

BETWEEN:

**Mehaka Lee Te Puia**  
Applicant

and

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**Minister for Immigration and Border Protection**  
Respondent

APPLICANT'S ANNOTATED SUBMISSIONS

**Part I: Certification**

1. These submissions are in a form suitable for publication on the internet.

**Part II: Issues**

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2. The issues presented by the Special Case are set out as questions of law.<sup>1</sup>

**Part III: Section 78B notices**

3. The Applicant has given notices under s 78B of the *Judiciary Act 1903* (Cth).<sup>2</sup>

**Part IV: Facts**

4. On 27 October 2015, the Minister was given a Departmental "submission" (the **submission**) inviting him to cancel the Applicant's visa "without natural justice" under s 501(3)(b) of the *Migration Act 1958* (Cth) (the **Act**).<sup>3</sup> Attached to the submission was an "issues paper" (the **issues paper**) inviting the Minister to base his decision on information in "Attachment Z" said to be "protected from disclosure under section 503A of the Act".<sup>4</sup>
- 30 5. Later that day, the Minister cancelled the Applicant's visa and signed a statement of reasons (the **reasons**).<sup>5</sup>

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<sup>1</sup> Special Case Book (**SCB**), 14.

<sup>2</sup> **SCB**, 164.

<sup>3</sup> Submission (**SCB**, 18-22); Special Case, [5] (**SCB**, 13).

<sup>4</sup> Issues paper (**SCB** 23); Special Case, [5] (**SCB**, 13).

<sup>5</sup> Record of cancellation (**SCB**, 31); Reasons (**SCB**, 154); Special Case, [9]-[10] (**SCB**, 13).

***The Minister finds that the Applicant fails the character test***

6. The Minister began by considering the character test. He did not do this by reference to the Applicant's criminal record (which he considered to be "relatively minor").<sup>6</sup> Instead, he reasoned as follows:<sup>7</sup>

In relation to the application of the character test in this case, I have considered information which is protected from disclosure under section 503A of the Act.

10 Having considered this information, I reasonably suspect that Mr TE PUIA does not pass the character test by virtue of section 501(6)(b) in that I reasonably suspect that he has been or is a member of a group or organisation and that the group or organisation has been or is involved in criminal conduct.

7. It may be observed that the Minister's conclusion is a bare restatement of the various "character test" criteria in s 501(6)(b) of the Act, viz:

the Minister reasonably suspects: (i) that the person has been or is a member of a group or organisation, or has had or has an association with a group, organisation or person; and (ii) that the group, organisation or person has been or is involved in criminal conduct

8. It may also be observed that the Minister's conclusion is based entirely on "protected" information. This is only confirmed when regard is had to the "issues paper" that informed the Minister's decision. That document: drew the Minister's attention to s 501(6)(b);<sup>8</sup> told him that it was "[t]he relevant provision of the character test for your consideration in this case";<sup>9</sup> told him that he "should take into consideration the information at **Attachment Z**";<sup>10</sup> reminded him that this information was "protected from disclosure under section 503A of the Act";<sup>11</sup> and then invited him to base his finding on it.<sup>12</sup>
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***The Minister finds that visa cancellation in the "national interest"***

9. As regards the "national interest", the Minister again referred to the "protected" information.<sup>13</sup> He also referred to the "National Security Strategy",

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<sup>6</sup> Reasons, [21] (SCB, 156).

<sup>7</sup> Reasons, [6]-[7] (SCB, 154).

<sup>8</sup> Issues paper, [13] (SCB, 24).

<sup>9</sup> Issues paper, [14] (SCB, 24).

<sup>10</sup> Issues paper, [15] (emphasis in original) (SCB, 24).

<sup>11</sup> Issues paper, [16] (SCB, 24).

<sup>12</sup> Issues paper, [17] (SCB, 25).

<sup>13</sup> Reasons, [11] (SCB, 155).

the “Commonwealth Organised Crime Strategic Framework Overview” and “Operation Morpheus, which he described as a “national taskforce” established “to disrupt, disable and dismantle the criminal activities of Australia’s highest risk Outlaw Motorcycle Gangs (OMCGs) and their members”.<sup>14</sup> He then concluded that:<sup>15</sup>

cancellation of Mr TE PUIA’s visa on the basis of his suspected membership of a group suspected of being involved in criminal conduct is in the national interest insofar as excluding such person from the Australian community will contribute to national law enforcement efforts to disrupt and disable such groups.

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10. This was precisely the conclusion that the Minister was invited to reach in the “issues paper” that he was given.<sup>16</sup> Interestingly, whereas the Minister had earlier found that the Applicant “has been or is a member of a group or organisation”, he referred here to the Applicant’s “suspected membership of a group”.

***The Minister finds that the “national interest” outweighs everything else***

11. The Minister then referred to some factors favouring non-cancellation of the Applicant’s visa (including how this would affect his three minor children)<sup>17</sup> before recording his decision to cancel the Applicant’s visa on the basis that the “national interest considerations” outweighed all other considerations.<sup>18</sup>

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***The Minister relies on s 503A***

12. The Applicant was then notified of the decision, given a copy of the reasons and the information on which the decision was based (save for the “protected” information, which was withheld in reliance on s 503A)<sup>19</sup> and invited pursuant to s 501C to make representations about revocation of the decision.<sup>20</sup>

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<sup>14</sup> Reasons, [9]-[10] (SCB, 155).

<sup>15</sup> Reasons, [12] (SCB, 155).

<sup>16</sup> Issues paper, [25] (SCB, 26).

<sup>17</sup> Reasons, [15]-[36] (SCB, 155-158).

<sup>18</sup> Reasons, [37], (SCB, 158).

<sup>19</sup> The effect s 503A is discussed in the *Graham* submissions, at [5]-[10].

<sup>20</sup> Letter to Applicant dated 2 November 2015, being Annexure A to the Affidavit of Nicholas William John Rolfe sworn 4 December 2015 in proceeding WAD 732 of 2015, which is document no. 2 (not reproduced) in the Special Case Book. The document was omitted from the Special Case in oversight. It shows the Minister’s reliance upon s 503A. It is Annexed to the Applicant’s Annotated Chronology dated 12 December 2016.

13. On judicial review in the Federal Court of Australia, the Minister again withheld the “protected” information, this time from both the Applicant and the Court.<sup>21</sup>

#### **Part V: Argument**

14. The applicant relies upon the submissions filed on behalf of the Plaintiff in proceeding M97/2016 (the **Graham submissions**). He also makes the following submissions drawing upon the facts in his case.

#### ***The Constitutional issues***

- 10 15. As noted in the *Graham* submissions, whether the statutory scheme offends against the separation of powers depends on the extent to which it derogates from “the defining or essential characteristics of courts”, which is to be assessed by reference to “its practical operation within the scheme of the Act”.<sup>22</sup> Similarly, whether the statutory scheme “does not so curtail or limit the right or ability of applicants to seek relief under s 75(v) as to be inconsistent with the place of that provision in the constitutional structure” is to be assessed as a matter of “substance or practical effect”.<sup>23</sup> Both are questions of degree, having regard to substance and not form.
- 20 16. The facts in the present case help to show how the statutory scheme operates in practice. This in turn assists in showing the extent to which the statutory scheme interferes with the exercise of judicial power and with this Court’s constitutionally entrenched judicial review jurisdiction. In particular, it shows how a decision made wholly or substantially in reliance on “protected” information can be practically unexaminable. It also illustrates how the statutory scheme encourages unnecessary secrecy.

#### ***A practically unexaminable decision***

17. Because the Applicant is not told what “group or organisation” he is suspected of being (or having been) a member of, he is unable to argue that he is not a member of that group or organisation, nor that it is not, and never has been, “involved in criminal conduct”. This is as true on judicial review as

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<sup>21</sup> See Special Case, [8.b] (**SCB, 13**).

<sup>22</sup> *Graham* submissions, [16].

