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
MELBOURNE REGISTRY

BETWEEN: **QYFM**

Appellant

and

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

First Respondent

Administrative Appeals Tribunal

Second Respondent

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SUBMISSIONS OF THE APPELLANT

PART I — CERTIFICATION

1 The redacted version of these submissions is in a form suitable for publication on the Internet. Redactions have been made by reference to s 91X of the *Migration Act 1958* (Cth) (the **Migration Act**).

PART II — CONCISE STATEMENT OF ISSUES

2 Justice Bromwich was Director of Public Prosecutions (**DPP**) when the Appellant was tried on indictment, convicted, and sentenced to more than 12 months' imprisonment. As DPP, he appeared as senior counsel to oppose a conviction appeal, which was dismissed. The sentence triggered s 501(3A) of the Migration Act. One delegate of the First Respondent (the **Minister**) cancelled the Appellant's visa, and another refused to revoke the cancellation. When the Appellant appealed from a judgment of a single judge of the Federal Court dismissing his application for judicial review of a decision by the Second Respondent (the **Tribunal**) affirming the non-revocation decision, the Full Court convened to hear the appeal included Bromwich J. The Appellant made an apprehended-bias objection, which Bromwich J decided alone.

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3 The appeal raises four issues:

(1) whether the objection should have been decided by the Full Court (ground 1).

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(2) whether Bromwich J's prior involvement as DPP gave rise to apprehended bias (ground 2).

(3) whether Bromwich J's recollection and perception of his role in the conviction appeal was relevant to (2) (ground 2).

(4) if the circumstances would otherwise give rise to apprehended bias, whether the judgment should be set aside even though Bromwich J concurred with the other two judges in the substantive judgment (ground 2, relief).

PART III — SECTION 78B OF THE *JUDICIARY ACT 1903* (CTH)

4 The Appellant has considered whether notices should be given in compliance with s 78B of the *Judiciary Act 1903* (Cth). He considers that no such notices are necessary.

PART IV — CITATION OF JUDGMENTS OF PRIMARY AND INTERMEDIATE COURTS

10 5 The citation of the reasons of the primary judge is *QYFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCA 1810.[1] The citation of the reasons of the Full Court is *QYFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FCAFC 166 (**J**).[2]

PART V — RELEVANT FACTS

6 In December 2011, the Appellant, a citizen of Burkina Faso, was granted a Class BC (Subclass 100 (Partner)) visa.[3]

7 On 17 December 2012, Bromwich J was appointed as DPP by the Governor-General under s 18 of the *Director of Public Prosecutions Act 1983* (Cth) (the **DPP Act**).[4]

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8 The DPP instituted a prosecution on indictment[5] against the Appellant on one charge of importing a marketable quantity of a border controlled drug (cocaine) on 27 June 2012, contrary to s 307.2(1) of the *Criminal Code Act 1995* (Cth).[6] It may be presumed[7] that the indictment was signed by, for or on behalf of the DPP.[8]

1 **CAB 103–118**.

2 **CAB 135–159**.

3 J [4] (**CAB 138**).

4 J [54] (**CAB 156**).

5 The date of the indictment was not disclosed in the material before the Full Court.

30 6 *DPP v* Redacted [2013] VCC Redacted (**Sentence Reasons**), [1] (Appellant's Book of Further Materials (**ABFM**), 5); J [4].

7 *Minister for Natural Resources v NSW Aboriginal Land Council* (1987) 9 NSWLR 154, 164 (McHugh JA).

8 DPP Act, ss 6(1)(a) and 9(2).

9 On 4 October 2013, the prosecution filed a written opening;[9] on 7 October 2013, the Appellant pleaded not guilty;[10] the DPP then carried on the prosecution through counsel;[11] on 27 October 2013, the jury delivered a guilty verdict;[12] on 5 December 2013, the Appellant was convicted and sentenced to ten years' imprisonment, with a non-parole period of seven years, and 526 days reckoned as time served.[13] At that time, s 501(3) of the Migration Act empowered (but did not require) the Minister to cancel a person's visa if the Minister reasonably suspected the person had been sentenced to at least 12 months' imprisonment and was satisfied that refusal was in the national interest.[14]

