

JOEL MCCOMBER

Curriculum Vitae



I am an Australian Legal Practitioner admitted to practice in the Supreme Court of Queensland and the High Court of Australia.

Since 2017 I have been the managing Legal Practitioner Director of law firms with a sole focus on in complex migration matters, specifically visa cancellations and refusals on character grounds under s 501 of the *Migration Act 1958* and quasi-character cancellations under s 116(1)(e).

I have appeared in matters across Australia before the Administrative Appeals Tribunal (in both its Migration and Refugee Division and General Division), as well as the Federal Circuit Court of Australia and Federal Court of Australia. I have also instructed counsel in matters before the High Court of Australia.

ADMISSIONS

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| 2016 | Admitted to the High Court of Australia's Register of Practitioners |
| 2015 | Admitted as a Legal Practitioner in the Supreme Court of Queensland |

EMPLOYMENT EXPERIENCE

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| 2019 - Present | Managing Legal Practitioner Director—Sentry Law |
| 2017 - 2019 | Managing Legal Practitioner Director—Samuta McComber Lawyers |
| 2017 | Project Solicitor—LawRight |
| 2015 - 2017 | Solicitor—Hall Payne Lawyers |
| 2014 - 2015 | Trainee Lawyer—Hall Payne Lawyers |
| 2013 - 2014 | Research Clerk—Hall Payne Lawyers |
| 2010 - 2014 | Administration Officer—Welfare Rights Centre Queensland Inc. |
| 2009 - 2011 | Law Clerk—Kenny & Co Solicitors |

EDUCATION

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| 2014 | Graduate Diploma of Legal Practice—College of Law |
| 2009-2014 | Bachelor of Arts/Bachelor of Laws (Honours)—The University of Queensland |

MEMBERSHIPS

- Queensland Law Society
- Law Council of Australia (Federal Litigation and Dispute Resolution Section)
- Australian Institute of Administrative Law
- Migration Institute of Australia
- Migration Alliance
- LawRight Inc

LITIGATED CASES

High Court of Australia

[*Plaintiff B65-2020 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* \[2021\] HCATrans 118](#)

Instructed M.T. Brady QC with K.E. Slack of counsel for applicant for an extension of time to file in the High Court of Australia's original jurisdiction. Applicant's Humanitarian (subclass 204) Visa was mandatorily cancelled under s 501(3A) of the *Migration Act 1958* and applicant did not request revocation under s 501CA within the prescribed timeframe. Subsequent to mandatory cancellation, sole conviction and sentencing enlivening mandatory cancellation power quashed on appeal. Applicant argued that quashing of sentence meant he was not serving a sentence of imprisonment at the relevant time, such that mandatory cancellation power was *ultra vires*. Application for extension of time dismissed.

[*Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Moorcroft* \(2021\) 95 ALJR 557; \[2021\] HCA 19](#)

Instructed S.J Keim SC with K.E. Slack of counsel for respondent to appeal from Minister from *Moorcroft v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2020) 275 FCR 276. Issue concerned whether a non-citizen unlawfully removed from Australia by Minister (i.e., removed without statutory power) is excluded from being granted a Special Category (subclass 444) visa on the basis that they have previously been 'removed from Australia.' Appeal allowed on the basis that 'removed' means 'removed in fact,' not 'lawfully removed.'

[*Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Moorcroft* \[2020\] HCATrans 166](#)

Instructed S.J Keim SC with K.E. Slack of counsel for respondent to application for special leave to appeal by Minister from *Moorcroft v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2020) 275 FCR 276. Special leave granted.

Federal Court of Australia

[*BCDC v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* \[2021\] FCA 1114](#)

Appeared as solicitor-advocate for applicant for judicial review of decision made by the Administrative Appeals Tribunal affirming an earlier non-revocation decision under s 501CA(4) of the *Migration Act 1958*. Successfully argued that the Tribunal's fundamental misapprehension of the Applicant's non-refoulement claims led to jurisdictional error. Writs of certiorari and mandamus issued.

[*EVX20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* \[2021\] FCA 1079](#)

Instructed D. Reynolds of counsel for applicant seeking to quash non-revocation decision made personally by the Minister under s 501CA(4). Subsequent to the mandatory cancellation of the Applicant's protection visa under s 501(3A) Applicant's conviction for murder was quashed on appeal and a verdict of acquittal entered. Despite this the Minister found that the Applicant failed the 'character test' on the basis that there was a possibility he in fact committed the offence. Logan J found for the Applicant that the Minister was precluded from relying on the Applicant's quashed conviction in deciding whether he passed the character test. Writs of certiorari and mandamus issued.

[*Helmbright v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs \(No 3\)* \[2021\] FCA 955](#)

Instructed S.J. Keim SC with C.J. Klease of counsel in successful resistance of costs order sought by the Minister. Order sought by the Applicant—that the parties bear their own costs—made by Mortimer J.

[*Helmbright v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs \(No 2\)* \[2021\] FCA 647](#)

Instructed S.J. Keim SC with C.J. Klease of counsel for applicant seeking declaration that he is an Aboriginal Australian for the purposes of the s 51(xix) of the *Constitution* (in light of the High Court’s decision in *Love v Commonwealth; Thoms v Commonwealth* [2020] HCA 3). Minister argued that proof of entitlement to native title necessary for recognising elders to enjoy ‘traditional authority’ for the purposes of the third limb of Brennan J’s tripartite test set out in *Mabo [No. 2]*. Applicant descendent from a Tasmania Aboriginal community not in a position to prove claim for native title due to substantial interrupted to observance of laws and customs connected to land. Mortimer J rejected applicant’s submission that Deane J’s tripartite test from *The Tasmanian Dams Case* could be applied, but found that ‘traditional authority’ of recognising elders does not require proving claim to native title for the purposes of the *Mabo [No. 2]* test. Application dismissed due to insufficient evidence to prove this narrower construction from ‘traditional authority.’

