

IN THE HIGH COURT OF AUSTRALIA

MELBOURNE REGISTRY

No M 27 of 2018

BETWEEN:

QLN147

Appellant

THE REPUBLIC OF NAURU

Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

PART I

1. The appellant certifies that this outline of oral submissions is in a form suitable for publication on the internet.

PART II

Issues in dispute

- 10 2. The Supreme Court correctly accepted that "[t]he submissions of the Appellant before the Tribunal included evidence about conditions in Sri Lanka prisons" that "went beyond the Tribunal's finding that conditions in Negombo would be 'cramped and unsanitary'" ([30]). Nevertheless, the Court gave two reasons for affirming the Tribunal's decision:
 - **First**, the appellant's material was "very general", and "did not relate to the specific matter required to be considered by the Tribunal" (being "whether detention for up to three days on remand in Negombo prison would amount to cruel and inhumane treatment") ([35]-[36]). Thus, the Tribunal was not required to deal with it ([42]).
 - 20 ○ This reasoning is flawed for the reasons explained in the appellant's submissions (AS) ([34]-[38]). The Republic's submissions (RS) do not engage with the appellant's submissions. Nor does the Republic otherwise defend the Supreme Court's reasoning. The Republic accepts that the appellant's material was "relevant" ([12]). However, the Republic characterises the material as not being "centrally important", and on this basis submits that any failure by the Tribunal to consider it did not involve an error of law ([15]-16]).
 - **Secondly**, in any event, the Tribunal's conclusion that the appellant may be detained in "cramped and unsanitary conditions" "captures the flavour" of the appellant's

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10. Therefore, information in, or referred to by, the appellant's agent's submission as to conditions in Sri Lankan prisons that "went beyond" those described by the Tribunal (e.g., inadequate food) was critical to the appellant's claim. If the Tribunal failed to consider that information, then it disabled itself from considering whether the *cumulative* conditions would give rise to cruel, inhuman or degrading treatment.

- SZSRS at [47]-[57]

Dated: 11 September 2018

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Nick Wood

Counsel for the appellant