10 On 27 May 2014, the Victorian Court of Appeal granted the Appellant leave to appeal his conviction.[15] At the hearing on 12 August 2014, the DPP appeared in person[16] as senior counsel[17] for the Crown, with junior counsel who had appeared below. At the core of the dispute[18] between the Appellant and the Crown was whether the Appellant had been a "suspect", within the meaning of s 23V of the *Crimes Act 1914* (Cth), when he made statements to a Customs officer, which had been admitted at trial. Justice Priest granted leave "on the papers", being "attracted to the notion" that, in the circumstances, the officer had been questioning the Appellant as a "suspect".[19] However, "[w]ith the benefit of full argument on the appeal" (including, presumably, argument by the DPP for the Crown) he was persuaded that a conclusion that the Appellant was a suspect when initially questioned was incorrect.[20] It may be inferred from the Court of Appeal's reasons that the DPP, as senior counsel appearing for the Crown, was aware at least of the evidence set out in the judgment and made submissions as to why, on the facts before the Court, the appeal should be dismissed. On 12 November 2014, the appeal was dismissed.[21]

9 Sentence Reasons, [3] (**ABFM 5**).
10 Sentence Reasons, [1] (**ABFM 5**).
11 DPP Act, ss 6(1)(b), 15(1)(a)(i) and (e); Sentence Reasons, [5] (stating that Redacted appeared on behalf of the prosecution at the trial) (**ABFM 5**).
12 Sentence Reasons, [1] (**ABFM 5**).
13 J [4] (**CAB 138**); Sentence Reasons; National Police Certificate dated 8 March 2018 (**ABFM 15**).
14 Migration Act (compilation prepared 23 November 2013), s 501(3)(b), (c) and (d), (6)(a) and (7)(c).
15 Redacted *v R* [2014] VSCA Redacted (reported at (2014) Redacted) (**Conviction Appeal**), [2] (**ABFM 17**).
16 DPP Act (compilation prepared 1 July 2014), s 15(1)(c); Conviction Appeal, appearances.
17 DPP Act, s 16.
18 Conviction Appeal, [25] (**ABFM 26**).
19 Conviction Appeal, [49] (**ABFM 37**).
20 See Conviction Appeal, [49] (**ABFM 37**).
21 J [54] (**CAB 156**). See Conviction Appeal, [4], [46]–[48] (**ABFM 18, 36–37**).

11 On 11 December 2014, s 501(3A) was inserted into the Migration Act.[22] It required the Minister to cancel a visa granted to a person if satisfied that the person had been sentenced to at least 12 months' imprisonment.[23] It therefore required the Minister to cancel the Appellant's visa, as a consequence of his conviction and sentence.

12 On 29 February 2016, Bromwich J was appointed as a judge of the Federal Court under s 6 of the *Federal Court of Australia Act 1976* (Cth) (the **FCA Act**).[24] It may be presumed[25] that his Honour resigned his office as DPP under s 21 of the DPP Act, with effect immediately before or on that appointment.

13 On 8 November 2017, the Minister's delegate cancelled the Appellant's visa pursuant to s 501(3A) of the Migration Act.[26] In the notification letter, the delegate referred to the reasons for the Appellant's sentence and the fact that his appeal had been dismissed.[27] On 4 February 2019, another delegate refused revocation.[28] That non-revocation decision was affirmed by the Tribunal on review. But the Tribunal's decision was set aside and remitted.[29]

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14 On 9 July 2020, the Tribunal again affirmed the non-revocation decision under review.[30] The Appellant, unrepresented, applied for judicial review.[31] His application was dismissed by Kerr J on 18 December 2020.[32]

15 On 24 February 2021, the Appellant appealed from Kerr J's decision to the Full Court of the Federal Court.[33] He was initially unrepresented but subsequently retained legal representation, following which he filed an amended notice of appeal on 5 August 2021.[34] The appeal book contained copies of, among other things, the Sentence Reasons and the Conviction Appeal. The hearing of his appeal was listed to take place before the

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22 *Migration Amendment (Character and General Visa Cancellation) Act 2014* (Cth), s 2, and Sch 1, item 8.
23 Migration Act, s 501(3A)(b).
24 J [54] (**CAB 156**).
25 See n 7 above.
26 J [5] (**CAB 138**).
27 Letter from the delegate of the Minister to the Appellant dated 8 November 2017 (**ABFM 39–42**).
28 **CAB 106**, [5].
29 J [5] (**CAB 138**).
30 J [5] (**CAB 138–139**).
31 **CAB 98**.
32 **CAB 119**.
33 **CAB 121**.
34 **CAB 127**.