<sup>23</sup> *Graham* submissions, [34]-[35].

it was when the Applicant was invited under s 501C to make submissions on “revocation” of the Minister’s decision.<sup>24</sup>

18. The Applicant is similarly unable to argue against the Minister’s finding on “national interest” and his ensuing exercise of discretion by reference to “the national interest considerations”. For example, it is impossible to argue, in a vacuum, that the former was based on no evidence, or that the latter was an unreasonable exercise of discretion.
19. This most basic denial of particulars stands in marked contrast with, say, the statutory scheme impugned in *Pompano*.<sup>25</sup>

10 19.1. That scheme allowed the Queensland Commissioner of Police to apply to the Supreme Court for a declaration that an organisation was a “criminal organisation” if, inter alia, “members of the organisation associate for the purpose of engaging in, or conspiring to engage in, serious criminal activity”.<sup>26</sup> The Commissioner could rely in confidence on “criminal intelligence” but was required to give “detailed particulars of what is alleged against the respondent organisation and how the Commissioner puts the case for making a declaration”.<sup>27</sup> This included “particulars of the activity upon which the Commissioner relies, of those who are alleged to have engaged in that activity and of whether those persons are alleged to be or to have been members of the organisation.”<sup>28</sup>

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19.2. Reliance on criminal intelligence could thus “deny a respondent knowledge of *how* the Commissioner seeks to prove an allegation [but not] knowledge of *what* is the allegation that is made against it.”<sup>29</sup> Armed with such knowledge, the respondent could attempt to meet the

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<sup>24</sup> In fact, the Applicant is in an even worse position on judicial review. He cannot even make submissions based on guesswork, as the Court, itself deprived of the protected information, will not know whether he has guessed correctly.

<sup>25</sup> *Assistant Commissioner Condon v Pompano Pty Ltd* (2013) 252 CLR 38 (*Pompano*), discussed also in the *Graham* submissions, at [27].

<sup>26</sup> *Pompano*, 51 [17] (French CJ).

<sup>27</sup> *Pompano*, 84 [104] (Hayne, Crennan, Kiefel and Bell JJ).

<sup>28</sup> *Pompano*, 101 [163] (Hayne, Crennan, Kiefel and Bell JJ).

<sup>29</sup> *Pompano*, 101 [163] (Hayne, Crennan, Kiefel and Bell JJ).

case against it.<sup>30</sup> As noted in the *Graham* submissions,<sup>31</sup> this was one factor that led to the statutory scheme being upheld.

20. The present statutory scheme involves no obligation to particularise allegations that are based on “protected” information. Nor does it limit the extent to which decisions can be based on “protected” information. Where, as here, the “protected” information is critical to the decision, the decision is rendered practically unexaminable by a Court on judicial review.

*Information unnecessarily withheld*

- 10 21. The Minister’s reasons do not tell the Applicant which “group or organisation” he is suspected of being a member of. This is despite the fact that, ex hypothesi, the Applicant must already know of his own membership of that group or organisation. This is an example of information being unnecessarily withheld in reliance on s 503A.

- 20 22. It is easy to see how this might happen. In order to be used in “character” decision-making, information in the possession of a gazetted agency needs to flow to the Department. At this moment, it is a simple matter for the gazetted agency to stipulate that the information is being communicated in confidence, thereby gaining the protection of the statutory scheme.<sup>32</sup> There are many reasons why a gazetted agency might do this. For example, the information may expose (or allow to be inferred) a confidential source of information or secret law enforcement methodology. Or it may give an advantage to criminals by revealing what is (and is not) known to law enforcement agencies. These are recognised heads of “public interest”.<sup>33</sup> But other reasons have nothing to do with the public interest.

22.1. **Other “sensitivities”**. Information may tend to embarrass a gazetted agency by exposing corruption or inefficiency. Or it may simply invite

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<sup>30</sup> *Pompano*, 79 [87.4]-[87.5] (French CJ), 102 [165]-[166] (Hayne, Crennan, Kiefel and Bell JJ).

<sup>31</sup> *Graham* submissions, [27.3].

<sup>32</sup> The communication needs to be to an “authorised migration officer”, which is effectively any bureaucrat who performs functions or exercises powers under the Act. See the definitions of “authorised migration officer” and “Commonwealth officer” in s 503A(9) of the Act, together with ss 3 (definition of “Commonwealth officer”) and 70 of the *Crimes Act 1914* (Cth).

<sup>33</sup> See e.g. *Marks v Beyfus* (1890) 25 QBD 494, 498 (Lord Esher MR); *Conway*, 953G-54A (Lord Reid), 972F (Lord Morris); 995C (Lord Upjohn). See also the Uniform Evidence Law, s 130(4).

scrutiny of the gazetted agency. Such factors are not recognised at common law. Indeed, they have been repeatedly eschewed.<sup>34</sup>

22.2. **Efficiency.** But for the statutory scheme, a gazetted agency would need to identify any sensitive information, inform the Department of this and request an opportunity to claim public interest immunity before that information was disclosed in the context of decision-making or on judicial review. Ultimately, any such claim may need to be substantiated. All of this creates work for the gazetted agency.

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a. **Identifying what is sensitive.** Sensitive information may be collocated with other information within a single document or within a dossier or file consisting of multiple documents. Someone would need to examine all of the material to identify that which is sensitive. If only part of a document is sensitive, a redacted version of the document would need to be prepared.

b. **Restricting oneself to the public interest.** Care must be taken, when claiming public interest immunity, to differentiate between information that engages the public interest and information that is merely “sensitive” to a gazetted agency for some other reason that the common law does not recognise.

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c. **Preparing evidence.** Finally, whoever claims public interest immunity must be prepared to furnish affidavit evidence in support of the claim. Deponents themselves will need to be aware of what the information is. This generally necessitates escalation and legal input within an agency.

The statutory scheme obviates all of this. It enables a gazetted agency to communicate whole documents or files in confidence. There is no need to spend time identifying what (if anything) is sensitive, or whether such sensitivities engage the public interest. There is also no risk that the gazetted agency will be forced to devote time and

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<sup>34</sup> See the *Graham* submissions, [18]. See also, in the context of the open court principle, *Scott v Scott* [1913] AC 417, 438-39 (Viscount Haldane LC)

resources to justifying its claims in the courtroom. It is not hard to see how this would be attractive to a gazetted agency with finite resources.

22.3. **Policy.** A gazetted agency might also communicate information in confidence as a matter of course or pursuant to some policy. For example, to allow requests for information from partner agencies to be processed more quickly, a law enforcement agency may subject all information to an initial obligation of confidence, in the understanding that any on-disclosure will require further permission, at which juncture the information can be vetted for sensitivities. Such a practice might exist quite independently of s 503A. This appears to have been the case in *Ball*, where the Minister found that the applicant had a substantial criminal record but withheld that criminal record from her on the basis that it had been provided by the New Zealand Police by way of a computer print-out that stipulated: "This information should not be released without police consent."<sup>35</sup>

23. There will also be cases in which the reason for communicating information confidentially no longer exists by the time the decision is made, or challenged. This may be because information is no longer sensitive due to the passage of time.<sup>36</sup> Or it may be because the information is no longer sensitive once visa cancellation in reliance on it reveals to an applicant that he or she is of interest to law enforcement authorities.

24. Clearly, there are many possible reasons why information upon which a decision-maker intends to rely may not in fact be sensitive to the gazetted agency that provided it in confidence. Yet in no case does the statutory scheme require authorised migration officers or the Minister to take any steps to ascertain whether this is so, nor to attempt to divest "protected" information of its confidential character.<sup>37</sup> To the contrary, the Act allows the Minister to

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<sup>35</sup> *Ball v Minister for Immigration, Multicultural and Indigenous Affairs* (2003) 199 ALR 374, 378 [7], [10], 381-83 [14]-[17] (Ryan J).

<sup>36</sup> For example, the decision impugned in the *Graham* proceeding was made some 18 months after the "protected" information was communicated by the gazetted agency to an authorised migration officer: see the *Graham* submissions, f.n. 96.

