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Update Summary

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FEDERAL OFFENCES

S Odgers SC, G Nash QC, Prof M Bagaric

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July 2023 Print Update Summary

Updated Commentary

Gerard Nash KC, has provided the following updates to the Migration Act 1958 (Annotated)

- MA.36.35 Danger to Australia's security, new commentary

-MA 198.20- Removal 'as soon as practicable' - new commentary

-MA.500.20- review by AAT of decisions by the minister

MA.501CA.20- Duty of minister under s 501CA

-MA.501CA.40- Revocation of visa cancellation

-MA.501CA.70 Can refolement be considered under s 510CA

- *AFD21 v. Minister for Home Affairs* [2021] 287 FCR 308; 393 ALR 398; [2021] FCAFC 167.
- *Deng v. Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 115, where the ambit of what constitutes 'family violence' is discussed.
- *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v. AWT19* (2021) 285 FCR 381; [2021] FCAFC 58.
- *Au v. Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 125
- The Tribunal is "required to consider claims which, although not expressly made, 'clearly arise' and are raised 'squarely' on the face of the material before it": see *Deng v. Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 115 at [88] per Kyrou J
- The decision- maker is required to "undertake an active intellectual process with reference to" representations made to him or her. See *AFD21 v. Minister for Home Affairs* [2021] FCAFC 167 at [142]
- A representation pursuant to s. 501CA(3)(b) must be made within the time period stipulated in Regulation 2.52(2).
- *Pearson v. Minister for Home Affairs* [2022] FCAFC 203, the Full Court held that an aggregate maximum term of imprisonment of 4 years and 3 months imposed in respect of ten offences did not fall within s. 501(3A) of the *Migration Act*.
- *Plaintiff M1/2021 v. Minister for Home Affairs* [2022] HCA 17; 400 ALR 417 at [24] per Kiefel CJ, Keane Gordon and Steward JJ.

- *MZAPC v. Minister for Immigration and Border Protection* [2021] HCA 17; 390 ALR 590 at [2], [39], [60] (Kiefel CJ, Gageler, Keane and Gleeson JJ); *Nathanson v. Minister for Home Affairs* [2022] HCA 26; 403 ALR 398 at [1] (Kiefel CJ, Keane and Gleeson JJ): *Kwatra v. Minister for Immigration, Citizenship and Multicultural Affairs* [2022] FCAFC 194, per curiam at [16]

Corporations Act – updated commentary

Ashleigh Harrold, barrister, has provided the following updates to Federal Offences:

COMM.FO~CH.26B Director of Public Prosecutions

- Further instructions included in RTF
- Remove sections 15-16A
- Remove sections 32-33A
- Updated TOC and automatic bullet point formatting

COMM.FO~CH.26C Freedom of Information Act

- Remove [FOI.ACT.20] Freedom of Information Act – cases and articles
- [FOI.ACT.40400.4020] General note - new commentary
- Remove Division 3 – Review of information publication scheme (s 9)
- Remove [FOI.37.120400.4180] Case notes – s 37(2)(c) (part 42 only as highlighted)
- Remove [FOI.42.40400.4240] Case notes – s 42(1) (part 46 only as highlighted)

COMM.FO~CH.26D Law Officers Act

- Delete general note s 17

COMM.FO~CH.26f Royal commissions Act

- Remove part 5 - miscellaneous section 9 and 16
- Remove 400.7580
- **Remove section 7C Commentary heading**
- Updated regulations- s 17 commentary

COMM.FO~CH.26G Telecommunications

- Remove 400.9900

- Remove part 1-2 interpretation
- [TIA.6K.20] Relevant sections- update regulations
- Remove s9 A and 11B commentary
- S46A updated regulation
- S48 updated regulation
- S49 updated regulation
- S61 updated regulation
- Remove s78 commentary
- S118 updated regulation
- S300 updated reference