

HIGH COURT OF AUSTRALIA

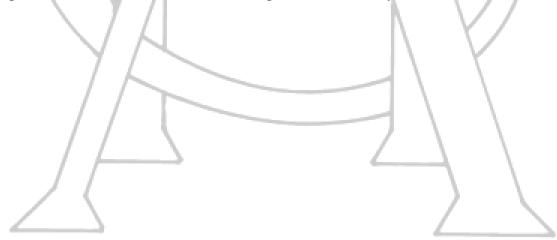
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Details of Filing	
File Number: File Title:	P10/2024 Tapiki v. Minister for Immigration, Citizenship and Multicultu
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Important Information

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IN THE HIGH COURT OF AUSTRALIA SYDNEY REGISTRY

No S126 of 2023

BETWEEN:

KATHERINE ANNE VICTORIA PEARSON Plaintiff COMMONWEALTH OF AUSTRALIA First Defendant MINISTER FOR HOME AFFAIRS Second Defendant and ADMINISTRATIVE APPEALS TRIBUNAL Third Defendant

No P10 of 2024

BETWEEN:

PERTH REGISTRY

KINGSTON TAPIKI Appellant and MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS Respondent

No B15 of 2024

JZQQ

BETWEEN:

BRISBANE REGISTRY

Appellant and MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS First Respondent and ADMINISTRATIVE APPEALS TRIBUNAL Second Respondent

OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE NORTHERN TERRITORY (INTERVENING)

Part I: FORM OF SUBMISSIONS

1. This outline of oral submissions is in a form suitable for publication on the internet.

Part II: PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

- As in *Duncan*, the Chapter III issue has reduced to a narrow question of construction: cf (2015) 256 CLR 83 (JBA V 3 T 23), [37].
 - (a) The Appellant in JZQQ accepts that it is an essential part of his argument that Item 4, Part 2, Schedule 1 of the Migration Amendment (Aggregate Sentences) Act 2023 (Cth) (JBA V 1 T 5) treats Pearson No. 1 as wrong. Those submissions were adopted by the Plaintiff in Pearson and the Appellant in Tapiki.
 - (b) The Court has already answered substantially the same narrow question of construction in AEU and Duncan in relevantly identical statutory contexts: Australian Education Union v General Manager of Fair Work Australia (2012 246 CLR 117 (JBA V 3 T 20), [53], [96], [116]-[117]; Duncan (2015) 256 CLR 83 (JBA V 3 T 23), [25], [40]-[42]; JZQQ NT [10]-[14].
 - (c) The legislation in *Duncan* did not direct courts to treat the decision in *Cunneen* as incorrect: *Duncan* (2015) 256 CLR 83 (JBA V 3 T 23), [3], [7], [12], [40]-[41]. So too, Item 4 does not direct that *Pearson No. 1* be treated as incorrect.
 - (d) On the Appellant's case, Items 4 would do no work. That construction should not be preferred because it would frustrate the evident statutory purpose and would produce invalidity: *Duncan* (2015) 256 CLR 83 (JBA V 3 T 23), [39].
- 3. It was accepted by the Appellant in JZQQ that the legislature could have achieved the same result that Item 4 purports to produce albeit using different language. However, it is "the operation and effect of the law" which is controlling and that operation and effect is to be discerned from "the nature of the rights, duties, powers and privileges which the statute changes, regulates or abolishes": *Bachrach* (1998) 195 CLR 547 (JBA V 4 T 30), [12]; *Mineralogy* (2021) 274 CLR 219 (JBA V 5 T 35), [83]-[84]; JZQQ NT [16]. Item 4 operates to expand jurisdiction to do certain things.
- 4. The argument in *JZQQ* concerning s 75(v) of the Constitution was not developed orally: **JZQQ AS [57]-[63]; NT [26]-[30]**. It is unclear if it is still pressed.

Dated: 10 October 2024

Lachlan Peattie