of seriousness for the offence of affray or the offence of resist or hinder police, the description in the criminal history rationally founded the characterisation of each offence as serious. That is because the offending involved respectively violence (an affray) and a police officer in the execution of duty (resist or hinder). The fact the Applicant was convicted in absentia does not render the finding irrational. The Applicant was convicted. The description in the criminal history was capable, in and of itself, of rationally founding the view expressed by the Assistant Minister at [35], [65] and [127] of the reasons: cf, *Splendido* at [30].

42 Second, the narrative in the Yoxall Report did not render that characterisation of the offending irrational. I am not persuaded that the Applicant has discharged his onus of establishing that the Assistant Minister did *not* have regard to the Yoxall Report in making the relevant findings. The Assistant Minister stated at [3] of the reasons that he "had regard to the documents provided by the Department" in making the cancellation decision. Those documents included the Yoxall Report. Moreover, the reasons include a detailed consideration of the Yoxall Report by the Assistant Minister, particularly in the assessment of risk to the Australian community (eg, reasons at [40]-[42], [44], [53] and [54]): *Carrascalao v Minister for Immigration and Border Protection* [2017] FCAFC 107; (2017) 252 FCR 352 at [49] (Griffiths, White and Bromwich JJ).

43 But in any event, as the Respondent highlights, the vice with the Applicant's submission is that it presupposes that the exercise being undertaken by the Assistant Minister involved an

objective evaluation of the seriousness of the offending. The relevant findings were not expressed as objective conclusions, nor were they required to be: cf, *Minister for Immigration and Border Protection v Eden* [2016] FCAFC 28; (2016) 240 FCR 158 at [68]-[69] (Allsop CJ, Griffiths and Wigney JJ). The narrative recorded in the Yoxall Report did not deprive that finding of a rational basis because it identified the Applicant got involved in a fight (affray) and was "wriggling about" and not cooperating with a police officer attempting, in the execution of duty, to arrest him. That narrative is consistent with a rational, but subjective, conclusion that the offending was serious.

44 Third, I do not accept that the reasons are to be read as placing the Applicant's convictions for affray and resist or hinder police in the execution of offending in the same category of seriousness as his conviction for grievous bodily harm. As much is made clear by [30] of the reasons where the Assistant Minister observes "that there has been a general trend of increasing seriousness" in the Applicant's offending, noting that his "offending began with affray and resisting or hindering a police officer, and it eventually developed into grievous bodily harm to an individual". It may be accepted that the reasons variously refer to the convictions for resist or hinder police as serious or very serious (at [35] and [65]) to affray as serious (at [65]) and collectively to the offences of grievous bodily harm, affray and resist or hinder police as "serious crimes" (at [127]). But read in context, they are sensibly understood as a statement that each offence is, in and of itself, serious and not a statement that the convictions for affray and resist or hinder police in the execution of duty are at the same level of seriousness as grievous bodily harm.

45 Fourth, and to the extent to which it is still pressed by the Applicant, I am not persuaded that perfunctory errors such as the use of the plural "officials" in [65] of the reasons to refer to the offence of resist or hinder police (singular) is anything more than looseness in language on the part of the Assistant Minister: *Wu Shan Liang* at 272; see also, reasons at [35]. In any event, any such perfunctory errors were immaterial to the reasoning and findings made by the Assistant Minister with respect to the seriousness of the Applicant's offending: *Masi-Haini* at [54].

46 The Assistant Minister made an essentially subjective finding that the Applicant committed the offences of affray and resist or hinder police in the execution of duty and that they were "serious crimes". The descriptive information in the criminal history about that offending and the account given by the Applicant to Dr Yoxall were individually and cumulatively capable of

establishing that qualitative assessment of the character of the crimes in issue: cf, *Splendido FC* at [71].

Second limb: qualitative assessments as to risk

47 The second limb of the complaint concerns the qualitative assessments by the Assistant Minister that the Applicant continued to pose a significant risk to the Australian community and that the Australian community would be exposed to significant harm should he re-offend in a similar fashion.

