



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 10 Oct 2024 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: P10/2024
File Title: Tapiki v. Minister for Immigration, Citizenship and Multicultu:
Registry: Perth
Document filed: Form 27F - Outline of oral argument
Filing party: Interveners
Date filed: 10 Oct 2024

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

**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

PERTH REGISTRY

No P10 of 2024

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

BRISBANE REGISTRY

No B15 of 2024

BETWEEN: **JZQQ**
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

2. 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