<sup>37</sup> *Minister for Immigration and Multicultural and Indigenous Affairs v Ball*, (2004) 138 FCR 450, 459 [30] (Dowsett J), 470 [81] (Jacobson and Bennett JJ).



waive protection after consulting with the Gazetted agency, but explicitly provides that his discretion to do so is non-compellable.<sup>38</sup>

*Natural consequences of the statutory scheme*

25. It is thus apparent that the statutory scheme can and sometimes does result in unnecessary secrecy and practically unreviewable decisions. There is nothing to suggest that such consequences are uncommon.<sup>39</sup>

10 25.1. Information relevant to “character” decision-making is inherently likely to be acquired or generated by law enforcement or intelligence agencies, which are very likely to be gazetted agencies.<sup>40</sup> It is hardly surprising that there will be cases (like the present) where all of the critical information was obtained from a gazetted agency.

20 25.2. It is also not surprising that gazetted agencies, given a choice between the common law of public interest immunity and a statutory scheme that permits them to determine whether information in their possession is to be immune from production, will avail themselves of the latter. Nor that they will do so liberally. As noted above,<sup>41</sup> a gazetted agency might communicate information in confidence for reasons that have nothing to do with the public interest. Considered from the perspective of the gazetted agency, these reasons are entirely logical. Importantly, they do not involve the gazetted agencies acting venally.<sup>42</sup> They simply involve the gazetted agency (which is under no obligation to have regard to broader public interest considerations) making use of what the statutory scheme offers.

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<sup>38</sup> See ss 503A(3) and (3A).

<sup>39</sup> But even if they were, a provision that impairs judicial review of administrative action is not rendered valid because it only does so in a minority of cases. As the plurality remarked in *Bodruddaza* (2007) 2289 CLR 651: “[i]t is no answer to say that some unfairness is to be expected and must be tolerated”: see at 672 [58] (Gleeson CJ, Gummow, Kirby, Hayne, Heydon and Crennan JJ).

<sup>40</sup> See the definition of “gazetted agency” in s 503A(9) of the Act, together with the Gazette notice signed 14 August 2003 and published 3 September 2003 (No. GN 35, p. 2602). The list of gazetted agencies has since expanded: see the Gazette notice signed 22 March 2016, which commenced operation on 1 April 2016 (Immi 16/028).

<sup>41</sup> At [22].

<sup>42</sup> Cf. *Wainohu v New South Wales* (2011) 243 CLR 181, 240 [152] (Heydon J).

25.3. Finally, it is hardly surprising that “character” decision-makers proceed to rely upon “protected” information without considering whether particular information is (or ever was) sensitive to the gazetted agency that provided it confidentially. The statutory scheme does not require them to take any steps in this regard.<sup>43</sup> And doing so would delay the decision-making process, add to costs and perhaps even antagonise the gazetted agency.

***Additional ground of review***

10 26. As noted in the *Graham* submissions,<sup>44</sup> a person can fail the “character test” by being a suspected member (past or present) of a group or organisation suspected of being, or having previously been, “involved in criminal conduct”. But groups and organisations are often heterogeneous. And they may be “involved in” criminal activity through a subset of their members. Yet the “membership” limb of the character test, in s 501(6)(b) of the Act, requires no “sympathy with, or support for, or involvement in, the criminal conduct”. It captures not only those who are involved in criminal conduct, but also those who are opposed to it, including anyone who is actively trying to root it out. It captures too any past members who quit because they disagreed with others’ involvement in criminal conduct. So too past and present members who  
20 simply have no knowledge of any criminal conduct.

27. Thus, even in cases where the suspected past or present “criminal conduct” of a group or organisation engages the “national interest”,<sup>45</sup> it hardly follows that it is in the national interest to cancel the visa of a particular member. In particular, visa cancellation (and subsequent exclusion from the Australian community) will not necessarily serve to “disrupt” or “disable” the group. Indeed, it may even do the opposite. For example:

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<sup>43</sup> See [24] above.

<sup>44</sup> At [44]ff.

<sup>45</sup> This will not always be the case. The “national interest” is a distinct criterion from the “character test”, albeit that it will, sometimes, be engaged by the same facts that cause a person to fail the character test. As Gaudron J remarked in *Re Patterson; ex parte Taylor* (2001) 207 CLR 391, at 419 [80]: “Both issues must be considered separately. And where the same conduct is relied upon for both purposes, there must be something in the nature, or the seriousness of that conduct, or in the circumstances surrounding it to found a satisfaction that it is in the national interest to cancel the visa of the person concerned.”

27.1. Removing from Australia a member who does not know about any involvement in criminal activity will not assist, whether directly or indirectly, to suppress such activity.

27.2. Removing a member who is actively opposed to the involvement of others in criminal activity may lead to *increased* involvement.

27.3. Targeting a past member who quit the group or organisation because he or she disagreed with its involvement in criminal activity may discourage others from following his or her lead.

10 28. Clearly, more analysis is required. Decision-makers must not leap uncritically from suspicion of past or present membership to a conclusion that visa cancellation “is in the national interest”. Rather, they must ask: how will removing this particular individual advance the national interest?

29. On this front, the “issues paper” did not suggest a mode of reasoning. It did no more than beg the question, by telling the Minister that:<sup>46</sup>

It is open to you to consider that the cancellation of Mr TE PUIA’s visa on the basis of his suspected membership of a group suspected of being involved in criminal conduct, is in the national interest, insofar as excluding such persons from the Australian community will contribute to national law enforcement efforts to disrupt and disable such groups.

20 30. The words “insofar as” invite consideration of whether, and to what extent, removing the Applicant from Australia would help to “disrupt and disable” the group in question. This, in turn, invites consideration of how it might do so. But the Minister did not engage with such questions. Instead, he merely restated what had been put to him:

I concluded that the cancellation of Mr TE PUIA’s visa on the basis of his suspected membership of a group suspected of being involved in criminal conduct is in the national interest insofar as excluding such persons from the Australian community will contribute to national law enforcement efforts to disrupt and disable such groups.

30 31. There is no demonstrated substance, however concise, in this “conclusion”. There is nothing to suggest that the Minister turned his mind to the above questions. He did not record (even in the most general terms) any finding that the Applicant was himself involved in, or that he otherwise supported or

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<sup>46</sup> Issues paper, [25] (SCB, 26).

facilitated, criminal activity. Nor any suspicion that he may do so in the future. Nor did the Minister set out any reasoning of general application, such as a problematic project to indiscriminately remove group members in the mere hope of removing some of those who may be involved in, supportive of, or facilitating criminal activity.<sup>47</sup>

32. The Minister's reasons suggest that his conclusion on "national interest" was an unthinking one. They suggest that he failed to make any finding capable of supporting his conclusion and, thus, that he did not reason to that conclusion via a logical pathway.<sup>48</sup>

10 **Part VII: Statutory provisions**

33. See Annexure.

**Part VIII: Orders sought**

34. The Applicant seeks:

34.1. A writ of prohibition directed to the Respondent to prevent action upon his decision made on 27 October 2015 to cancel the Applicant's Class TY Subclass 444 Special Category (Temporary) visa.

34.2. A writ of certiorari directed to the Respondent quashing that decision.

34.3. Costs.

34.4. Such other orders as the Court deems appropriate.

- 20 35. In the event that question 1 is answered "yes" but questions 3(a) and (b) are answered "no", and the Court is unable, on the evidence, to answer question 3(c) in the affirmative, the Applicant would wish to pursue (subject to public interest immunity) the information that has not yet been disclosed to him. He would accordingly seek:

35.1. An order remitting the proceeding to the Federal Court of Australia.

35.2. Costs.

35.3. Such other orders as the Court deems appropriate.

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<sup>47</sup> Such a mode of reasoning may be legally unreasonable. But this question does not arise.

<sup>48</sup> See *FTZK v Minister for Immigration and Border Protection* (2014) 310 ALR 1, 5 [6] (French CJ and Gageler J).

**Part IX: Oral argument**

36. It is estimated that the Applicant will require 2½ hours to present his oral argument, including in reply. This includes oral argument in M97 of 2016.