48 Those findings were not, however, solely based on the criminal history. As appears from the reasons, the Assistant Minister also had regard to the sentencing remarks and police report relating to his convictions for grievous bodily harm, as well as the matters identified in the Yoxall Report relevant to his risk of re-offending.

49 In dealing with the seriousness of the Applicant's criminal conduct, the Assistant Minister outlined:

> 31. I have also had regard to the fact that [the Applicant] had been sentenced to a term of imprisonment for his *Grievous Bodily Harm* offence. Sentences involving terms of imprisonment are the last resort in the sentencing hierarchy. Where a court has sentenced an offender to a term of custodial imprisonment, this should be viewed as a reflection of the objective seriousness of the offences involved. The courts have imposed a custodial sentence on [the Applicant] which indicates that the District Court has viewed the relevant offending as very serious.
>
> 32. Furthermore, and as summarised above, the physical consequences of [the Applicant's] offending on members of the Australian community as a result of his offence of *grievous bodily harm* are demonstrated and set out in the sentencing remarks and police report as follows:
>
> - The harm caused to the victim was "*life threatening*", and it was only the work of very highly trained surgeons that prevented the victim from dying **Attachment B**;
> - The victim was stabbed by [the Applicant] 5 separate times, with at least one of the wounds creating such a serious injury to the victim's leg that life-endangering blood loss followed **Attachment B**; and
> - The victim was rushed to hospital for emergency care, and obtained "*several deep lacerations to his torso and upper right thigh*" **Attachment Cl**.

50 The Assistant Minister went on to deal with the risk to the Australian community by reference to a range of material including, relevantly, the Yoxall Report. The Assistant Minister outlined in this respect that:

> 40. … Dr Yoxall found that [the Applicant] was a survivor of childhood trauma, suffered from complex post-traumatic stress disorder (PTSD), used alcohol as a "maladaptive coping mechanism", struggled with poor judgement, impulsivity, poor emotional self-regulation, depression and suicidal ideation. Dr Yoxall also observed that [the Applicant] had a history of alcohol abuse which commenced from the age of 15, he was a binge drinker, would often consume 750ml of spirits (often vodka) in one session and used cannabis intermittently and cocaine on one occasion prior to the night of the offending. The report also states that [the Applicant] underwent a pre-sentence assessment with psychologist Mr Peter Stoker, who found that [the Applicant] had "*serious mental health problems including major depression with psychotic features*", had an alcohol abuse disorder and may suffer from attention deficit hyperactivity disorder (ADHD **Attachment J**.
>
> 41. Dr Yoxall considered that all of these factors, combined with his immaturity and drug use, culminated in the grievous bodily harm offence of 24 July 2020 **Attachment J**.

51 The Assistant Minister then considered other information before him, including a statement of the Applicant attesting to his remorse, as well as evidence that the Applicant had participated in a number of rehabilitation programs while in prison. The Assistant Minister outlined in the reasons that:

> 50. Dr Yoxall also advises, and [the Applicant] submits, that given the degree of change [the Applicant] has demonstrated, if he "remains abstinent from alcohol and drugs and any association with those who provide negative social influence, and he manages his mental health, then his risk of violent reoffending will be low" **Attachments J and K**.

52 The Assistant Minister stated that:

> 54. Based on the evidence before me, I accept that [the Applicant] has engaged in rehabilitative programs and activities, and that there are some protective factors available to him via living with his family and being offered employment upon his release into the community. **However, I cannot ignore that such rehabilitative measures and protective factors have been tested in the community for a short time, in circumstances where [the Applicant] has been in prison and immigration detention from December 2022 to 20 June 2024**. As suggested by Dr Yoxall, [the Applicant's] risk of reoffending is dependent his ability maintain his mental health, abstain from alcohol and drugs, and ensureing (*sic*) he has positive prosocial friends and supports **Attachment J**.
>
> 57. A number of factors, as outlined above, may have contributed to [the Applicant's] offending behaviour. I note that [the Applicant] has engaged with rehabilitative programs and activities, including the completion of the anger management course, SSI Explore Program, mindfulness and resilience courses, and that he has expressed remorse for his actions and appears to have an understanding of the impact of his behaviour on his victim. He has also been offered employment upon his release into the community and would reside with his grandparents. **I am also concerned that [the Applicant's] low risk of reoffending is largely dependent on him maintaining the mitigating factors described in Dr Yoxell's report**. **On balance, I have found that**