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Full Court (McKerracher, Griffiths and Bromwich JJ) from 9:15am AWST on 17 August 2021.

16 At 9:04am AWST on 17 August 2021,[35] Bromwich J's associate sent an email to the parties (copied to the chambers of McKerracher and Griffiths JJ), which stated, relevantly:

> Justice Bromwich has asked me to advise that his Honour appeared for the Crown in the appellant's unsuccessful conviction appeal before the Victorian Court of Appeal on 12 August 2014.
>
> Justice Bromwich does not consider that this is a cause for apprehended bias because that appeal related to a pure legal question, but nonetheless his Honour wishes to raise it with the parties in order that any application for his Honour to recuse himself can be made.

17 Shortly after the hearing commenced at 9:43am AWST, counsel for the Appellant sought the recusal of Bromwich J.[36] The presiding judge, McKerracher J, invited counsel to make submissions,[37] and then announced the Court would adjourn, to consider what steps to take next.[38] After a brief adjournment (9:57am–10:06am AWST), McKerracher J invited Bromwich J alone to "deal with the application".[39] Justice Bromwich then delivered an *ex tempore* ruling, declining to recuse himself, for the following reasons:[40] (1) his Honour was not just counsel, but DPP, at the time of the conviction appeal; (2) as DPP, he only appeared in appeals on a point of principle, rather than in relation to factual matters; (3) he had only a faint memory of the factual detail of the case, but a reasonably clear memory of the case because of its legal principle; (4) he had no knowledge of the Appellant's criminal history at the time of the conviction appeal; (5) his knowledge of the case did not go beyond what was in the Conviction Appeal, and accordingly his Honour did not have any particular knowledge greater than that of any other member of the bench; and (6) it was not disputed in the present appeal that the Appellant had failed the character

[35] **ABFM 45**. The times on the email are shown in AEST, being the relevant time zone where it was received, in Sydney, NSW, on 17 August 2021, which was two hours ahead of AWST, the relevant time zone in Perth, where the hearing was conducted.

[36] J [57] (**CAB 157**); Transcript of hearing on 17 August 2021 (**ABFM 46–51**) (**T**), 2–6.

[37] T 3.6–9, 4.10–11.

[38] T 4.28–31.

[39] T 4.40–41

[40] T 5.6–6.11.

test, and the materiality aspect of the judicial review case on the present appeal did not have anything to do with the knowledge acquired from his Honour's appearance as DPP in the conviction appeal.[41] His Honour concluded, that for those reasons, "I decline to recuse myself from sitting on this appeal".[42] Immediately thereafter, McKerracher J invited counsel for the Appellant to make argument on the substantive appeal.[43]

18 On 15 September 2021, the Full Court dismissed the appeal. A joint judgment delivered by McKerracher and Griffiths JJ dealt with the substantive issues on the appeal, but did not mention the recusal issue. Justice Bromwich delivered a separate judgment, agreeing with the orders and reasons of McKerracher and Griffiths JJ (J [51]), and then setting out, at J [52]–[61], his Honour's reasons for declining to recuse himself.[44] After summarising the relevant factual context (J [53]–[56]), relevant passages from *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 (***Ebner***) (J [57]–[58]), and the arguments made by counsel for the Appellant and the Respondent (J [59]–[60]), his Honour reproduced the substance of the *ex tempore* reasons given at the hearing (J [61]).

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PART VI — ARGUMENT

The Full Court should have decided the apprehended-bias objection

19 Apprehended-bias disqualification is justified on the basic principle that the tribunal must be, and appear to be, independent and impartial.[45] If the tribunal exercises Commonwealth judicial power, Ch III requires adjudication of matters in federal jurisdiction by a court whose judicial process and constitution effect this basic principle.[46]

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20 Where such a court exercises jurisdiction by a single judge, it must be "constituted by a judge who is impartial and appears to be impartial".[47] In such cases, it is well-established[48] that the judge "is disqualified if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the

[41] J [61] (**CAB 158–159**).

[42] T 6.10–11.