Dated: 12 December 2016



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Bret Walker

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Telephone: 02 8257 2527

Facsimile: 02 9221 7974

Email: [maggie.dalton@stjames.net.au](mailto:maggie.dalton@stjames.net.au)



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James Forsaith

Telephone: 03 9225 7945

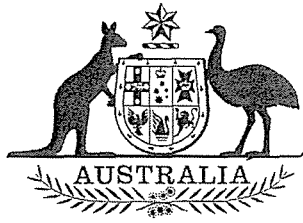
Facsimile: 03 9225 8485

Email: [forsaith@vicbar.com.au](mailto:forsaith@vicbar.com.au)

## Annexure: Statutory provisions

The following provisions were in force on 27 October 2015:

- *Constitution*, ss 71, 75
  - o Remain in force, in this form
- *Migration Act 1958* (Cth), ss 501, 501C, 503A
  - o Remain in force, in this form
- *Crimes Act 1914* (Cth), ss 3 (definition of “Commonwealth officer”), 70
  - o Remain in force, in this form
- 10 - Notice under s 503A of the *Migration Act 1958* as amended by the *Migration Legislation Amendment (Protected Information) Act 2003* – dated 14 August 2013
  - o Revoked by Notice under section 503A of the *Migration Act 1958* – 16/001 – dated 22 March 2016 [commenced 1 April 2016], which remains in force, in this form



# Commonwealth of Australia Constitution Act (The Constitution)

This compilation was prepared on 4 September 2013  
taking into account alterations up to Act No. 84 of 1977

**[Note: This compilation contains all amendments to the Constitution  
made by the Constitution Alterations specified in Note 1  
Additions to the text are shown in bold type  
Omitted text is shown as ruled through]**

Prepared by the Office of Parliamentary Counsel, Canberra

## Chapter III—The Judicature

### 71 Judicial power and Courts

The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes.

### 72 Judges' appointment, tenure, and remuneration

The Justices of the High Court and of the other courts created by the Parliament:

- (i) shall be appointed by the Governor-General in Council;
- (ii) shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity;
- (iii) shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office.

**The appointment of a Justice of the High Court shall be for a term expiring upon his attaining the age of seventy years, and a person shall not be appointed as a Justice of the High Court if he has attained that age.**

**The appointment of a Justice of a court created by the Parliament shall be for a term expiring upon his attaining the age that is, at the time of his appointment, the maximum age for Justices of that court and a person shall not be appointed as a Justice of such a court if he has attained the age that is for the time being the maximum age for Justices of that court.**

**Subject to this section, the maximum age for Justices of any court created by the Parliament is seventy years.**



from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.

Until the Parliament otherwise provides, the conditions of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court.

#### **74 Appeal to Queen in Council** [*see Note 12*]

No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.

The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.

Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure.

#### **75 Original jurisdiction of High Court**

In all matters:

- (i) arising under any treaty;
- (ii) affecting consuls or other representatives of other countries;
- (iii) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party;
- (iv) between States, or between residents of different States, or between a State and a resident of another State;

Section 76

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(v) in which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth; the High Court shall have original jurisdiction.

**76 Additional original jurisdiction**

The Parliament may make laws conferring original jurisdiction on the High Court in any matter:

- (i) arising under this Constitution, or involving its interpretation;
- (ii) arising under any laws made by the Parliament;
- (iii) of Admiralty and maritime jurisdiction;
- (iv) relating to the same subject-matter claimed under the laws of different States.

**77 Power to define jurisdiction**

With respect to any of the matters mentioned in the last two sections the Parliament may make laws:

- (i) defining the jurisdiction of any federal court other than the High Court;
- (ii) defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is invested in the courts of the States;
- (iii) investing any court of a State with federal jurisdiction.

**78 Proceedings against Commonwealth or State**

The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power.

**79 Number of judges**

The federal jurisdiction of any court may be exercised by such number of judges as the Parliament prescribes.

**80 Trial by jury**

The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence



# Migration Act 1958

No. 62, 1958

## Compilation No. 124

**Compilation date:** 1 July 2015  
**Includes amendments up to:** Act No. 104, 2015  
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**Volume 1:** sections 1–261K  
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Schedule  
Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

Section 501

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*sentence* includes any form of determination of the punishment for an offence.

**501 Refusal or cancellation of visa on character grounds**

*Decision of Minister or delegate—natural justice applies*

- (1) The Minister may refuse to grant a visa to a person if the person does not satisfy the Minister that the person passes the character test.

Note: *Character test* is defined by subsection (6).

- (2) The Minister may cancel a visa that has been granted to a person if:
- (a) the Minister reasonably suspects that the person does not pass the character test; and
  - (b) the person does not satisfy the Minister that the person passes the character test.

*Decision of Minister—natural justice does not apply*

- (3) The Minister may:
- (a) refuse to grant a visa to a person; or
  - (b) cancel a visa that has been granted to a person;
- if:
- (c) the Minister reasonably suspects that the person does not pass the character test; and
  - (d) the Minister is satisfied that the refusal or cancellation is in the national interest.
- (3A) The Minister must cancel a visa that has been granted to a person if:
- (a) the Minister is satisfied that the person does not pass the character test because of the operation of:
    - (i) paragraph (6)(a) (substantial criminal record), on the basis of paragraph (7)(a), (b) or (c); or
    - (ii) paragraph (6)(e) (sexually based offences involving a child); and

- (b) the person is serving a sentence of imprisonment, on a full-time basis in a custodial institution, for an offence against a law of the Commonwealth, a State or a Territory.
- (3B) Subsection (3A) does not limit subsections (2) and (3).
- (4) The power under subsection (3) may only be exercised by the Minister personally.
  - (5) The rules of natural justice, and the code of procedure set out in Subdivision AB of Division 3 of Part 2, do not apply to a decision under subsection (3) or (3A).

*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)); or
  - (aa) the person has been convicted of an offence that was committed:
    - (i) while the person was in immigration detention; or
    - (ii) during an escape by the person from immigration detention; or
    - (iii) after the person escaped from immigration detention but before the person was taken into immigration detention again; or
  - (ab) the person has been convicted of an offence against section 197A; or
  - (b) the Minister reasonably suspects:
    - (i) that the person has been or is a member of a group or organisation, or has had or has an association with a group, organisation or person; and
    - (ii) that the group, organisation or person has been or is involved in criminal conduct; or
  - (ba) the Minister reasonably suspects that the person has been or is involved in conduct constituting one or more of the following:

Section 501

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- (i) an offence under one or more of sections 233A to 234A (people smuggling);
  - (ii) an offence of trafficking in persons;
  - (iii) the crime of genocide, a crime against humanity, a war crime, a crime involving torture or slavery or a crime that is otherwise of serious international concern; whether or not the person, or another person, has been convicted of an offence constituted by the conduct; or
- (c) having regard to either or both of the following:
- (i) the person's past and present criminal conduct;
  - (ii) the person's past and present general conduct;
- the person is not of good character; or
- (d) in the event the person were allowed to enter or to remain in Australia, there is a risk that the person would:
- (i) engage in criminal conduct in Australia; or
  - (ii) harass, molest, intimidate or stalk another person in Australia; or
  - (iii) vilify a segment of the Australian community; or
  - (iv) incite discord in the Australian community or in a segment of that community; or
  - (v) represent a danger to the Australian community or to a segment of that community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community or segment, or in any other way; or
- (e) a court in Australia or a foreign country has:
- (i) convicted the person of one or more sexually based offences involving a child; or
  - (ii) found the person guilty of such an offence, or found a charge against the person proved for such an offence, even if the person was discharged without a conviction; or
- (f) the person has, in Australia or a foreign country, been charged with or indicted for one or more of the following:
- (i) the crime of genocide;

- (ii) a crime against humanity;
- (iii) a war crime;
- (iv) a crime involving torture or slavery;
- (v) a crime that is otherwise of serious international concern; or
- (g) the person has been assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*); or
- (h) an Interpol notice in relation to the person, from which it is reasonable to infer that the person would present a risk to the Australian community or a segment of that community, is in force.

Otherwise, the person passes the *character test*.

