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Update Summary

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FEDERAL OFFENCES

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Stephen Odgers has made the following updates to Federal Offences:

Criminal Code, Chapter 10- National Infrastructure, Part 10.6 Telecommunications Services

SECTION 474.14 COMMENTARY

In *Barnard v The King* [2025] WASCA 63 the Western Australian Court of Criminal Appeal held at [63] that, where a person is charged with an offence under s 474.14(2) of using equipment to facilitate the commission of a serious offence, it is only necessary to prove that the act rendered easier the attainment of the serious offence. It is not necessary to show that the serious offence was in fact committed.

Gerard Nash has made the following updates to federal offences:

Chapter 8 F Competition and Consumer Act 2010
Insert new section 2 commentary:

SECTION 2 COMMENTARY

[CACA.Sch2.20] Involved

> "In order for a person to be 'involved' within the meaning of s. 2(1) of the ACL, it is necessary for the person to have actual knowledge of the essential facts constituting the contravention": *Chopsonion Pty Ltd (Controllers Appointed) v. Watts Meat Machinery Pty Ltd (No. 2)* [2025] FCA 4 per O'Sullivan J at [549].

[CACA.SCH2.18.20] Misleading or deceptive

Updated commentary

> In order for conduct to be misleading or deceptive it must induce or be capable of inducing error. Whether in a particular case conduct is misleading or deceptive is determined by an objective test and is a question of fact. That question must be decided by viewing the conduct as a whole and the notional effects of that conduct having regard to the context and the effect the conduct has "on the state of mind of the relevant person or class of persons". Conduct is not misleading or deceptive unless the representee is led to make some erroneous assumption. See Chopsonion Pty Ltd (Controllers Appointed) v. Watts Meat Machinery Pty Ltd (No. 2) [2025] FCA 4 at [489]-[490] per O'Sullivan J.

[CACA.Sch.2.18.30] Misleading Conduct

In *Australian Competition an Consumer Commission v Master Wealth Control Pty Ltd* [2024] FCA 344 Jackman J said at [34]:

> "[C]onduct is, or is likely to be, misleading or deceptive if it has a tendency to lead into error. See *Australian Competition and Consumer Commission v TPG internet Pty Ltd* [2013] HCA 54 at 39…..In addition, the threshold 'likely to be' is satisfied

where there is a real and not remote possibility that conduct will mislead or deceive.."

[CACA.Sch2.18.33] Accessorial liability

"[I]n order for a person to be 'rned' in a contravention within the meaning of s. 75B of the*Competition and Consumer Act 2010 (Cth)*...the person must have actual (not imputed or constructive) knowledge of the essential facts constituting the contravention, although it is not necessary for the person to know that those facts constitute a contravention":*Australian C0mpetition and Consumer Commission v Master Wealth Pty Ltd*[2024] FCA 344, per Jackman J at [40].

See also *Anchorage Capital Master Offshore Limited v. Sparkes* [2023] NSWCA 88; (2023) 111 NSWLR 304 at 342 and notes at to *Competition and Consumer Act s. 75B.*

Insert new section:

[CACA.Sch.2.29.50] False representation as to rights

Section 29(1)(m) of the ACL prohibits a person, in trade or commerce, in connection with the supply or possible supply of services or in connection with the promotion by any means of the supply of services, from making a false or misleading representation concerning the existence or effect of any "right". See *Australian Competition and Consumer Commission v Master Wealth Control Pty Ltd* [2024 FCA 344

CHAPTER 17 Migration Act 1958

Insert new section 195

New commentary for s 195: Detainee may apply for Visa

[MA.195A.20] Sections 195 and 195A apply only to a person in detention

In *Taylor v. Director Ministerial Intervention (National)* [2024] FCA 1322 the applicant, whose visa had been cancelled, applied to the Minister, while in immigration detention, seeking that the Minister consider the exercise of the power under s. 195A of the Act. But a departmental officer determined not to refer this application to the Minister because, inter alia, the applicant did not satisfy the criteria specified in relevant guidelines.

[MA.198.20] Removal "as soon as practicable"

Updated commentary

SECTION 476A COMMENTARY

Insert new section :

[MA476.20] Jurisdiction of Federal Court

By force of s. 476A(1)(b) and (c) the Federal Court has original jurisdiction in relation to a migration decision including a privative, or purported privative, clause decision of the Tribunal under s. 500 or of the Minister acting personally under ss. 501, 501BA and 501CA. See *XJLR v. Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 6 per Rares J at [8]. That jurisdiction under s. 476A(1)(b) or (c) is the same as that of the High Court under s. 75(v) of the Constitution: ibid.

SECTION 500 COMMENTARY

[MA.500.25] Form of application

An application for review made within the period fixed by s. 500(6b) need not contain any statement of the reasons for the application, as is apparently required, by s. 29(1)(c) of the *AAT Act: Miller v. Minister for Immigration, Citizenship and Multicultural Affairs* [2024] HCA 13.

SECTION 501BA COMMENTARY

[MA.501BA.20] Power of Minister under s 501BA

Updated commentary

In *CRRN v. Minister for Immigration and Multicultural Affairs* [2025] FCA 192 the AAT made an order revoking the mandatory cancellation of the applicant's visa. He then made an application to become a participant in the National Disability Insurance Scheme.

While determination of that application was pending, the Minister exercised his power under s. 501(BA) of the *Migration Act* to set aside the Tribunal's decision and cancel the applicant's visa, with the result that by the time the application to the NDIS was determined the applicant was no longer eligible to participate in the Scheme. The applicant then made an application pursuant to s. 476A(1)(c) challenging the Minister's decision to set aside the Tribunal's decision and cancel his visa.

[MA.501CA.100] AAT Review

Updated commentary:

Following the cancellation of the applicant's visa he sought review in the Administrative Appeals Tribunal. He did not use the appropriate form and did not set out a separate statement of the reasons for the application but made that application within the prescribed time. Subsequently, out of time, he filed the requisite form of application with a statement of the reasons for the application. The High Court held that the requirement in s 29(1)(c) of the *Administrative Appeals Tribunal Act,* requiring that an application contain a statement of the reasons for the application did not have the effect that noncompliance with s. 29(1)(c) resulted in the invalidity of the application. See *AUS17 v Minister for Immigration and Border Protection* [2020] HCA 37; 269 CLR 494 at [11]–[12].