



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

S142 of 2023

BETWEEN:

MJZP

Plaintiff

and

DIRECTOR-GENERAL OF SECURITY
First Defendant

COMMONWEALTH OF AUSTRALIA
Second Defendant

**OUTLINE OF ORAL SUBMISSIONS OF THE ATTORNEY-GENERAL FOR THE
STATE OF TASMANIA (INTERVENING)**

Part I: Certification

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

Part II: Outline of propositions to be advanced in oral argument

SDCV should not be re-opened

2. Tasmania supports the submissions of the Commonwealth and Western Australia to the effect that *SDCV v Director-General of Security* (2022) 277 CLR 241 (*SDCV*) (**Vol 7, Tab 49**) has a ratio; that, even if it lacks a ratio, it is binding in this case; and that it should not be re-opened: **DS [6]-[23]; WA [6]-[46]**.
3. The Plaintiff's suggestion that its proportionality argument is a reason to revisit *SDCV PS [23]* should be rejected: *Baker v Campbell* (1983) 153 CLR 52 at 102-103 (Brennan J) (**Vol 3, Tab 20**): **Tas [6]**.

If SDCV is re-opened the Court should again hold that s 46(2) of the AAT Act is valid

4. The Plaintiff suggests that a legislative departure from the “general rule” will infringe Ch III of the Constitution unless the departure is “justified”, in that it is “no more than is reasonably necessary to protect a compelling public interest” **PS [39]** (with the polity bearing the onus of proving the departure is reasonably necessary **Reply [14]**) in the sense of being reasonably appropriate and adapted **PS [41]**. Tasmania opposes that proposition: **Tas [30]-[33]**.
5. Rather, the question of whether a particular legislative departure from the general rule infringes Ch III of the Constitution should be answered by the accepted method of considering whether the procedure as a whole is fair *in all the circumstances*. The assessment of what is fair in all the circumstances can include the balancing of competing interests, and considering whether there is any practical injustice: **Tas [12]-[16]**.
6. The executive is the expert in matters of security, defence and international relations, and the legislature has authorised the Minister to determine, on a case-by-case basis, whether the disclosure of information “would be” contrary to the public interest because it would prejudice those matters: **Tas [22]- [25]**.

Dated: 13 December 2024



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