> **there remains an ongoing, albeit somewhat reduced, likelihood that [the Applicant] will reoffend. [the Applicant's] conduct is such that I consider that any risk of his offending being repeated is unacceptable**.
>
> 58. Considering the nature and seriousness of [the Applicant's] conduct, the potential harm to the Australian community should the non-citizen commit further offences or engage in other serious conduct, and taking into account the likelihood of [the Applicant] reoffending, I consider that the need to protect the Australian community from criminal or other serious conduct weighs heavily in support of visa cancellation being in the national interest.
>
> (Emphasis added)

53 That conclusion is reflected in the ultimate finding made by the Assistant Minister at [130] of the reasons that the Applicant continued to pose a significant risk to the Australian community. As appears from that overview, the qualitative assessment undertaken by the Assistant Minister was not based solely on the criminal history: cf, *Splendido* at [31]. Rather, it was based upon a range of material including, relevantly, the Yoxall Report which explicitly dealt with the risk of the Applicant re-offending.

Was the qualitative assessment of risk by the Assistant Minister rationally founded in the evidence?

54 The material upon which the Assistant Minister relied (as outlined above) was capable of rationally supporting the findings he made: firstly, that the Applicant had a very serious criminal history involving violence; secondly, and relatedly, that the Australian community could be exposed to serious harm should he re-offend; and thirdly, that the Applicant continues to pose a significant risk to the Australian community.

55 Insofar as it concerns the first finding, the details of the nature of the offending the subject of the conviction for grievous bodily harm – including its description of the acts constituting the offence and the life-threatening injuries those acts caused – was capable of rationally founding the characterisation that the Applicant had a very serious criminal history involving violence. The details of that offending, and the harm it caused, was also capable of rationally founding the second related finding that the Australian community could be exposed to serious harm should he re-offend. It is tolerably clear given the detailed consideration in the reasons to that offending and the harm it caused that the impugned conclusions at [128] and [130] were to the conviction for grievous bodily harm and not the convictions for affray and resist or hinder police in the execution of duty.

56 Insofar as it concerns the third finding, the opinions expressed in the Yoxall Report with respect to the protective and risk factors with respect to the Applicant re-offending were rationally

capable of founding the conclusion that he continued to pose a significant risk to the Australian community. As appears from the reasons, it was the capacity of the Applicant to maintain each of the conditions identified by Dr Yoxall as relevant to the risk of re-offending and the relatively short period in which those rehabilitative and protective factors had been tested, that founded the finding the Assistant Minister made about the risk of re-offending. That finding has an evidentiary basis. In any event, as appears from [57] and [128] of the reasons, the decisive consideration for the Assistant Minister was that any risk of re-offending was unacceptable: cf, *Masi-Haini* at [50]-[54].

57 For these reasons, the individual and cumulative findings made by the Assistant Minister, and put in issue by the Applicant, were rationally supported by the material by reference to which the cancellation decision was made.

58 Ground 1, Strand 3 is not established.

LEGAL CONSEQUENCES OF THE DECISION

59 Ground 1, Strand 2 and Ground 2 concern the conclusion the Assistant Minister made in dealing with the legal consequences of the decision he was making under s 501BA of the Act. The Applicant complains that the finding made by the Assistant Minister in that part of the reasons was legally unreasonable or, alternatively, reflected a misconstruction of the power that was being exercised.

What was the Assistant Minister required to do?

