

FEDERAL COURT OF AUSTRALIA

TPTN v Assistant Minister for Immigration [2026] FCA 924

File number(s): TAD 67 of 2025

Judgment of: NESKOVICIN J

Date of judgment: 16 July 2026

Catchwords: **MIGRATION** – application for judicial review of a decision of the Assistant Minister under s 501BA(2) of the *Migration Act 1958* (Cth) – whether the Assistant Minister made findings based on selective and dated materials – whether the Assistant Minister failed to consider material that was constructively in his possession – whether the Assistant Minister represented he had considered information not in his possession – whether the Assistant Minister made findings about the current state of the Applicant’s rehabilitation without evidence or a logical basis – Applicant failed to establish that the Assistant Minister exercised his power in a manner that was illogical or irrational – application dismissed

Legislation: *Migration Act 1958* (Cth) ss 501, 501BA, 501CA

Cases cited: *Ba v Minister for Immigration and Multicultural Affairs* [2025] FCA 1239
Carrascalao v Minister for Immigration & Border Protection (2017) 252 FCR 352; [2017] FCAFC 107
Chetcuti v Minister for Immigration, Citizenship, Migrant Services & Multicultural Affairs [2020] FCA 1758
GRCF v Minister for Immigration, Citizenship and Multicultural Affairs [2025] FCA 415
LJTZ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (2022) 179 ALD 299; [2022] FCA 1209
Luong v Minister for Immigration, Citizenship and Multicultural Affairs (2026) 215 FCR 159; [2026] FCAFC 6
Minister for Immigration, Citizenship & Multicultural Affairs v McQueen (2014) 98 ALJR 594; [2024] HCA 11
Moli v Minister for Immigration (2025) 313 FCR 385; [2025] FCAFC 175
Moli v Minister for Immigration [2025] FCA 350

Po'oi v Minister for Immigration and Citizenship (2025)
314 FCR 376; [2025] FCAFC 192

Division:	General Division
Registry:	Victoria
National Practice Area:	Administrative and Constitutional Law and Human Rights
Number of paragraphs:	77
Date of hearing:	15 June 2026
Counsel for the Applicant:	Dr J Donnelly
Solicitor for the Applicant:	Zarifi Lawyers
Counsel for the Respondent:	Mr J Barrington
Solicitor for the Respondent:	Australian Government Solicitor

ORDERS

TAD 67 of 2025

BETWEEN: **TPTN**
Applicant

AND: **ASSISTANT MINISTER FOR IMMIGRATION**
Respondent

ORDER MADE BY: **NESKOV CIN J**

DATE OF ORDER: **16 JULY 2026**

THE COURT ORDERS THAT:

1. The amended originating application dated 7 April 2026 is dismissed.
2. The Applicant is to pay the Respondent's costs, to be taxed in default of agreement.

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

REASONS FOR JUDGMENT

NESKOVCIN J:

1 The Applicant is a citizen of New Zealand who arrived in Australia in October 1998, when he was eight years old. He has resided in Australia since that time.

2 The Applicant seeks judicial review of a decision of the Respondent, the **Assistant Minister** for Immigration, made personally pursuant to s 501BA(2) of the *Migration Act 1958* (Cth). By that decision, the Assistant Minister set aside a decision of the Administrative Review **Tribunal** made on 31 March 2025 and cancelled the Applicant’s Class TY Subclass 444 **Special Category** (Temporary) **visa** under s 501BA of the Migration Act.

3 The Applicant advanced one ground of review, namely, that the Assistant Minister’s decision is vitiated by jurisdictional error because the Assistant Minister, in making his decision, exercised the power under s 501BA(2) of the Migration Act in a manner that was illogical or irrational.

4 The parties tendered an Application Book, which included the Assistant Minister’s decision, and the Applicant relied on an affidavit affirmed by his solicitor on 19 May 2026.

5 For the reasons set out below, the ground of review relied upon by the Applicant is not accepted, and his application for review should be dismissed, with costs.

BACKGROUND

6 As already mentioned, the Applicant is a citizen of New Zealand, who arrived in Australia in October 1998, at the age of eight. Since that time, the Applicant has continuously resided in Australia.

7 The Applicant has a lengthy history of criminal offending in Australia.

8 Relevantly, on 1 April 2011, the Applicant was convicted in the District Court of New South Wales of “robbery and demand property with menaces with intent to steal” and was sentenced to two years and six months’ imprisonment.

9 On 16 August 2019, the Applicant was convicted in the Local Court of New South Wales of “assault occasioning actual bodily harm (dv)” and sentenced to imprisonment, to be served by way of a 16-month Intensive Correction Order. He was also convicted of “demand with menaces intend obtain gain/cause loss” and sentenced to a concurrent Community Correction

Order of 14 months. The NSW Police Facts Sheet indicated that the victim of the Applicant's offending was the Applicant's then domestic partner (**Person 1**) and an Apprehended Violence Order (**AVO**) was issued prohibiting the Applicant from having contact with Person 1.