*Substantial criminal record*

- (7) For the purposes of the character test, a person has a ***substantial criminal record*** if:
- (a) the person has been sentenced to death; or
  - (b) the person has been sentenced to imprisonment for life; or
  - (c) the person has been sentenced to a term of imprisonment of 12 months or more; or
  - (d) the person has been sentenced to 2 or more terms of imprisonment, where the total of those terms is 12 months or more; or
  - (e) the person has been acquitted of an offence on the grounds of unsoundness of mind or insanity, and as a result the person has been detained in a facility or institution; or
  - (f) the person has:
    - (i) been found by a court to not be fit to plead, in relation to an offence; and
    - (ii) the court has nonetheless found that on the evidence available the person committed the offence; and
    - (iii) as a result, the person has been detained in a facility or institution.

Section 501

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*Concurrent sentences*

- (7A) For the purposes of the character test, if a person has been sentenced to 2 or more terms of imprisonment to be served concurrently (whether in whole or in part), the whole of each term is to be counted in working out the total of the terms.

Example: A person is sentenced to 2 terms of 3 months imprisonment for 2 offences, to be served concurrently. For the purposes of the character test, the total of those terms is 6 months.

*Periodic detention*

- (8) For the purposes of the character test, if a person has been sentenced to periodic detention, the person's term of imprisonment is taken to be equal to the number of days the person is required under that sentence to spend in detention.

*Residential schemes or programs*

- (9) For the purposes of the character test, if a person has been convicted of an offence and the court orders the person to participate in:
- (a) a residential drug rehabilitation scheme; or
  - (b) a residential program for the mentally ill;
- the person is taken to have been sentenced to a term of imprisonment equal to the number of days the person is required to participate in the scheme or program.

*Pardons etc.*

- (10) For the purposes of the character test, a sentence imposed on a person, or the conviction of a person for an offence, is to be disregarded if:
- (a) the conviction concerned has been quashed or otherwise nullified; or
  - (b) both:
    - (i) the person has been pardoned in relation to the conviction concerned; and



- (ii) the effect of that pardon is that the person is taken never to have been convicted of the offence.

*Conduct amounting to harassment or molestation*

- (11) For the purposes of the character test, conduct may amount to harassment or molestation of a person even though:
- (a) it does not involve violence, or threatened violence, to the person; or
  - (b) it consists only of damage, or threatened damage, to property belonging to, in the possession of, or used by, the person.

*Definitions*

- (12) In this section:

*court* includes a court martial or similar military tribunal.

*imprisonment* includes any form of punitive detention in a facility or institution.

*sentence* includes any form of determination of the punishment for an offence.

Note 1: *Visa* is defined by section 5 and includes, but is not limited to, a protection visa.

Note 2: For notification of decisions under subsection (1) or (2), see section 501G.

Note 3: For notification of decisions under subsection (3), see section 501C.

**501A Refusal or cancellation of visa—setting aside and substitution of non-adverse decision under subsection 501(1) or (2)**

- (1) This section applies if:
- (a) a delegate of the Minister; or
  - (b) the Administrative Appeals Tribunal;
- makes a decision (the *original decision*):
- (c) not to exercise the power conferred by subsection 501(1) to refuse to grant a visa to the person; or

*Minister's exercise of power*

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

*Decision not reviewable under Part 5 or 7*

- (5) A decision under subsection (2) is not reviewable under Part 5 or 7.

Note: For notification of decisions under subsection (2), see section 501G.

**501C Refusal or cancellation of visa—revocation of decision under subsection 501(3) or 501A(3)**

- (1) This section applies if the Minister makes a decision (the *original decision*) under subsection 501(3) or 501A(3) to:
- (a) refuse to grant a visa to a person; or
  - (b) cancel a visa that has been granted to a person.
- (2) For the purposes of this section, *relevant information* is information (other than non-disclosable information) that the Minister considers:
- (a) would be the reason, or a part of the reason, for making the original decision; and
  - (b) is specifically about the person or another person and is not just about a class of persons of which the person or other person is a member.
- (3) As soon as practicable after making the original decision, the Minister must:
- (a) give the person, in the way that the Minister considers appropriate in the circumstances:
    - (i) a written notice that sets out the original decision; and
    - (ii) particulars of the relevant information; and
  - (b) except in a case where the person is not entitled to make representations about revocation of the original decision (see subsection (10))—invite the person to make representations to the Minister, within the period and in the manner

Section 501C

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ascertained in accordance with the regulations, about revocation of the original decision.

- (4) The Minister may revoke the original decision if:
  - (a) the person makes representations in accordance with the invitation; and
  - (b) the person satisfies the Minister that the person passes the character test (as defined by section 501).
- (5) The power under subsection (4) may only be exercised by the Minister personally.
- (6) If the Minister revokes the original decision, the original decision is taken not to have been made. This subsection has effect subject to subsection (7).
- (7) Any detention of the person that occurred during any part of the period:
  - (a) beginning when the original decision was made; and
  - (b) ending at the time of the revocation of the original decision;is lawful and the person is not entitled to make any claim against the Commonwealth, an officer or any other person because of the detention.
- (8) If the Minister makes a decision (the *subsequent decision*) to revoke, or not to revoke, the original decision, the Minister must cause notice of the making of the subsequent decision to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the subsequent decision was made.
- (9) If the person does not make representations in accordance with the invitation, the Minister must cause notice of that fact to be laid before each House of the Parliament within 15 sitting days of that House after the last day on which the representations could have been made.
- (10) The regulations may provide that, for the purposes of this section:
  - (a) a person; or

(b) a person included in a specified class of persons; is not entitled to make representations about revocation of an original decision unless the person is a detainee.

- (11) A decision not to exercise the power conferred by subsection (4) is not reviewable under Part 5 or 7.

**501CA Cancellation of visa—revocation of decision under subsection 501(3A) (person serving sentence of imprisonment)**

- (1) This section applies if the Minister makes a decision (the *original decision*) under subsection 501(3A) (person serving sentence of imprisonment) to cancel a visa that has been granted to a person.
- (2) For the purposes of this section, *relevant information* is information (other than non-disclosable information) that the Minister considers:
- (a) would be the reason, or a part of the reason, for making the original decision; and
  - (b) is specifically about the person or another person and is not just about a class of persons of which the person or other person is a member.
- (3) As soon as practicable after making the original decision, the Minister must:
- (a) give the person, in the way that the Minister considers appropriate in the circumstances:
    - (i) a written notice that sets out the original decision; and
    - (ii) particulars of the relevant information; and
  - (b) invite the person to make representations to the Minister, within the period and in the manner ascertained in accordance with the regulations, about revocation of the original decision.
- (4) The Minister may revoke the original decision if:
- (a) the person makes representations in accordance with the invitation; and

Section 503

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- (2) A decision under subsection (1) must be taken by the Minister personally.
- (3) If the Minister makes a decision under subsection (1), the Minister must cause notice of the making of the decision to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the decision was made.

**503 Exclusion of certain persons from Australia**

- (1) A person in relation to whom a decision has been made:
  - (a) under section 200 because of circumstances specified in section 201; or
  - (b) under section 501, 501A or 501B; or
  - (c) to refuse under section 65 to grant a protection visa relying on subsection 5H(2) or 36(1C);is not entitled to enter Australia or to be in Australia at any time during the period determined under the regulations.
- (2) The period referred to in subsection (1) commences, in the case of a person who has been deported or removed from Australia, when the person is so deported or removed.
- (3) Different periods may be prescribed under subsection (1) in relation to different situations.
- (4) This section does not apply to a holder of a criminal justice visa or to a holder of a permanent visa that was granted by the Minister acting personally.

**503A Protection of information supplied by law enforcement agencies or intelligence agencies**

- (1) If information is communicated to an authorised migration officer by a gazetted agency on condition that it be treated as confidential information and the information is relevant to the exercise of a power under section 501, 501A, 501B or 501C:

- (a) the officer must not divulge or communicate the information to another person, except where:
  - (i) the other person is the Minister or an authorised migration officer; and
  - (ii) the information is divulged or communicated for the purposes of the exercise of a power under section 501, 501A, 501B or 501C; and
- (b) an authorised migration officer to whom information has been communicated in accordance with paragraph (a) or this paragraph must not divulge or communicate the information to another person, except where:
  - (i) the other person is the Minister or an authorised migration officer; and
  - (ii) the information is divulged or communicated for the purposes of the exercise of a power under section 501, 501A, 501B or 501C.