60 In exercising the discretion under s 501BA, the Assistant Minister was required to have regard to the "direct and immediate statutorily prescribed consequences" the Act attributes to the decision: *Taulahi v Minister for Immigration and Border Protection* [2016] FCAFC 177; (2016) 246 FCR 146 at [84] (Kenny, Flick and Griffiths JJ), citing *NBMZ v Minister for Immigration and Border Protection* [2014] FCAFC 38; (2014) 220 FCR 1 (Allsop CJ, Buchanan and Katzmann JJ); and *BTLD v Minister for Immigration and Multicultural Affairs* [2025] FCA 600; (2025) 310 FCR 606 at [20]-[21] (Burley J). The parameters of those legal consequences are in issue between the parties, but it is uncontroversial that they include the liability of the Applicant to be removed from Australia: Act, s 198; see also, ***DLJ18*** *v Minister for Home Affairs* [2019] FCAFC 236; (2019) 273 FCR 66 at [15] (Flick J) and [84]-[87] (Snaden J); cf, at [28] (Bromberg J).

What did the Assistant Minister find?

61 In dealing with the legal consequences of the decision, the reasons record:

> **Legal consequences of the decision**
>
> 106. [The Applicant] 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, [The Applicant] is not covered by a protection finding as defined in S197C of the Act.
>
> 107. [The Applicant] submits that the prospect of permanent exclusion from Australia represents a grave legal consequence for him, and that this outcome, which effectively severs his ability to return to Australia, must be considered a significant factor …
>
> 108. **While I accept that the removal and visa limitations which result from a decision to cancel [the Applicant's] visa would likely sever his ability to return to Australia, I find that this is the intended consequence of the operation of s 501 of the Act. Accordingly, I afford this consideration neutral weight.**
>
> (Emphasis added)

What do the parties contend about that finding?

62 The Applicant contends that the reasoning at [108] is legally unreasonable because it involved an element of circularity and attributed to Parliament an intention or preference for making an adverse decision, when no such intention exists given the discretion conferred under s 501BA of the Act.

63 The Applicant further contends that the Assistant Minister's approach of attributing neutral weight to the legal consequences of the decision, on the basis that Parliament intended such consequences, reflects a misconstruction of s 501BA: ***Singh*** *v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] FCA 1273 at [31]-[34] (Rangiah J); cf, ***Stoneley*** *v Minister for Immigration and Multicultural Affairs* [2025] FCA 143 at [34]-[35] (Charlesworth J).

64 The Respondent disputes that the reasons show that the Assistant Minister proceeded on the presumption that Parliament intended or expressed a preference for an adverse decision under s 501BA of the Act. The Respondent submits that the attribution of "neutral weight" to the legal consequences of the decision can be understood as reflecting that the legal consequences of the decision were subsumed into the Assistant Minister's evaluation of the other prescribed considerations: cf, *Stoneley* at [37].

65 As these submissions reveal, much of the written and oral arguments of the parties were devoted to the analogies that may be drawn from the reasons considered in *Singh* and *Stoneley* and the correctness of those decisions. Those decisions (and thus those submissions) are of limited assistance because, as the parties rightly acknowledge, *Singh* and *Stoneley* involved a different section of the Act (s 501CA) and, in any event, turned on their own facts. While comparisons may be drawn, the reasons and facts and circumstances dealt with in those cases are not so similar as to compel a particular result here.

Did the Assistant Minister err in the exercise of the discretion and was that finding irrational or illogical?

66 The process of reasoning followed by the Assistant Minister in reaching the conclusion at [108] was:

(a) I accept that a decision to cancel the visa would result in adverse consequences for the Applicant;

(b) This is the intended consequence of the operation of s 501 of the Act; and

(c) Accordingly, I afford this consideration [legal consequences of the decision] neutral weight.