10 On 10 November 2020, the Applicant was convicted in the Local Court of New South Wales of "contravene prohibition/restriction in AVO (domestic)" and sentenced to a Community Correction Order of 15 months. In relation to this offending, the NSW Police Facts Sheet noted that, at the time of the arrest, the Applicant was with Person 1 and was in breach of the AVO.

11 On 31 March 2021, the Applicant was convicted in the Local Court of New South Wales of "assault occasioning actual bodily harm" and "contravene prohibition/restriction in AVO (Domestic)" and sentenced to 18 months imprisonment for each offence, to be served concurrently. The convictions involved offending against Person 1 in Person 1's home.

12 Furthermore, on 31 March 2021, the Community Correction Order from 10 November 2020 was "called up" and the Applicant was sentenced to a Community Correction Order of 17 months, with conditions to enrol in rehabilitation and treatment programs, and the AVO was extended by five years.

13 As a result of the convictions on 31 March 2021, the Applicant did not pass the character test because he had a "substantial criminal record" on the basis of s 501(7)(c) of the Migration Act. Accordingly, his Special Category visa was subject to mandatory cancellation under s 501(3A) while he was serving his sentence of imprisonment.

14 On 14 May 2021, the Minister notified the Applicant that his Special Category visa had been cancelled and invited him to make representations about the revocation of that decision pursuant to s 501CA of the Migration Act. The Applicant made a request for revocation of the mandatory cancellation of his Special Category visa.

15 On 15 November 2021, a delegate of the Minister decided not to revoke the cancellation of his Special Category visa under s 501CA(4) of the Migration Act.

16 On 16 November 2021, the Applicant applied to the Administrative Appeals Tribunal (**AAT**) for a review of the non-revocation decision.

17 On 4 February 2022, the AAT affirmed the delegate's decision not to revoke the cancellation of the Applicant's Special Category visa. The Applicant sought judicial review of the AAT's decision in this Court.

- 18 On 20 June 2024, the Full Court of this Court determined that it “[did] not consider that the [AAT] would inevitably have reached the same decision if it had not impermissibly taken into account the [Applicant’s] juvenile offending” and remitted the case to be determined by the AAT, differently constituted, according to law: *TPTN v Minister for Immigration and Multicultural Affairs* (2024) 304 FCR 244; [2024] FCAFC 82 at [71] (Collier ACJ, Meagher and Horan JJ).
- 19 On 31 March 2025, the Administrative Review **Tribunal** set aside the delegate’s decision and decided in substitution that the mandatory cancellation of the Applicant’s Special Category visa should be revoked: *TPTN v Minister for Immigration and Multicultural Affairs* [2025] ARTA 366 (**Tribunal decision**).
- 20 On 24 July 2025, the Assistant Minister set aside the Tribunal decision and cancelled the Applicant’s Special Category visa under s 501BA(2) of the Migration Act.
- 21 On 11 November 2025, the Applicant sought judicial review of the Assistant Minister’s decision in this Court.

THE STATUTORY PROVISIONS

- 22 The Assistant Minister’s decision was made pursuant to s 501BA of the Migration Act, which relevantly provides as follows:

501BA Cancellation of visa—setting aside and substitution of non-adverse decision under section 501CA

- (1) This section applies if:

- (a) a delegate of the Minister; or
- (b) the ART;

makes a decision under section 501CA (the original decision) to revoke a decision under subsection 501(3A) to cancel a visa that has been granted to a person.

Action by Minister—natural justice does not apply

- (2) The Minister may set aside the original decision and cancel a visa that has been granted to the person if:

- (a) the Minister is satisfied that the person does not pass the character test because of the operation of:
 - (i) paragraph 501(6)(a), on the basis of paragraph 501(7)(a), (b) or (c); or
 - (ii) paragraph 501(6)(e); and

- (b) the Minister is satisfied that the cancellation is in the national interest.
- (3) The rules of natural justice do not apply to a decision under subsection (2).

Minister's exercise of power

- (4) The power under subsection (2) may only be exercised by the Minister personally.

Decision not reviewable by application under Part 5

- (5) A decision under subsection (2) is not reviewable by application under Part 5.

23 In relation to the “character test”, ss 501(6)(a) and 501(7)(c) of the Migration Act relevantly provide as follows:

Character test

- (6) For the purposes of this section, a person does not pass the character test if:
 - (a) the person has a substantial criminal record (as defined by subsection (7));

...

Substantial criminal record

- (7) For the purposes of the character test, a person has a substantial criminal record if:

...

- (c) the person has been sentenced to a term of imprisonment of 12 months or more;

...