Note: *Authorised migration officer* and *gazetted agency* are defined by subsection (9).

- (2) If:
  - (a) information is communicated to an authorised migration officer by a gazetted agency on condition that it be treated as confidential information and the information is relevant to the exercise of a power under section 501, 501A, 501B or 501C; or
  - (b) information is communicated to the Minister or an authorised migration officer in accordance with paragraph (1)(a) or (b);then:
  - (c) the Minister or officer must not be required to divulge or communicate the information to a court, a tribunal, a parliament or parliamentary committee or any other body or person; and
  - (d) if the information was communicated to an authorised migration officer—the officer must not give the information in evidence before a court, a tribunal, a parliament or parliamentary committee or any other body or person.

Section 503A

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- (3) The Minister may, by writing, declare that subsection (1) or (2) does not prevent the disclosure of specified information in specified circumstances to a specified Minister, a specified Commonwealth officer, a specified court or a specified tribunal. However, before making the declaration, the Minister must consult the gazetted agency from which the information originated.

Note: *Commonwealth officer* is defined by subsection (9).

- (3A) The Minister does not have a duty to consider whether to exercise the Minister's power under subsection (3).

- (4) If a person divulges or communicates particular information to a Commonwealth officer in accordance with a declaration under subsection (3), the officer must comply with such conditions relating to the disclosure by the officer of the information as are specified in the declaration.

- (4A) If a person divulges or communicates particular information to a Commonwealth officer in accordance with a declaration under subsection (3):

(a) the officer must not be required to divulge or communicate the information to the Federal Court or the Federal Circuit Court; and

(b) the officer must not give the information in evidence before the Federal Court or the Federal Circuit Court.

The information may only be considered by the Federal Court or the Federal Circuit Court if a fresh disclosure of the information is made in accordance with:

(c) a declaration under subsection (3); or

(d) subsection 503B(6).

- (5) If a person divulges or communicates particular information to a tribunal in accordance with a declaration under subsection (3), the member or members of the tribunal must not divulge or communicate the information to any person (other than the Minister or a Commonwealth officer).

- (5A) If a person divulges or communicates particular information to a tribunal in accordance with a declaration under subsection (3):
- (a) the member or members of the tribunal must not be required to divulge or communicate the information to the Federal Court or the Federal Circuit Court; and
  - (b) the member or members of the tribunal must not give the information in evidence before the Federal Court or the Federal Circuit Court.

The information may only be considered by the Federal Court or the Federal Circuit Court if a fresh disclosure of the information is made in accordance with:

- (c) a declaration under subsection (3); or
  - (d) subsection 503B(6).
- (6) This section has effect despite anything in:
- (a) any other provision of this Act (other than sections 503B and 503C); and
  - (b) any law (whether written or unwritten) of a State or a Territory.
- (7) To avoid doubt, if information is divulged or communicated:
- (a) in accordance with paragraph (1)(a) or (b); or
  - (b) in accordance with a declaration under subsection (3);
- the divulging or communication, as the case may be, is taken, for the purposes of the Australian Privacy Principles, to be authorised by this Act.
- (8) If any Act (whether passed before or after the commencement of this section) provides for information to be given, that Act has effect subject to this section unless that Act expressly provides otherwise.

Note: This section is specified in Schedule 3 to the *Freedom of Information Act 1982* with the effect that documents containing information protected from disclosure by this section are exempt documents under that Act.



Section 503B

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(9) In this section:

*Australian law enforcement or intelligence body* means a body, agency or organisation that is responsible for, or deals with, law enforcement, criminal intelligence, criminal investigation, fraud or security intelligence in, or in a part of, Australia.

*authorised migration officer* means a Commonwealth officer whose duties consist of, or include, the performance of functions, or the exercise of powers, under this Act.

*Commonwealth officer* has the same meaning as in section 70 of the *Crimes Act 1914*.

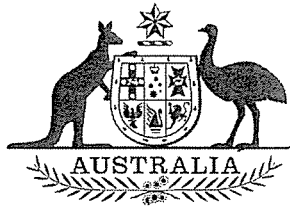
Note: A Minister is not a Commonwealth officer.

*foreign law enforcement body* means a body, agency or organisation that is responsible for, or deals with, law enforcement, criminal intelligence, criminal investigation, fraud or security intelligence in a foreign country or a part of a foreign country.

*gazetted agency* means:

- (a) in the case of an Australian law enforcement or intelligence body—a body specified in a notice published by the Minister in the *Gazette*; or
- (b) in the case of a foreign law enforcement body—a body in a foreign country, or a part of a foreign country, that is a foreign country, or part of a foreign country, specified in a notice published by the Minister in the *Gazette*; or
- (c) a war crimes tribunal established by or under international arrangements or international law.

Note: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.



# Crimes Act 1914

No. 12, 1914

## Compilation No. 108

**Compilation date:** 8 October 2015  
**Includes amendments up to:** Act No. 122, 2015  
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This compilation is in 2 volumes

**Volume 1:** sections 1–23W  
**Volume 2:** sections 23WA–91  
Schedule  
Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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# An Act relating to Offences against the Commonwealth

## Part I—Preliminary

### 1 Short title

This Act may be cited as the *Crimes Act 1914*.

### 3 Interpretation

(1) In this Act, unless the contrary intention appears:

*Aboriginal person* means a person of the Aboriginal race of Australia.

*ACC* means the Australian Crime Commission.

*associated offence* means:

- (a) in relation to an offence against section 233B of the *Customs Act 1901*—an ancillary offence (within the meaning of the *Criminal Code*) that relates to the offence; or
- (b) in relation to an offence against section 10, 11, 12, 13 or 14 of the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*—an ancillary offence (within the meaning of the *Criminal Code*) that relates to the offence; or
- (c) in relation to an offence against a law of a State or Territory—an offence:
  - (i) under a provision of a law of that State or Territory that corresponds to a provision of Part 2.4 of the *Criminal Code*; and
  - (ii) that relates to the offence.

*Australian law enforcement officer* means a law enforcement officer other than a member of a police force, or other law enforcement agency, of a foreign country.

child sex offences: see Schedule 2 to the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010*.

**Commonwealth offence**, except in Part IC, means an offence against a law of the Commonwealth.

**Commonwealth officer** means a person holding office under, or employed by, the Commonwealth, and includes:

- (a) a person appointed or engaged under the *Public Service Act 1999*;
- (aa) a person permanently or temporarily employed in the Public Service of a Territory or in, or in connection with, the Defence Force, or in the Service of a public authority under the Commonwealth;
- (b) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*); and
- (c) for the purposes of section 70, a person who, although not holding office under, or employed by, the Commonwealth, a Territory or a public authority under the Commonwealth, performs services for or on behalf of the Commonwealth, a Territory or a public authority under the Commonwealth; and
- (d) for the purposes of section 70:
  - (i) a person who is an employee of the Australian Postal Corporation;
  - (ii) a person who performs services for or on behalf of the Australian Postal Corporation; and
  - (iii) an employee of a person who performs services for or on behalf of the Australian Postal Corporation.

**constable** means a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory.

**controlled substance** means:



# Crimes Act 1914

No. 12, 1914

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## **Part VI—Offences by and against public officers**

### **70 Disclosure of information by Commonwealth officers**

- (1) A person who, being a Commonwealth officer, publishes or communicates, except to some person to whom he or she is authorized to publish or communicate it, any fact or document which comes to his or her knowledge, or into his or her possession, by virtue of being a Commonwealth officer, and which it is his or her duty not to disclose, shall be guilty of an offence.
- (2) A person who, having been a Commonwealth officer, publishes or communicates, without lawful authority or excuse (proof whereof shall lie upon him or her), any fact or document which came to his or her knowledge, or into his or her possession, by virtue of having been a Commonwealth officer, and which, at the time when he or she ceased to be a Commonwealth officer, it was his or her duty not to disclose, shall be guilty of an offence.