67 It is tolerably clear that the reference to s 501 is to the mandatory cancellation of the Applicant's visa under s 501(3A) of the Act on character grounds. While there may be some dispute as to their precise scope, the Assistant Minister's statement that adverse consequences are intended by s 501 is accurate: cf, *Stoneley* at [35]. But the intended consequences of the *operation* of s 501 cannot rationally inform the conclusion that "accordingly" the legal consequences of the *decision the Minister is tasked with making* under s 501BA of the Act should be afforded neutral weight. That is because the decision under s 501BA of the Act involves the exercise of a *discretion* by the Assistant Minister. Given that discretion, adverse consequences are not "intended" by s 501BA and would only follow if the Assistant Minister (being satisfied of the criteria in s 501BA(2)(a) and s 501BA(2)(b)) determined to exercise the power (here) to set aside the Tribunal decision and cancel the visa.

68 I am not persuaded that I should read the reference to "neutral weight" in [108] as reflecting that the Assistant Minister subsumed his consideration of the legal consequences into the evaluation of the other prescribed considerations: cf, *Stoneley* at [37]. That is not what the reasons state: *CKT20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 124; (2022) 294 FCR 318 at [133] (Katzmann,

Charlesworth and Burley JJ) and the authorities there cited; cf, *Stoneley* at [27] and [37]. The vice with the finding at [108] is that it reflects a misunderstanding of the power the Assistant Minister was exercising. That power was discretionary (not mandatory) and, as such, any adverse legal consequences from exercising the discretion under s 501BA of the Act could not be construed as "intended".

69 It follows that I am satisfied that in making the finding at [108] of the reasons, the Assistant Minister erred in the construction of s 501BA of the Act and, further, that finding was illogical.

Materiality

What is required to establish that the error is jurisdictional or that the decision is legally unreasonable?

70 In determining materiality, the relevant inquiry is whether there is a realistic possibility that the decision that was in fact made *could* (not would) have been different if the error had not occurred: ***LPDT*** *v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12; (2024) 280 CLR 321 at [7] and [14] (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ). The qualification "realistic" is used to distinguish the assessment of the possibility of a different outcome from one where the possibility is fanciful or improbable: *LPDT* at [14]. While the onus is on the Applicant, the threshold of materiality to establish jurisdictional error is not demanding or onerous: *LPDT* at [10] and [14].

71 As the High Court explained in *LPDT* (at [16]):

> In sum, unless there is identified a basis on which it can be affirmatively concluded that the outcome would inevitably have been the same had the error not been made, once an applicant **establishes that there has been an error and demonstrates that there exists a realistic possibility that the outcome of the decision could have been different had that error not been made**, the threshold of materiality will have been met (and curial relief will be justified subject to any issue of utility or discretion).
>
> (Emphasis added)

72 If, in the final result, a decision is legally unreasonable, then materiality is implicit in that conclusion and no further threshold needs to be met: *Masi-Haini* at [52] and the authorities there cited; *LPDT* at [6]; and *MZAPC v Minister for Immigration and Border Protection* [2021] HCA 17; (2021) 273 CLR 506 at [33] (Kiefel CJ, Gageler, Keane and Gleeson JJ). However, the characterisation of a decision (or state of satisfaction) as legally unreasonable is not easily made and not every lapse of logic will give rise to jurisdictional error: *Djokovic* at [33]-[34]; see also, *Masi-Haini* at [50]-[54].

73 As the Full Court explained in *Djokovic* (at [35]):

> Ultimately, the question is whether the satisfaction of the relevant state of affairs or matter **was irrational, illogical** or not based on findings or inferences of fact supported by logical grounds… **such that it cannot be said to be possible for the conclusion to be made or the satisfaction reached logically or rationally on the available material**…
>
> (Emphasis added)

What do the parties submit about whether the error was material and the decision legally unreasonable?

74 The Respondent contends that materiality is not established because the relevant legal consequences were taken into account and weighed by the Assistant Minister in other aspects of the cancellation decision, and were not required to be considered repetitiously: *Bale v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCA 646 at [26] (Perram J). The Respondent further outlines that unless it can be said that the cancellation decision was not open (irrespective of the pathway of reasoning), then it was not legally unreasonable: *Masi-Haini* at [52].

