WEI v MINISTER FOR IMMIGRATION AND BORDER PROTECTION (S9/2015)

Date proceedings commenced: 8 January 2015

Date referred to Full Court: 15 June 2015

Mr Wei Wei is a Chinese national who completed his secondary schooling in Australia in 2011, after arriving on a student visa in 2008. In March 2012 Mr Wei was granted a fresh student visa, after he had enrolled in a "Foundation Program" at Macquarie University ("the University"). While holding that visa, Mr Wei enrolled in a further Foundation Program that commenced in June 2013. At the request of Mr Wei, the University issued a "Letter of Enrolment" to him on 23 December 2013 in relation to that course. Mr Wei successfully completed the course in June 2014.

The University, however, failed to record Mr Wei's enrolment in an electronic database known as the Provider Registration and International Student Management System ("PRISMS"). PRISMS is used by the Department of Immigration and Border Protection ("the Department") as a tool in the monitoring of compliance with s 19 of the *Education Services for Overseas Students Act* 2000 (Cth) ("the ESOS Act"), which requires education providers to provide the Department with certain information on relevant students. The Department also uses PRISMS to monitor students' compliance with their visa conditions.

On 20 March 2014 a delegate of the Minister for Immigration and Border Protection ("the Minister") cancelled Mr Wei's second visa ("the Decision"). This was on the basis that Mr Wei had breached a condition of that visa by (apparently) not being enrolled in a registered course.

The Minister's Department had sent a letter to Mr Wei in February 2014 notifying him that the Department would consider cancelling his visa and inviting him to respond. That letter however was returned to the Department "unclaimed". A letter sent by the Department in March 2014 notifying Mr Wei of the Decision was also returned "unclaimed". Mr Wei only became aware of the Decision in October 2014. The University did not record requisite information in PRISMS about Mr Wei and his course until November 2014.

Mr Wei commenced proceedings in this Court by application for an order to show cause, seeking to quash the Decision. On 15 June 2015 Justice Gageler referred Mr Wei's application to a Full Court for further hearing.

The ground on which Mr Wei claims relief is:

- The Decision was affected by a breach of natural justice or a constructive failure to exercise jurisdiction, because Mr Wei's education provider failed to comply with ss 19(1)(a) and 19(1)(b) of the ESOS Act with the consequences that:

a) Information that was required to be before the delegate when he made the Decision was not actually (but was constructively) before him; and

b) The statutory scheme, by which education providers provide information to the Minister so that consideration can be given as to whether to *inter alia* cancel a student visa (ss 19(1)(a) and 19(1)(b) of the ESOS Act read with s 116(1)(b) of the *Migration Act* 1958 (Cth)) was undermined.