RELEVANT PRINCIPLES

24 In *Moli v Minister for Immigration* [2025] FCA 350 at [96], in a passage endorsed by the Full Court in *Moli v Minister for Immigration* (2025) 313 FCR 385; [2025] FCAFC 175 at [7] (Derrington, Raper and Vandongen JJ), Colvin J set out the following principles in relation to s 501BA of the Migration Act which are established by previous authorities:

- (a) the provision confers a discretionary power upon the Minister personally;
- (b) the matters stated in s 501BA(2) are pre-conditions that must be met before the power arises;
- (c) one pre-condition is that the Minister is satisfied that the cancellation of the person's visa is in the national interest;
- (d) the required state of satisfaction must be formed within the bounds of reasonableness and rationality;

- (e) the required state of satisfaction must be formed on the basis of a correct understanding of the law (particularly, a correct understanding of what is required by the pre-condition);
- (f) the formation of the required state of satisfaction involves the making of a broad evaluative judgment;
- (g) what is in the national interest for the purposes of the provision is largely a political question; and
- (h) the concept of the national interest is undoubtedly broad but is not unbounded.

25 In *Luong v Minister for Immigration, Citizenship and Multicultural Affairs* (2026) 215 FCR 159; [2026] FCAFC 6 at [42] – [48] (Charlesworth, Kyrou and Neskovic JJ), in considering the exercise of power under s 501BA(2), the Full Court said:

- 42 A decision of the Minister under s 501BA of the Act will be invalid if it is legally unreasonable in the sense discussed by the plurality (Hayne, Kiefel and Bell JJ) in *Minister for Immigration and Citizenship v Li* [2013] HCA 18; (2013) 249 CLR 332 at [76], namely, that the impugned decision lacks “an evident and intelligible justification”: *Po’oi* at [64] (Kyrou and Needham JJ). Accordingly, the Minister’s formation of a state of satisfaction as to the national interest under s 501BA(3) must be reached reasonably: *Madafferi* at [89] (French, O’Loughlin and Whitlam JJ); *Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v CWY20* [2021] FCAFC 195; (2021) 288 FCR 565 at [140] (Besanko J, with whom Allsop CJ, Kenny, Kerr and Charlesworth JJ agreed).
- 43 Other expressions used to describe legal unreasonableness include that the impugned decision is arbitrary, capricious, illogical, irrational or perverse: *Po’oi* at [64] (Kyrou and Needham JJ). However, it must be borne in mind that legal unreasonableness “is inherently sensitive to context [and] cannot be reduced to a formulary”: *Po’oi* at [4] (Snaden J, citing *Minister for Immigration and Border Protection v SZVFW* [2018] HCA 30; (2018) 264 CLR 541 at [59] (Gageler J)).
- 44 Legal unreasonableness may be established in relation to a decision of the Minister under s 501BA of the Act either because the outcome of the exercise of the power in that section is unreasonable or the reasoning that led to that outcome is unreasonable: *Minister for Immigration, Citizenship and Multicultural Affairs v Lieu* [2023] FCAFC 57; (2023) 297 FCR 162 at [81] (Mortimer CJ).
- 45 A decision of the Minister under s 501BA of the Act can be found to be legally unreasonable even though no particular error in the reasoning can be identified. In such a case, the question is whether the result of the decision is so unreasonable that it could not have been reached if proper reasoning had been applied in the exercise of the power in s 501BA in the circumstances of the particular case: *Palmer* at [159] (Feutrill J). This may be established if the decision falls outside a range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Li* at [105] (Gageler J); *SZVFW* at

[82] (Nettle and Gordon JJ).

46 Another instance of legal unreasonableness is where the Minister identifies a particular non-mandatory matter as a proper basis for disposing of a particular case but then fails to consider that matter either at all or misconstrues or misunderstands it to such an extent as to amount to a constructive failure to consider it: *Po'oi* at [65] (Kyou and Needham JJ), citing *Jabbour v Secretary, Department of Home Affairs* [2019] FCA 452; (2019) 269 FCR 438 at [89] (Robertson J).

47 The fact that s 501BA(3) of the Act excludes the rules of natural justice has the consequence that the Minister is not legally bound to seek further information from the non-citizen or take into account any unsolicited information they provide unless the Minister chooses to do so: *Palmer* at [123] (Derrington and Hespe JJ). The relative decisional freedom of the Minister as to what might be considered in determining what is in the national interest means that any failure of the Minister to consider material which was presumptively relevant to the decision cannot, without more, go to jurisdiction: *Palmer* at [123]. Section 501BA contemplates that the Minister may decide to cancel a non-citizen's visa without up to date information where the Minister elects not to afford natural justice to the non-citizen: *EU20 v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCAFC 130; (2023) 298 FCR 492 at [37] (Abraham, O'Sullivan and Raper JJ).

48 However, consistent with the principle set out at [46] above, legal unreasonableness may arise where there is adverse reliance by the Minister on out of date information on a matter as a proper basis for cancelling a non-citizen's visa without giving the non-citizen an opportunity to provide up to date information on that matter.