75 The Applicant argues that the Assistant Minister's error in the construction of s 501BA of the Act was material and the cancellation decision legally unreasonable because "the ultimate instinctive synthesis process, including the weighing of competing factors, could possibly have resulted in a different decision" being made by the Assistant Minister "if this factor had been lawfully considered".

76 Much of the written submissions were devoted to a debate as to whether the "direct and immediate" statutorily prescribed circumstances of an adverse decision under s 501BA include permanent removal and exclusion from Australia: *Migration Regulations 1994* (Cth), Sch 5, cl 5001(c) and *DLJ18* at [15] and [84]-[85]; cf, at [24]-[27]. That debate need not be resolved because, as appears from what follows, the reasons were premised on the Applicant being precluded from returning to Australia. The question is whether the Applicant has established that there is a realistic possibility the cancellation decision could have been different had the error not occurred and, relatedly, whether, in the final result, the cancellation decision met the threshold of legal unreasonableness.

Has the Applicant established that the error was material?

77 I am not satisfied that there is a realistic possibility that the cancellation decision could have been different had the Assistant Minister not erred in the construction of s 501BA of the Act at

[108] of the reasons. Similarly, I am not satisfied that the irrationality or illogicality in the Assistant Minister's finding in that paragraph rendered the ultimate decision to cancel the visa legally unreasonable.

78 Another consideration the Assistant Minister took into account in making the cancellation decision was the extent of the impediments to the Applicant if he was removed from Australia to New Zealand: reasons at [109]-[115]. This included consideration by the Assistant Minister of the practical, financial and emotional hardship the Applicant would experience if separated from his partner, family and community support networks; the difficulties the Applicant may experience in locating appropriate services to manage his complex mental health condition and his concerns of a deterioration in his mental health if separated from his partner; as well as the concerns the Applicant held about securing suitable employment, accommodation and transport in New Zealand.

79 While dealt with in the context of a different consideration, those matters are properly characterised as "grave" consequences that would follow for the Applicant if his visa was cancelled by the Assistant Minister: cf, reasons at [107]. Indeed, they extend beyond what is uncontroversially the immediate and statutorily prescribed legal consequences of that decision (removal from Australia) to capture the full gamut of consequences that would follow if the Applicant were permanently excluded from the country: cf, reasons at [107]; *DLJ18* at [15] and [84]-[87]; cf, at [24]-[27].

80 Having taken those matters into account, the Assistant Minister made the "overall" finding that the "impediments" consideration weighed moderately in favour of not cancelling the visa: reasons at [116].

81 In the result, the Assistant Minister decided to exercise the power to cancel the visa: reasons at [121]-[133]. In reaching that conclusion, the Assistant Minister took into account the "impediments" consideration as a matter that weighed against a decision to cancel the visa: reasons at [125]. The finding at [108] of the reasons about the legal consequences of the cancellation decision formed no part of that final analysis by the Assistant Minister: cf, reasons at [121]-[130]. Ultimately, the Assistant Minister found that "the considerations against cancellation are outweighed by the serious national interest considerations in this case": reasons at [131].

82 Given that process of reasoning, I am not satisfied that there is a realistic possibility that the cancellation decision could have been different if the Assistant Minister had not erred in his finding at [108] of the reasons. Similarly, I am not satisfied that the lapse in logic in that part of the reasons amounted to jurisdictional error. The cancellation decision would inevitably have been the same because the Assistant Minister took into account the consequences that would follow from an adverse decision under s 501BA of the Act (including the permanent exclusion consequences put in issue by the Respondent) and gave them weight, but found that the national interest considerations were decisive in the exercise of the discretion whether to cancel the visa. Because the Assistant Minister took those consequences into account in making the ultimate decision, I am persuaded that the cancellation decision was open to the Assistant Minister on the information that was available.

83 Ground 1, Strand 2 and Ground 2 are not established.

CONCLUSION

84 For all of the above reasons, the application will be dismissed. There is no reason to depart from the usual order as to costs. The Applicant will pay the Respondent's costs of the application.

I certify that the preceding eighty-four (84) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Longbottom.

Associate:

Dated: 9 April 2026