Penalty: Imprisonment for 2 years.



Commonwealth of Australia

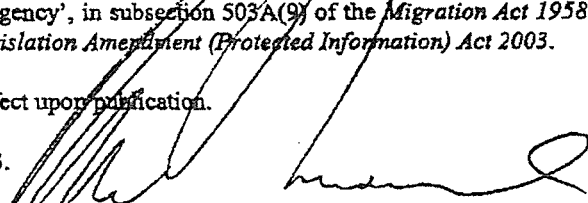
*Migration Act 1958*

**NOTICE UNDER SECTION 503A OF THE *MIGRATION ACT 1958* AS AMENDED BY  
THE *MIGRATION LEGISLATION AMENDMENT (PROTECTED INFORMATION) ACT*  
2003.**

I, **PHILIP RUDDOCK**, Minister for Immigration and Multicultural and Indigenous Affairs, acting under subsection 503A(9) of the *Migration Act 1958* as amended by the *Migration Legislation Amendment (Protected Information) Act 2003* hereby:

1. REVOKE the gazette notice made under subsection 503A(9) of the *Migration Act 1958* as amended by the *Migration Legislation Amendment (Strengthening of Provisions relating to Character and Conduct) Act 1998* and signed on 4 August 2003;
2. SPECIFY each of the Australian law enforcement or intelligence bodies listed in Schedule 1 to this notice, as a gazetted agency for the purposes of paragraph (a) of the definition of 'gazetted agency' in subsection 503A(9) of the *Migration Act 1958*, as amended by the *Migration Legislation Amendment (Protected Information) Act 2003*;
3. SPECIFY each of the foreign countries, or parts of foreign countries, listed in Schedule 2 to this notice, as foreign countries, or parts of foreign countries, for the purposes of paragraph (b) of the definition of 'gazetted agency', in subsection 503A(9) of the *Migration Act 1958*, as amended by the *Migration Legislation Amendment (Protected Information) Act 2003*.
4. This Instrument comes into effect upon publication.

Dated *1st August 2003*.

  
Minister for Immigration and Multicultural and Indigenous Affairs

NOTE 1: *Gazette Notice* is defined in regulation 1.03 to mean a notice in the *Gazette* by the Minister that is authorised by the Act, or a notice under regulation 1.17.

NOTE 2: The definition of *gazetted agency* in subsection 503A(9) of the *Migration Act 1958*, as amended by the *Migration Legislation Amendment (Protected Information) Act 2003* provides in part that a gazetted agency means:

- (a) in the case of an Australian law enforcement or intelligence body – a body specified in a notice published by the Minister in the *Gazette*; or
- (b) in the case of a foreign law enforcement body – a body in a foreign country, or a part of a foreign country, that is a foreign country, or part of a foreign country, specified in a notice published by the Minister in the *Gazette*.

NOTE 3: The definition of *Australian law enforcement or intelligence body* in subsection 503A(9) of the *Migration Act 1958*, as amended by the *Migration Legislation Amendment (Protected Information) Act 2003*, provides that an *Australian law enforcement or intelligence body* means a body, agency or organisation that is responsible for, or deals with, law enforcement, criminal intelligence, criminal investigation, fraud or security intelligence in, or in a part of Australia.

NOTE 4: The definition of *foreign law enforcement body* in subsection 503A(9) of the *Migration Act 1958*, as amended by the *Migration Legislation Amendment (Protected Information) Act 2003*, provides that a *foreign law enforcement body* means a body, agency or organisation that is responsible for, or deals with, law enforcement, criminal intelligence, criminal investigation, fraud or security intelligence in a foreign country or a part of a foreign country.]

## SCHEDULE 1

### LIST OF AUSTRALIAN LAW ENFORCEMENT AGENCIES OR INTELLIGENCE BODIES

1. Australian Federal Police.
2. Australian Crime Commission.
3. Australian Security Intelligence Organisation.
4. Aus Trac.
5. Crim Trac.
6. Interpol National Central Bureau, Canberra.
7. New South Wales Police Service.
8. Victoria Police.
9. Queensland Police Service.
10. South Australia Police.
11. Western Australia Police Service.
12. Tasmania Police
13. Northern Territory Police.
14. Australian Customs Service.
15. Department of the Treasury.
16. Department of Foreign Affairs and Trade.
17. Attorney-General's Department.
18. Australian Tax Office.
19. Centrelink.
20. Health Insurance Commission.
21. Australian Securities and Investments Commission.



## SCHEDULE 2

### LIST OF FOREIGN COUNTRIES, OR PARTS OF FOREIGN COUNTRIES

- A** Abu Dhabi, Afghanistan, Ajman, Albania, Alderney, Algeria, American Samoa, Andorra, Angola, Anguilla, Antigua and Barbuda, Argentina, Armenia, Aruba, Austria, Azad Kashmir, Azerbaijan
- B** Bahamas, Bahrain, Bangladesh, Barbados, Barbuda, Belarus, Belau, Belgium, Belize, Benin, Bermuda, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Bouvetøya, Brazil, Brechou, British Virgin Islands, Brunei, Bulgaria, Burkina Faso, Burundi
- C** Caicos Islands, Cambodia, Cameroon, Canada, Cape Verde, Cayman Islands, Central African Republic, Ceuta, Chad, Channel Islands, Chile, China People's Republic of, Colombia, Comoros, Congo Democratic Republic, Congo Republic, Cook Islands, Coral Sea Islands Territory, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic
- D** Denmark, Djibouti, Dominica, Dominican Republic, Dubai
- E** East Timor, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia
- F** Falkland Islands, Faroe Islands, Fiji, Finland, France, French Guiana, French Polynesia, Fujairah, Futuna Islands
- G** Gabon, Gambia, Georgia, Germany, Ghana, Gibraltar, Great Britain, Greece, Greenland, Grenada, Guadeloupe, Guam, Guatemala, Guernsey, Guinea, Guinea-Bissau, Guyana
- H** Haiti, Herm, Honduras, Hong Kong, Hungary
- I** Iceland, India, Indian Ocean Territory (British), Indonesia, Iran, Iraq, Ireland, Ireland (Northern), Isle of Man, Israel, Italy, Ivory Coast
- J** Jamaica, Japan, Jersey, Jethou, Jordan
- K** Kazakhstan, Kenya, Kiribati, Korea Democratic People's Republic (North Korea), Korea Republic (South Korea), Kuwait, Kyrgyzstan
- L** Laos, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lihou, Lithuania, Luxembourg
- M** Macau, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Martinique, Mauritania, Mauritius, Mayotte, Melilla, Mexico, Micronesia, Federated States of, Midway Island, Moldova, Monaco, Mongolia, Montserrat, Morocco, Mozambique, Myanmar

**SCHEDULE 2 - continued**

**LIST OF FOREIGN COUNTRIES, OR PARTS OF FOREIGN  
COUNTRIES - continued**

**N** Namibia, Nauru, Nepal, Netherlands, Netherlands Antilles, New Caledonia, New Zealand, Nicaragua, Niger, Nigeria, Niue, Norfolk Island, Northern Marian Islands, Commonwealth of the, Norway

**O** Oman

**P** Pakistan, Palau, Palestinian Territories, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Pitcairn Islands, Poland, Portugal, Príncipe, Puerto Rico

**Q** Qatar

**R** Ras al-Khaimah, Reunion, Romania, Russian Federation, Rwanda

**S** St Kitts and Nevis, St Helena, Saint Lucia, St Pierre and Miquelon, Saint Vincent and the Grenadines, Samoa, San Marino, São Tomé and Príncipe, Sark, Saudi Arabia, Senegal, Serbia and Montenegro, Seychelles, Sharjah, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, South Georgia, South Sandwich Islands, Spain, Spanish North Africa, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria

**T** Taiwan, Tajikistan, Tanzania, Thailand, Tobago, Togo, Tokelau, Tonga, Trinidad and Tobago, Tristan da Cunha, Tunisia, Turkey, Turkmenistan, Turks and Caicos Islands, Tuvalu

