



**IN THE FEDERAL CIRCUIT and
FAMILY COURT OF AUSTRALIA (DIVISION 2)
AT MELBOURNE**

File No: MLG1256/2017

COX17
Applicant

MINISTER FOR IMMIGRATION AND BORDER PROTECTION
First Respondent

IMMIGRATION ASSESSMENT AUTHORITY
Second Respondent

CONSENT ORDER

BEFORE: JUDGE LADHAMS
DATE: 25 March 2022
MADE AT: PERTH

UPON APPLICATION TO THE COURT pursuant to r 13.08 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth) being considered in chambers, there being no need for an appearance by the parties

BY CONSENT, THE COURT ORDERS THAT:

- 1 The Hearing listed on 7 April 2022 at 9:00 am before Judge Ladhams be vacated.
- 2 A writ of certiorari issue directed to the second respondent quashing its decision dated 16 May 2017.
- 3 A writ of mandamus issue directed to the second respondent requiring it to determine the application made to it for review of the decision of a delegate of the first respondent dated 24 February 2017 according to law.
- 4 The first respondent pay the applicant's costs, fixed in the sum of \$\$3,930.

BY CONSENT, THE COURT NOTES THAT:

The first respondent concedes that the decision of the second respondent dated 16 May 2017 is affected by jurisdictional error. Specifically, by finding at paragraph [7]



of its decision that it was not satisfied that any “exceptional circumstances” existed that warranted the second respondent “getting” new information, the second respondent conflated its discretion to get new information which it considers may be relevant under s 473DC(1) of the *Migration Act 1958* (Cth) (**Act**) with the power to consider new information under s 473DD of the Act: see *EMJ17 v Minister for Immigration and Border Protection* [2018] FCA 1462 at [62]-[64] (Thawley J). The first respondent accepts that the error was material to the second respondent’s decision.

By the Court

DATE ENTERED: 25 March 2022



Registrar