26 While it will not be open to complain that a decision under s 501BA(2) is procedurally unfair, the bounds of legal reasonableness can still impose some constraints on the use of dated material. As Charlesworth J said in *LJTZ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 179 ALD 299; [2022] FCA 1209 at [100]:

... Again, it must be emphasised that it is permissible for the Minister to exercise the power in s 501BA(2) without first affording the affected visa holder an opportunity to be heard. However, if that course is taken, a practical consequence may be that there is an absence of evidence (or at least a gap in the evidence) bearing on a topic the Minister considers to be relevant. That absence or gap may limit the reasoning processes that are reasonably open to the Minister. For example, it may not be permissible (that is, within the bounds of legal reasonableness) for the Minister to proceed as though he has before him everything the applicant may have to say on the topic to the present day. It may not be permissible in the requisite sense to draw inferences about a current state of affairs by reference to an earlier state of affairs. It may not be logical to draw a positive inference that an event has not occurred merely by reference to the absence of evidence as to whether or not it has in fact occurred. I am satisfied that errors of those kinds occurred in the applicant's case.

27 See, for example, in *GRCF v Minister for Immigration, Citizenship and Multicultural Affairs* [2025] FCA 415 at [53] – [54] (Bennett J).

28 In *Po'oi v Minister for Immigration and Citizenship* (2025) 314 FCR 376; [2025] FCAFC 192 at [56] (Snaden, Kyrou and Needham JJ), the Full Court summarised the extent to which the Minister may rely upon departmental summaries in exercising the power under s 501BA(2) of the Migration Act:

56. In *McQueen* at [19], the plurality (Gageler CJ, Gordon, Edelman, Steward and Gleeson JJ) stated that a Minister may rely on their department to sift and organise material received and to prepare summaries of information, and that generally there is no obligation on a Minister to read each and every relevant document in order to exercise a power personally. However, relying on the work of their department does not immunise a Minister from errors made by the department, as those errors can be attributed to the Minister (*McQueen* at [20] and [22]). At [22], their Honours referred to the following qualifications to the general principle that a Minister may rely on departmental summaries of material that were expressed in *Carrascalao* at [61] (Griffiths, White and Bromwich JJ): first, reliance upon a materially deficient summary may give rise to an inference that the decision-making process was improper; secondly, the use of a summary may not be appropriate when it seeks to capture a substantive argument if the force of the submission is thereby lost; and thirdly, account must be taken by a Minister of any statement in a summary which advises the Minister to consider a particular document or documents.

THE ASSISTANT MINISTER'S DECISION

29 The Assistant Minister was satisfied that the Applicant did not pass the character test by operation of s 501(6)(a) of the Migration Act, on the basis of s 501(7)(c), and so the condition under s 501BA(2)(a) was met.

30 The Assistant Minister then considered whether he was satisfied that cancellation of the Applicant's Special Category visa was in the national interest. The Assistant Minister noted that "national interest" is not defined for the purposes of s 501BA and stated:

16. In determining whether it is in the national interest to cancel [the Applicant's] visa, I have given the highest priority to the safety of the Australian community and the need to protect the Australian community. In doing so, I considered the seriousness of [the Applicant's] criminal conduct having regard to the circumstances and nature of the conduct, the likelihood of him reoffending, and the risk he poses to the Australian community if such a likelihood eventuated.

31 The Assistant Minister proceeded to consider the seriousness of the Applicant's criminal conduct, finding:

34. I consider the above family violence offences which led to [the Applicant's] convictions of 16 August 2019 and 31 March 2021 are of a very serious nature. They involved physical violence and threatening behaviour against a woman, his partner, in her own home, and on one occasion, with her child in her arms.
35. Family violence offences are viewed very seriously by the Australian

Government and the Australian community, and I also consider that this family violence offending is very serious.

32 The Assistant Minister then considered the risk that may be posed by the Applicant to the Australian community. As this section is material to the Applicant's case, it is convenient to set out the Assistant Minister's reasons in relation to the risk to the Australian community in more detail.

33 The Assistant Minister's reasons stated, under the heading "Risk to the Australian community", as follows:

Risk to the Australian community

47. Having regard to [the Applicant's] offending history, ... I consider that any future offending of a similar nature or seriousness would have the potential to cause serious physical and/or psychological injury to members of the Australian community.

48. In assessing the likelihood of [the Applicant] reoffending in the future, I have considered available information as to matters that may have contributed to [the Applicant's] past conduct, as well as indications of remorse and the extent of [the Applicant's] rehabilitation, including their more recent conduct in custody, where relevant information is available.

34 The Assistant Minister then proceeded to assess the likelihood of the Applicant reoffending in the future by considering information before him as to matters that may have contributed to the Applicant's past conduct, indications of the Applicant's remorse and the extent of the Applicant's rehabilitation.

35 In relation to the first matter, being factors that may have contributed to the Applicant's past conduct, the Assistant Minister's reasons relevantly stated (*italicised references added*):

(a) Factors contributing to past conduct

49. I have taken into account [the Applicant's] submission that there a number [sic] of factors that have contributed to his offending, including mental health issues, Post Traumatic Stress, toxic environment, extreme financial hardship, childhood trauma, and the lack of mental health support Attachment L.

...

52. The sentencing remarks and Police Facts Sheets detail the circumstances of [the Applicant's] offending and I accept that he *has* issues with substance use and anger management Attachments B and E.

...

54. I accept that [the Applicant] *has* issues with substance use and anger management, and he submits he has mental health issues and suffered childhood trauma. However, I find that these issues do not excuse or reduce his moral culpability to any extent and that he is responsible for addressing

such issues.

