



Federal Court of Australia

District Registry: New South Wales Registry

Division: General

No: NSD723/2026

KHRG

Applicant

MINISTER FOR IMMIGRATION AND CITIZENSHIP and another named in the
schedule

Respondents

ORDER

JUDGE: Justice Younan

DATE OF ORDER: 29 September 2026

WHERE MADE: Sydney

BY CONSENT, THE COURT ORDERS THAT:

1. A writ of certiorari issue quashing the decision of the second respondent dated 2 April 2026.
2. A writ of mandamus issue directed to the second respondent requiring it to determine the applicant's application for review of the decision of a delegate of the first respondent dated 5 January 2026 according to law.
3. The first respondent pay the applicant's costs as agreed or assessed.

THE COURT NOTES THAT:

1. The second respondent (the **Tribunal**) erred, at T[98]–[99] of the decision record, by relying on the applicant's offence of 'driving vehicle with illicit drug present in blood' for which he was found guilty but received a bond pursuant to s 10(1)(b) of the *Criminal (Sentencing Procedure) Act 1999* (NSW), without proceeding to conviction. The applicant was discharged subject to entering into a good behaviour bond for a term of 6 months.
2. The Tribunal was precluded from taking into account the fact that the applicant was charged with the offence because it was an irrelevant consideration in accordance with ss 85ZR(2) and 85ZS(1)(d)(ii) of the *Crimes Act 1914* (Cth): *Minister for*



Immigration, Citizenship, Migrant Services and Multicultural Affairs v Thornton (2023) 276 CLR 136 at [6] per Gageler CJ and Jagot J, and at [73]–[74] per Gordon and Edelman JJ; *Lesianawai v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 281 CLR 1 at [45]–[46] per Beech-Jones J.

3. The error was material in circumstances where the Tribunal considered that the offence demonstrated a ‘blatant disregard ... for Australian road laws and [a] lack of care for the safety of other road users in Australia’ and constituted an instance of ‘serious offending’ (at T[99]): *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 280 CLR 321 at [9]–[16].

Date orders authenticated: 29 September 2026

Sia Lagos

Registrar

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



Schedule

No: NSD723/2026

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Second Respondent

ADMINISTRATIVE REVIEW TRIBUNAL