[*Hunt v Minister for Home Affairs* \[2021\] FCA 507](#)

Appeared as solicitor-advocate for applicant for judicial review of decision made personally by Minister to cancel applicant’s Special Category (subclass 444) visa under s 501(2). Applicant successfully argued that Minister failed to confront permanency of exclusion resulting from cancellation decision. Application allowed; writ of certiorari issued.

[*Moorcroft v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* \(2020\) 275 FCR 276; \[2020\] FCA 382](#)

Appeared as solicitor-advocate for appellant appealing from decision of Federal Circuit Court of Australia (*Moorcroft v Minister for Home Affairs* [2019] FCCA 772) to dismiss application for judicial review of visa refusal decision made in immigration detention. Applicant refused grant of Special Category (subclass 444) Visa because she had previously been unlawfully removed from Australia by Minister. Successfully argued that applicant had not been ‘removed’ as her removal was not authorised by the *Migration Act 1958* (Cth). Appeal allowed, writ of certiorari issued.

[*Salter v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* \[2019\] FCA 2054](#)

Appeared as solicitor-advocate for appellant appealing from decision of Federal Circuit Court of Australia (*Salter v Minister for Home Affairs* [2019] FCCA 1298) to dismiss application for judicial review of visa cancellation decision affirmed by the Administrative Appeals Tribunal. Appellant argued that Tribunal had failed to put specific, relevant matters to witnesses during Tribunal hearing (relying on *Hyunh v Minister for Immigration* (2015) 232 FCR 497). Appeal dismissed.

Federal Circuit Court of Australia

[*Salter v Minister for Home Affairs* \[2019\] FCCA 1298](#)

Appeared as solicitor-advocate for applicant for judicial review of visa cancellation decision under s 116(1)(e) affirmed by the Administrative Appeal Tribunal. Applicant argued that that Tribunal failed to put specific, relevant matters to witnesses. Application dismissed.

[Moorcroft v Minister for Home Affairs \[2019\] FCCA 772](#)

Appeared as solicitor-advocate for applicant for judicial review of visa refusal decision made in immigration clearance. Application for Special Category (subclass 444) Visa refused on basis that applicant had previously been removed from Australia, albeit unlawfully. Argued that Applicant had not been 'removed' in the relevant sense as removal was not authorized by law. Application dismissed.

Administrative Appeals Tribunal (General Division)

[Tewhare and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs \[2021\] AATA 2875](#)

Appeared as solicitor-advocate for applicant seeking merits review of non-revocation decision made under s 501CA(4). Decision under review set aside and substituted with revocation decision.

[Aualiitia and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs \[2019\] AATA 5557](#)

Appeared as solicitor-advocate for applicant seeking merits review of non-revocation decision made under s 501CA(4). Decision under review set aside and substituted with revocation decision.

[ZNBG and Minister for Home Affairs \[2019\] AATA 1872](#)

Appeared as solicitor-advocate for applicant seeking merits review of non-revocation decision made under s 501CA(4). Decision under review set aside and substituted with revocation decision.

[WSML and Minister for Home Affairs \[2019\] AATA 41](#)

Appeared as solicitor-advocate for applicant seeking merits review of visa cancellation decision under s 501(2). Decision under review set aside and substituted with non-cancellation decision.

Administrative Appeals Tribunal (Migration and Refugee Division)

[2007184 \(Refugee\) \[2021\] AATA 313](#)

Application for review of protection visa refusal. Applicant's country of citizenship—Burundi. Applicant found to be owed protection obligations under s 36(2) of the *Migration Act 1958*. Refusal decision set aside and visa application remitted to Department with direction that Applicant owed protection obligations.

[Mugo \(Migration\) \[2019\] AATA 2357](#)

Application for review of visa cancellation decision under s 116(1)(e) of the *Migration Act 1958*. Applicant's visa cancelled while on bail for single offence; subsequently acquitted following trial. Cancellation decision set aside and substituted with non-cancellation decision.

[Burton \(Migration\) \[2018\] AATA 4220](#)

Application for review of visa cancellation decision made under s 116(1)(e) of the *Migration Act 1958*. Applicant's visa had been cancelled while he was on bail pending trial for a number of serious offences and alleged associations with an outlaw motorcycle club. Owing to the matter's complexity and the increased prevalence of cancellations under s 116(1)(e) in circumstances where non-citizens are awaiting trial, the matter was heard by two members, including Deputy President Redfern—the Head of the Tribunal's Migration and Refugee Division. Cancellation decision set aside and substituted with non-cancellation decision.

NON-LITIGATED ADMINISTRATIVE LAW MATTERS

Responding to Notices of Intention to Consider Refusal under s 501(1) of the *Migration Act*.

Responding to Notices of Intention to Consider Cancellation under s 501(2) of the *Migration Act*.

Requesting revocation of mandatory visa cancellations under s 501CA of the Migration Act.

Responding to Notices of Intention to Consider Cancellation under s 116(1) of the Migration Act.