HIGH COURT OF AUSTRALIA

NOTICE OF FILING

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Details of Filing

File Number:	P10/2024
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Registry:	Perth
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Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY
No. S126/2023

BETWEEN: **KATHERINE ANNE VICTORIA PEARSON**

Plaintiff

and

COMMONWEALTH OF AUSTRALIA

First Defendant

MINISTER FOR HOME AFFAIRS

Second Defendant

ADMINISTRATIVE APPEALS TRIBUNAL

Third Defendant

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY
No. B15/2024

BETWEEN: **JZQQ**

Appellant

and

MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS

First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL

Second Respondent

IN THE HIGH COURT OF AUSTRALIA
PERTH REGISTRY
No. P10/2024

BETWEEN: **KINGSTON TAPIKI**

Appellant

and

MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS

Respondent

OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND

PART I: Internet publication

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. Reliance upon *Plaut* for the proposition that Congress may not reverse 'final' judgments is misplaced: **cf Tapiki submissions [44]-[46]**. On US authorities, that limit only applies when a decision 'ha[s] achieved finality'—meaning appeal avenues have been exhausted or the time for appeal has expired such that the decision 'becomes the last word of the judicial department'. Before that finality, if Congress changes the law retrospectively, an appellate court must apply the new law in the appeal 'even when that has the effect of overturning the judgment of an inferior court'.
   - *Plaut v Spendthrift Farm Inc*, 514 US 211, 227 (1995) (**JBA9.62, 3011**)
   - *Miller v French*, 530 US 327, 344 (2000) (**JBA9.56, 2677**).

3. When item 4 commenced on 17 February 2023, *Pearson v Minister for Home Affairs* (2022) 295 FCR 177 and *Tapiki [No 1]* (2023) 408 ALR 503 had not 'achieved finality': **Pearson submissions [19]-[20]**.

4. US authorities draw a line between permissibly amending substantive law and impermissibly interfering in the exercise of the courts' jurisdiction. Those authorities suggest that item 4 is well behind the line. Accepting that there was a 'diversity of opinion' on the US Supreme Court in *Patchak* (**JZQQ reply [18]**), even on the dissenting view, a law like item 4 would be valid. Item 4 'establishes new substantive standards and leaves the court to apply those standards'.
   - *Patchak v Zinke*, 583 US 244, 262 (s 2(a) and (b)), 249 fn 2 (plurality), 261 (concurring), 279-80 (dissent) (2018) (**JBA9.60, 2959, 2946, 2958, 2976-7**).

Dated: 10 October 2024

Felicity Nagorcka **Kent Blore**