36 In relation to the second matter, indications of remorse, after noting the Magistrate’s sentencing remarks in relation to the Applicant’s offending in March 2021 to the effect that the Applicant regretted his actions, the Assistant Minister noted that the Magistrate was troubled by the Applicant’s attempt to deflect responsibility and blame the victim. The Assistant Minister further noted that the Tribunal expressed doubts whether the Applicant has “reflected adequately on the impact of his behaviour upon the victim and her child”, regarding the Applicant’s family violence offending for which he was convicted in August 2019 and March 2021. The Assistant Minister’s reasons relevantly stated:

(b) Remorse

...

59. I acknowledge [the Applicant] may regret the position that he finds himself in, however, I am concerned that his lack of insight, particularly into his family violence offending, may lead to further offending.

37 In relation to the third matter, the extent of the Applicant’s rehabilitation, the Assistant Minister’s reasons referred to the Applicant’s participation in rehabilitation programs while he was in prison and in detention. The Assistant Minister further noted that the Tribunal had given the Applicant credit in respect of his rehabilitation and that the Applicant poses no effective risk to his former partner, and a low risk in relation to future offending, stating:

(c) Rehabilitation

...

65. The ART gave credit to [the Applicant] in respect of his rehabilitation, believing [the Applicant] had recovered from a substantial drug dependency, and that both jail and immigration detention have had a rehabilitative effect upon him Attachment G.

66. The ART found that [the Applicant] poses no effective risk to his former partner, as the relationship is over, and a low risk in relation to any future partner. The ART weighed in his favour the very long experience of jail and detention, which it found to have been a salutary and rehabilitative one and considered [the Applicant] posed an overall low risk of reoffending Attachment G.

38 However, the Assistant Minister concluded:

67. I accept that [the Applicant] has made progress in his rehabilitative efforts, however, any rehabilitation has not been tested for any length of time in the community, with the added pressures of everyday life and how he will cope in the future when he is in a relationship.

39 Before concluding on risk to the community, the Assistant Minister noted some adverse conduct in immigration detention, however, neither party focussed on that section of the Assistant Minister's decision.

40 By way of "Conclusion on risk to [the] community", the Assistant Minister relevantly stated:

76. I note that [the Applicant] participated in a domestic violence program in immigration detention, which is a positive step towards his rehabilitation, though I am cognisant that his previous participation in treatment programs has been ineffective in preventing further offending.
77. I am concerned that there is no evidence that [the Applicant] adhered to the court's recommendation in 2019 that he engage with a community based psychologist and treatment programs, specifically the EQUIPS - Domestic violence program.
78. [The Applicant's] offending history shows he is a recidivist offender. His convictions of 2019 and 2021 show a pattern of very serious physical family violence against a partner, which amounted to assault occasioning actual bodily harm and involved grabbing her by the throat, pushing her against a wall and onto furniture, striking her in the face with a closed fist and choking her, causing bruising and abrasions. I have also taken into account that in 2019 he committed family violence in the presence of the victim's then two year old child.
79. I have taken into account [the Applicant] has committed serious family violence against his former partner while subject to court orders and an AVO, and it concerns me judicial orders have not deterred him from reoffending. It also concerns me he was not deterred from reoffending by a departmental warning of the consequences of him reoffending on his migration status.
80. I note that [the Applicant] has re-connected with his family and that they attended court in 2011 and 2021 to show their support for him. However, I find that [the Applicant] has had familial support available to him over the years, and it has not prevented him reoffending.
81. I find [the Applicant's] conduct is very serious, as violence against women has the potential to cause physical and psychological injury to members of the Australian community. Even a small risk of such offending is of great concern.
82. I find the circumstances of [the Applicant's] continued offending are indicative of a lack of appreciation for the impact on his victims, and lack of remorse and insight into the seriousness of his offending.
83. I accept that [the Applicant's] anger management and substance use issues may have contributed in part to his offending behaviour. However I find these factors do not excuse, mitigate or reduce his moral culpability to any extent. I find that [the Applicant's] issues with substance use and violence, in particular family violence, are unresolved for the reasons mentioned above, and continue to be risk factors.
84. I have found that on balance there remains a likelihood that [the Applicant] will reoffend.
85. Considering the nature and seriousness of [the Applicant's] conduct, the

potential harm to the Australian community should the non-citizen commit further offences, 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 in this case in the national interest.

41 The Assistant Minister then turned to consider the expectations of the Australian community, noting that “the Australian community expects that the Australian Government can and should cancel a visa if the holder raises serious character concerns through certain kinds of conduct”, including family violence. The Assistant Minister found that the Applicant “raises serious character concerns and the community expectation described ... applies in this case”.

42 The Assistant Minister was satisfied that cancelling the Applicant's Special Category visa was in the national interest, stating:

91. In the specific case of [the Applicant] I have considered the seriousness of his offending, involving multiple family violence offences towards the same partner, and other violent and anti-social offences. Further, due to the nature of [the Applicant's] offending, I have found that any risk of reoffending is unacceptable due to its seriousness and the serious physical and psychological harm it could cause to members of the Australian community. Given the nature of [the Applicant's] offending, I consider that the Australian community would expect the Australian government would not allow [the Applicant] to remain in Australia.

