HIGH COURT OF AUSTRALIA

10 March 2021

MINISTER FOR IMMIGRATION AND BORDER PROTECTION v EFX17
[2021] HCA 9

Today the High Court unanimously dismissed an appeal from a judgment of the Full Court of the Federal Court of Australia. The appeal concerned the meaning and operation of s 501CA(3) of the *Migration Act 1958* (Cth). That sub-section provides that the Minister must, in the way that the Minister considers appropriate in the circumstances, give a person whose visa has been cancelled a written notice of the original decision to cancel and particulars of relevant information, and must invite the person to make representations, within the period and in the manner ascertained in accordance with the *Migration Regulations 1994* (Cth), about revocation of the original decision.

A delegate of the Minister cancelled the respondent's visa under s 501(3A). An email attaching a letter from the delegate and enclosures was sent to the correctional centre at which the respondent was detained. On 4 January 2017, the letter and enclosures were handed to the respondent by a corrective services officer. The letter explained the decision to cancel the respondent's visa. It also explained that the respondent had an opportunity to make representations about revocation of the decision "within 28 days after you are taken to have received this notice". The letter incorrectly stated that the respondent was taken to have received the notice at the end of the day the email was transmitted (being 3 January 2017).

Before the Federal Circuit Court of Australia, the respondent submitted that the Minister failed to comply with s 501CA(3) for essentially two reasons. First, the Minister failed to "give" the written notice and particulars and to "invite" representations because the letter and enclosures were not delivered to the respondent in such a way that he could understand their substantive content given, amongst other things, his limited capacity to understand English. Secondly, neither the Minister nor the delegate who made the cancellation decision personally delivered the written notice, particulars, and invitation to the respondent. Both submissions were rejected by the Federal Circuit Court but on appeal were accepted by a majority of the Full Court of the Federal Court. By grant of special leave, the Minister appealed to the High Court. By notice of contention, the respondent argued that the Full Court's decision should be upheld because the invitation to make representations did not specify the period within which to make such representations.

The High Court held that the verbs "give" and "invite" in s 501CA(3) bear their ordinary meanings of, respectively, deliver and request formally. The expression "in the way that Minister considers appropriate in the circumstances" is only concerned with the method of delivery or request. The capacity of a recipient to understand the written notice, particulars, and invitation referred to in s 501CA(3) is not relevant to whether the duties in that sub-section have been performed. The Court also held that the duties in s 501CA(3) are not required to be performed personally by the Minister or the delegate who made the cancellation decision. However, the Court upheld the notice of contention, concluding that an invitation to make representations "within the period ... ascertained in accordance with the regulations" must crystallise the period either expressly or by reference to correct objective facts from which the period could be ascertained on the face of the invitation. The letter provided to the respondent did not do so.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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