



**BEG15 v Minister for Immigration and  
Border Protection**

**FIRST RESPONDENT'S OUTLINE OF ORAL ARGUMENT**

1. This outline is in a form suitable for publication on the internet.
2. There is no basis to find that the Tribunal did anything, or refrained from doing anything, on the strength of the certificate. No incorrect assumption of power, or failure to comply with a statutory requirement, can be seen. The invalidity of the certificate, therefore, did not result in any jurisdictional error (WS [17], [19], [23]-[26]).
  - *Hossain v Minister for Immigration*, tab 2, at [24], [31]
3. Procedural fairness appears now to be in issue (Reply [13], cf AS [34]). If procedural fairness obligations arose, they did so as a condition of the valid exercise of power under, or in relation to, the certificate. In the absence of any indication that the Tribunal did (or refrained from doing) anything on the strength of the certificate – let alone that it exercised any power adversely to the appellant's interests – there can be no denial of procedural fairness. (WS [28]-[29])
4. Alternatively, the primary judge and the Full Court were correct to regard the case as one where relief would be refused in the exercise of discretion (WS [30]).
5. The issue raised by the Minister's notice of contention will not be reached if the earlier submissions on procedural fairness are accepted. The contention is that s 422B displaces the principles of procedural fairness that would otherwise apply in relation to the certificate, as a result of either or both of the following points:
  - a. Section 422B(1) establishes that Division 4 of Part 7 is exhaustive in relation to the matters with which it deals. Those matters include the issues to be canvassed in an oral hearing (s 425) and the right to be alerted to adverse material (s 424A). There is no room for further procedural fairness obligations to be implied (WS [33]).

- b. Section 422B(2) makes s 438 itself an exhaustive statement of the hearing rule in relation to the matters with which it deals. That means that no right to a hearing arises, as to the exercise of powers under s 438(3), unless it is spelt out in the provision (WS [34]-[35]).

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