92. Having regard to all of the above, I conclude that the use of my discretionary power to cancel [the Applicant's] Class TY Subclass 444 Special Category (Temporary) visa is in the national interest.

43 The Assistant Minister then set out the other considerations relevant to the exercise of his discretionary power to cancel the Applicant's visa, including the best interests of minor children, the Applicant's ties to Australia, the legal consequences of the decision and impediments the Applicant might face if he is removed to New Zealand.

44 However, the Assistant Minister concluded that:

134. [The Applicant] has committed very serious crimes, including that of, assault occasioning actual bodily harm (DV) and demand with menaces intend obtain gain/cause loss involving family violence. [The Applicant] has a history of offending, causing great harm 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.

135. I find that the Australian community could be exposed to significant harm should [the Applicant] reoffend in a similar fashion. I could not rule out the possibility of further criminal conduct by [the Applicant]. The Australian community should not tolerate any risk of further harm.

136. Noting that [the Applicant] has lived in Australia for most of his life, and 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.

137. 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 history of family violence offending not to continue to hold a visa, especially where the non-citizen continues to pose a significant risk to the Australian community.

138. I find that the considerations against visa cancellation are outweighed by the serious national interest considerations in this case.

GROUND OF REVIEW

45 As already mentioned, the Applicant advanced one ground of review, namely, jurisdictional error on the basis that the Assistant Minister reached his decision based on an illogical or irrational process of reasoning.

46 The Applicant's ground of review as developed in written and oral submissions was as follows:

- (a) the Assistant Minister made findings about the state of affairs as at the time of his decision based on a selective and dated set of material, and in a manner adverse to the Applicant, as if that state of affairs persisted; and
- (b) the Assistant Minister ignored or failed to consider material that was constructively in his possession, even though that material bore centrally on issues that informed his assessment of the national interest.

47 The Applicant sought to impugn the findings in paragraph 83 of the Assistant Minister's decision. The Applicant submitted that the Assistant Minister's findings that the Applicant's "issues with substance use and violence" were "unresolved", and were therefore current at the time of the decision, were illogical or irrational, in that the Assistant Minister did not have evidence to reach those conclusions at the time of the decision. Furthermore, the Assistant Minister ignored or failed to consider material that was constructively in his possession, including material that was before the Tribunal.

48 The Applicant also sought to impugn paragraph 67 of the Assistant Minister's decision, that the Applicant's "rehabilitation has not been tested for *any* length of time in the community" (emphasis added), on the basis that the Assistant Minister misunderstood the evidence, or failed

to consider that the Applicant had been in the community for almost four months (ie, between the date of the Tribunal's decision and the Assistant Minister's decision).

CONSIDERATION

49 It is convenient to deal with the two aspects of the Assistant Minister's decision, which the Applicant seeks to impugn, in turn.

Paragraph 83 of the Assistant Minister's decision

50 The Applicant submitted that, in paragraph 83 of the Assistant Minister's decision, the Assistant Minister made findings about a state of affairs as at the time of his decision based on a selective and dated set of material, and in a manner adverse to the Applicant, as if that state of affairs persisted. The Assistant Minister's decision was made approximately three and a half months after the Tribunal's decision. The Applicant accepted that, in making his decision to set aside the Tribunal's decision and revoke the Applicant's Special Category visa, the Assistant Minister was not obliged to afford the Applicant natural justice. The Applicant submitted that the Assistant Minister's assessment of risk was predominantly informed by material from and prior to 2021. The Applicant further submitted that there was no probative evidence before the Assistant Minister to support the proposition that the Applicant's substance use was ongoing and that the Assistant Minister stepped outside the bounds of logical reasoning and proceeded without evidence to reach an impermissible conclusion about the current state of the Applicant's substance use and anger management issues, without any logical or rational basis.

51 Furthermore, the Applicant submitted that the Assistant Minister had relevant information that was constructively available to him, which he ignored or failed to consider, even though that material bore centrally on issues that informed his assessment of the national interest. The Applicant submitted that the material before the Assistant Minister did not include a bundle of material that was given to the Tribunal by the Applicant, which included:

- (a) the Applicant's statement of facts, issues and contentions;
- (b) the Applicant's statement of facts, issues and contentions in reply;
- (c) a bundle of certificates or course completion records, mostly from 2023, including completion of rehabilitative courses; and
- (d) statements and letters from witnesses regarding the Applicant's rehabilitation and family support.