**U** Uganda, Ukraine, Umm al-Qaiwain, United Arab Emirates, United Kingdom, United States of America, US Virgin Islands, Uruguay, Uzbekistan

**V** Vanuatu, Vatican City, Venezuela, Vietnam, Virgin Islands British, Virgin Islands US

**W** Wake Island, Wallis and Futuna Islands

**Y** Yemen

**Z** Zambia, Zimbabwe



## Commonwealth of Australia

*Migration Act 1958*NOTICE UNDER SECTION 503A OF THE *MIGRATION ACT 1958* – 16/001*(Subsection 503A(9))*

I, *PETER DUTTON* Minister for Immigration and Border Protection, acting under section 503A(9) of the *Migration Act 1958* (the Act):

1. REVOKE the Gazette notice made under subsection 503A(9) of the Act, signed on 14 August 2003 (F2006B00213); and
2. SPECIFY for the purposes of paragraph 503A(9)(a) of the Act, each of the:
  - a. Australian law enforcement body; or
  - b. Australian intelligence bodies,listed in Schedule 1 to this notice, as a gazetted agency as defined in 503A(9) of the Act;
3. SPECIFY for the purposes of paragraph 503A(9)(b) of the Act, each of the:
  - a. foreign law enforcement body countries, or
  - b. parts of foreign law enforcement body countries,listed in Schedule 2 to this notice, as foreign law enforcement body countries, or parts of foreign law enforcement body countries.

This Gazette notice, Notice Under Section 503A of the Migration Act 1958 - 2016/028, GAZ 16/001 commences on 1 April 2016.

Dated: 22 March 2016

Peter Dutton

THE HON PETER DUTTON MP

Minister for Immigration and Border Protection  
Government Notices Gazette C2016G00414 30/03/2016

## SCHEDULE 1

### LIST OF LAW ENFORCEMENT AGENCIES OR AUSTRALIAN INTELLIGENCE BODIES

1. Attorney-General's Department
2. AUSTRAC
3. Australian Commission for Law Enforcement Integrity
4. Australian Crime Commission
5. Australian Federal Police
6. Australian Secret Intelligence Service
7. Australian Security Intelligence Organisation
8. Australian Securities and Investments Commission
9. Australian Sports Anti-Doping Authority
10. Australian Taxation Office
11. CrimTrac
12. Department of Defence
13. Department of Foreign Affairs and Trade
14. Department of Human Services
15. Department of the Prime Minister and Cabinet
16. Department of Social Services
17. Department of the Treasury
18. Director of Public Prosecutors
19. Interpol National Central Bureau, Canberra
20. The police force of a State or Territory
21. The corrective or correctional services department of a State or Territory
22. A parole board or authority or prisoner review board of a State or Territory
23. Australian Capital Territory Department of Justice and Community Safety
24. Australian Capital Territory Government Community Services
25. Department of Justice – New South Wales
26. New South Wales Crime Commission
27. Department of Family and Community Services New South Wales
28. Department of the Attorney-General and Justice Northern Territory
29. Department of Children and Families Northern Territory
30. Department of Justice and Attorney-General – Queensland
31. Crime and Corruption Commission Queensland

32. Department of Communities, Child Safety and Disability Services
33. Attorney-General's Department South Australia
34. Department of Education and Child Development – South Australia
35. Department of Justice – Tasmania
36. Department of Health and Human Services Tasmania
37. Department of Justice and Regulation – Victoria
38. Independent Broad-Based Anti-Corruption Commission Victoria
39. Family and Community Services Victoria
40. Department of the Attorney-General Western Australia
41. Crime and Corruption Commission Western Australia
42. Department for Child Protection and Family Support Western Australia

## SCHEDULE 2

### LIST OF FOREIGN LAW ENFORCEMENT COUNTRIES OR PARTS OF FOREIGN LAW ENFORCEMENT COUNTRIES

- A** Abu Dhabi, Afghanistan, Ajman, Albania, Alderney, Algeria, American Samoa, Andorra, Angola, Anguilla, Antarctica, Antigua and Barbuda, Argentina, Armenia, Aruba, Ashmore and Cartier Islands, Austria, Azad Jammu and Kashmir, Azerbaijan
- B** Bahamas, Bahrain, Baker Island, Bangladesh, Barbados, Belarus, Belau, Belgium, Belize, Benin, Bermuda, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Bouvet Island, Brazil, Brechou, British Indian Ocean Territory, British Virgin Islands, Brunei, Bulgaria, Burhou, Burkina Faso, Burundi
- C** Cambodia, Cameroon, Canada, Cape Verde, Casquets, Cayman Islands, Central African Republic, Ceuta, Chad, Channel Islands, Chile, China People's Republic of, Christmas Island, Colombia, Comoros, Congo Democratic Republic, Congo Republic, Cook Islands, Coral Sea Islands Territory, Costa Rica, Cote d'Ivoire, Crevichon, Croatia, Cuba, Curacao, Cyprus, Czech Republic
- D** Democratic People's Republic of Korea (North Korea), Denmark, Djibouti, Dominica, Dominican Republic, Dubai
- E** Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia
- F** Falkland Islands, Faroe Islands, Federated States of Micronesia, Fiji, Finland, France, French Guiana, French Polynesia, Fajairah
- G** Gabon, Gambia, Georgia, Germany, Ghana, Gibraltar, Grande Amfroque, Great Britain, Greece, Greenland, Grenada, Guadeloupe, Guam, Guatemala, Guernsey, Guinea, Guinea-Bissau, Guyana
- H** Haiti, Herm, Heard Island and McDonald Islands, Honduras, Hong Kong, Howland Island, Hungary
- I** Iceland, India, Indonesia, Iran, Iraq, Ireland, Ireland (Northern), Isle of Man, Israel, Italy
- J** Jamaica, Japan, Jarvis Island, Jersey, Jethou, Johnston Atoll, Jordan
- K** Kazakhstan, Kenya, Kingman Reef, Kiribati, Kuwait, Kyrgyzstan, Kosovo
- L** Laos, Latvia, Lebanon, Les Houmets, Lesotho, Liberia, Libya, Leichtenstein, Lihou, Lithuania, Luxembourg
- M** Macau, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall

- Islands, Martinique, Mauritania, Mauritius, Mayotte, Melilla, Mexico, Midway Island, Moldova, Monaco, Mongolia, Montenegro, Montserrat, Morocco, Mozambique, Myanmar
- N** Namibia, Nauru, Navassa Island, Nepal, Netherlands, New Caledonia, New Zealand, Nicaragua, Niger, Nigeria, Niue, Norfolk Island, Northern Mariana Islands, Norway
- O** Oman, Ortac
- P** Pakistan, Palau, Palestinian Territories, Palmyra Atoll, Panama, Papua New Guinea, Paraguay, Paracel Islands, Peru, Philippines, Pitcairn Islands, Poland, Portugal, Puerto Rico
- Q** Qatar
- R** Ras al-Khaimah, Renonquet, Republic of Korea (South Korea), Reunion Island, Romania, Russian Federation, Rwanda
- S** Saint Barthelemy, Saint Helena, Saint Kitts and Nevis, Saint Lucia, Saint Martin, Saint Pierre and Miquelon, Saint Vincent and the Grenadines, Samoa, San Marino, Sark, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sharjah, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, South Georgia and the South Sandwich Islands, Spain, Spanish North Africa, Spratly Islands, Sri Lanka, South Sudan, Sudan, Suriname, Svalbard, Swaziland, Sweden, Switzerland, Syria
- T** Taiwan, Tajikistan, Tanzania, Thailand, Timor-Leste, Tobago, Togo, Tokelau, Tonga, Trinidad and Tobago, Tristan da Cunha, Tunisia, Turkey, Turkmenistan, Turks and Caicos Islands, Tuvalu
- U** Uganda, Ukraine, Umm al-Qaiwain, United Arab Emirates, United Kingdom, United States of America, US Virgin Islands, Uruguay, Uzbekistan
- V** Vanuatu, Vatican City, Venezuela, Vietnam
- W** Wake Island, Western Sahara
- Y** Yemen
- Z** Zambia, Zimbabwe