- 52 The Assistant Minister did not dispute that the bundle of material given to the Tribunal was within his constructive possession and that it was not before him when he made his decision. The Tribunal’s decision, which was before the Assistant Minister, did not directly refer to these documents either.
- 53 The Applicant submitted that it was therefore inaccurate for the Assistant Minister to say, at paragraph 48, that he had regard to “available information as to matters” regarding, among other things, the Applicant’s rehabilitation. As a result, it was submitted, the Assistant Minister’s decision was not open to him, and he made an error similar to that identified in *LJTZ* at [100].
- 54 The Assistant Minister’s statement at paragraph 48 as to the “available information” before him should be read in the context of paragraph 3 in which he expressly stated that, in making his decision, he “had regard to the summary of material provided to [him] by the Department”. It is clear from this context that the Assistant Minister was not under a misapprehension that he had been provided with all the material that was given to the Tribunal, rather he had considered the “available material” within the summary of materials provided to him by his Department. Unlike in *LJTZ*, the Assistant Minister did not proceed under the pretence that he had considered the most up to date material from the Applicant.
- 55 The Applicant further submitted that the Assistant Minister relied on dated materials to make an inaccurate finding that the Applicant had current “unresolved” issues with substance use and violence when “the applicant had explicitly said (through his agent) that he had been abstinent for a period of four years as of 23 September 2024” in the materials given to the Tribunal.
- 56 There was no general obligation for the Assistant Minister to consider all material within his constructive possession, or even to consider the most up to date material: *Chetcuti v Minister for Immigration, Citizenship, Migrant Services & Multicultural Affairs* [2020] FCA 1758 at [55] – [57] (Bromberg J). As outlined in [28] above, the Assistant Minister was entitled to rely upon his Department’s summary of relevant materials in exercising his power under s 501BA(2) of the Migration Act, subject to certain qualifications summarised by the Full Court in *Po’oi* at [56].
- 57 Furthermore, although the Assistant Minister did not specifically consider the Applicant’s submission to the Tribunal that he had been abstinent from drugs for four years, the Assistant

Minister did have regard to the Tribunal’s finding that the Applicant had “recovered from a substantial drug dependency” and that his time in gaol and detention had been “salutary and rehabilitative”. Therefore, the Assistant Minister considered the substance of the Applicant’s representations, as summarised by the Tribunal, that over his period of time in gaol and detention, the Applicant had recovered from his drug dependency and made significant progress towards rehabilitation.

58 The Applicant did not otherwise submit that the summary of materials given to the Assistant Minister by his Department was inaccurate or incomplete or did not convey the force of any argument made on behalf of the Applicant: *Carrascalao v Minister for Immigration & Border Protection* (2017) 252 FCR 352; [2017] FCAFC 107 at [138] (Griffiths, White and Bromwich JJ). Nor did the Applicant submit that the summary from the Department directed the Assistant Minister to engage with the material given to the Tribunal: *Minister for Immigration, Citizenship & Multicultural Affairs v McQueen* (2024) 98 ALJR 594; [2024] HCA 11 at [25] (Gageler CJ, Gordon, Edelman, Steward and Gleeson JJ); *Ba v Minister for Immigration and Multicultural Affairs* [2025] FCA 1239 at [53] (Neskovcin J).

59 The Applicant submitted that the Assistant Minister found that, at the time of his decision in July 2025, the Applicant “*has* issues with substance use and anger management” (paragraphs 52 and 54), and made a similar finding, at paragraph 83, that the Applicant’s “issues with substance use and violence ... *are* unresolved” and “continue to be risk factors” (emphasis added). However, there was no evidence before the Assistant Minister regarding persisting substance use at the time of his decision or that the Applicant’s issues with anger management and violence are “unresolved”. The Applicant submitted that “[o]n the material before the Assistant Minister, there was no evidence to suggest the applicant had relapsed into illicit substance use, engaged in further family violence, engaged in any other offending, or commenced a fresh relationship with any other person between the time of the Tribunal’s decision and his decision in July 2025”.

60 The Applicant construes the Assistant Minister’s reasons too narrowly. Paragraph 83 must be read in its proper context, by reference to the findings and reasons that preceded it.

61 Paragraphs 83 – 85 effectively contain the Assistant Minister’s ultimate finding on the likelihood of the Applicant reoffending and whether cancellation of the Applicant’s Special Category visa is in the national interest. That finding was reached in the context of the Assistant Minister having considered and assessed the risk to the Australian community from any future

offending. The Assistant Minister assessed the likelihood of the Applicant reoffending in the future, by considering the information before him as to matters that may have contributed to the Applicant's past conduct, remorse and the extent of the Applicant's rehabilitation.

62 In assessing factors that “contributed” to the Applicant's offending (paragraphs 48 and 49), it is apparent that the Assistant Minister was referring to the Applicant's past conduct, as the heading to paragraph 49 suggests. In that context, as the Applicant pointed out, the Assistant Minister said that the Applicant “*has* issues with substance use and anger management” (paragraphs 52 and 54). A fair reading of that section, containing references to Attachments B and E regarding the Applicant's offending in 2011 and 2021, indicates that the Assistant Minister was referring to the Applicant's issues at the time of the Applicant's offending. Seen in their proper context, the statements in paragraphs 52 and 54, that the Applicant “*has* issues with substance use and anger management” should be taken as a reference to the Applicant's issues at the time of his offending.

63 Although the next section on “remorse” was not the subject of any criticism by the Applicant, it is contextually relevant. The Assistant Minister stated that he “acknowledge[s] [the Applicant] may regret the position that he finds himself in, however, [he is] concerned that [the Applicant's] *lack of insight*, particularly into his family violence offending, may lead to further offending” (emphasis added).

64 The Assistant Minister then considered the Applicant's “rehabilitation”. The Assistant Minister noted that the Applicant had participated in rehabilitation programs in prison and detention. The Assistant Minister noted that the Tribunal had given the Applicant credit in respect of his rehabilitation and that the Applicant poses no effective risk to his former partner. Then, at paragraph 67, the Assistant Minister accepted that the Applicant “has” made progress in his rehabilitative efforts, however, the Assistant Minister stated that “any rehabilitation has not been tested for any length of time in the community, with the added pressures of everyday life and how he will cope in the future when he is in a relationship”.

65 In the “Conclusion on risk to community”, the Assistant Minister relevantly observed that the Applicant's previous participation in domestic violence programs has been ineffective in preventing further offending: paragraph 76. Further, that the Applicant's offending history shows “he is a recidivist offender”, noting that his convictions in 2019 and 2021 show a pattern “of very serious physical family violence against a partner” and that he had “committed serious

family violence against his former partner while subject to court orders and an AVO”, which “have not deterred him from reoffending”: paragraphs 78 – 79.

66 The Assistant Minister further found, at paragraph 82, that the circumstances of the Applicant’s continued offending are “indicative of a lack of appreciation for the impact on his victims, and lack of remorse and insight into the seriousness of his offending”.

67 Turning to the impugned findings at paragraph 83, the Applicant did not challenge the Assistant Minister’s acceptance that the Applicant’s “anger management and substance use issues may have contributed in part to his offending behaviour”. After noting that those factors do not excuse, mitigate or reduce the Applicant’s moral culpability, the Assistant Minister found that “[the Applicant’s] issues with substance use and violence, in particular family violence, are unresolved for the reasons mentioned above, and continue to be risk factors”.

68 The Applicant submitted that this was a finding as to a state of affairs that persisted, however, “[o]n the material before the Assistant Minister, there was no evidence to suggest the applicant had relapsed into illicit substance use, engaged in further family violence, engaged in any other offending, or commenced a fresh relationship with any other person between the time of the Tribunal’s decision and his decision in July 2025”.

69 The “reasons mentioned” for the Assistant Minister’s findings at paragraph 83, relevantly included that, in relation to substance use, despite the Applicant having made progress in his rehabilitative efforts, any rehabilitation “has not been tested for any length of time in the community, with the added pressures of everyday life and how he will cope in the future when he is in a relationship”. It was not in dispute that the Applicant was not in a relationship at the time of the Tribunal’s and Assistant Minister’s decisions, and so there was a basis for the Assistant Minister to conclude that the Applicant’s rehabilitation “has not been tested for any length of time in the community, *with* the added pressures of everyday life and how he will cope in the future when he is in a relationship” (emphasis added).

70 Furthermore, with respect to the Assistant Minister’s finding at paragraph 83 regarding the Applicant’s unresolved issues with “violence, in particular family violence”, the “reasons mentioned” for this finding included that the Applicant had shown a lack of remorse and insight, and continued to commit serious family violence, despite being subject to court orders and an AVO, which had not deterred him from reoffending.

71 For those reasons, in my assessment, the Applicant failed to establish that the Assistant
Minister’s finding that “[the Applicant’s] issues with substance use and violence, in particular
family violence, are unresolved ... and continue to be risk factors” was illogical or irrational.

Paragraph 67 of the Assistant Minister’s decision

72 It is worth repeating the impugned finding at paragraph 67, which is as follows:

67. I accept that [the Applicant] has made progress in his rehabilitative efforts, however, any rehabilitation has not been tested for any length of time in the community, with the added pressures of everyday life and how he will cope in the future when he is in a relationship.

73 Paragraph 67 suggests that the Assistant Minister was aware that the Applicant was not in a
relationship at the time of the decision. The Applicant did not suggest that that finding was
incorrect.

74 The Applicant submitted that the Assistant Minister misunderstood or failed to appreciate that
the Applicant was in the community for approximately four months, with no issues with
substance use. As a result, it was submitted, it was incorrect for the Assistant Minister to
conclude that the Applicant’s “rehabilitation has not been tested for *any* length of time in the
community” (emphasis added).

75 The Applicant’s submissions failed to address the Assistant Minister’s finding in paragraph 67
as a whole. As already mentioned, the Assistant Minister’s finding was that the Applicant’s
“rehabilitation has not been tested for any length of time in the community, *with* the added
pressures of everyday life and how he will cope in the future when he is in a relationship”
(emphasis added).

76 For the reasons previously mentioned, in my assessment, the Applicant failed to establish that
the Assistant Minister’s decision was illogical or irrational.

CONCLUSION

77 For those reasons, the application should be dismissed, with costs.

I certify that the preceding seventy-seven (77) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Neskovicin.

Associate:

Dated: 16 July 2026