[43] T 6.13–16.

[44] See J [51] (**CAB 156**).

[45] *Ebner* (2000) 205 CLR 337, 344–245 [6]–[7] (Gleeson CJ, McHugh, Gummow and Hayne JJ).

[46] *Ebner* (2000) 205 CLR 337, 362–363 [79]–[82] (Gaudron J); *North Australian Aboriginal Legal Aid Service Inc v Bradley* (2004) 218 CLR 146, 163 [29] (McHugh, Gummow, Kirby, Hayne, Callinan and Heydon JJ); *Forge v Australian Securities and Investments Commission* (2006) 228 CLR 45, 76 [63]–[64] (Gummow, Hayne and Crennan JJ).

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[47] *Ebner* (2000) 205 CLR 337, 362–363 [80] (Gaudron J).

[48] *Charisteas v Charisteas* (2021) 393 ALR 389 (***Charisteas***), 393 [11] (the Court).

question the judge is required to decide".[49] On objection, the presently-prevailing position is that the judge constituting the court must decide whether to recuse.[50]

21 But what is the position where the court comprises multiple members sitting in panel? The Appellant submits that the *Ebner* test requires modification, such that the court must (barring necessity) be reconstituted "if a fair-minded lay observer might reasonably apprehend that any of the judges might not bring an impartial mind to the resolution of the question the court is required to decide". The apprehended-bias objection should be decided by the tribunal whose integrity is impugned, not the individual judge whose circumstances give rise to the issue. Here, that required the Full Court to decide the recusal application, not Bromwich J alone.

10 22 Justice Kerr singly exercised original jurisdiction in dismissing the judicial review application.[51] The appeal from that judgment invoked the appellate jurisdiction under s 24(1)(a) of the FCA Act. Section 25(1) provided that the appellate jurisdiction "shall, subject to this section and to the provisions of any other Act, be exercised by a Full Court" — that is, relevantly,[52] by "3 or more Judges sitting together": s 14(2).

23 Thus, unless s 25 or a provision of another Act otherwise provided, the appellate jurisdiction (whose creation and nature are statutory[53]) had to be exercised by three or more judges sitting together. Section 25 provided for a single judge to exercise appellate jurisdiction in certain circumstances,[54] but neither s 25 nor any other statutory provision provided for a single judge to determine an apprehended-bias objection to the Full Court,

20 as constituted, hearing the proceeding.

[49] *Ebner* (2000) 205 CLR 337, 344 [6] (Gleeson CJ, McHugh, Gummow and Hayne JJ) (emphasis added).

[50] *Ebner* (2000) 205 CLR 337, 361 [74] (Gleeson CJ, McHugh, Gummow and Hayne JJ, obiter dicta). Compare 397–398 [185] (Callinan J); Australian Law Reform Commission, *Final Report – Without Fear or Favour: Judicial Impartiality and the Law on Bias* (Report 138, December 2021) (**ALRC Bias Report**), Recommendation 2 (p 241), 232–250 [7.7]–[7.64]. As in *Ebner*, the correctness of that position for a single-judge bench does not arise on this appeal.

[51] FCA Act, ss 19(1), 20(1). The original jurisdiction was invoked by the Appellant filing an originating application for review of a migration decision (**CAB 99–102**): Migration Act, s 476A(1)(b); *Federal Court*

30 *Rules 2011* (Cth), r 31.22, Form 70.

[52] FCA Act, s 14(3) has no relevant application to the present case.

[53] *Dwyer v Calco Timbers Pty Ltd* (2008) 234 CLR 124, 128 [2] (the Court).

[54] FCA Act, s 25(1AA), (2), (2B), (2BB), (5) and (6).

24 Nor does any principle of the general law command that the objection be decided by the single judge whose circumstances it concerns.[55] Rather, to adapt the (extra-curial) argument of Sir Anthony Mason, the Full Court's responsibility "to ensure that it is constituted in accordance with the provisions of the law governing the judicial process, the exercise of judicial power and natural justice" is inconsistent with a practice of "delegating that responsibility to one of its number".[56]

25 Further, the objective test for apprehended bias made its application appropriate[57] — perhaps even more appropriate[58] — for decision by the Full Court.

26 It is the judgment of the Full Court that is impugned by an objection that one of its members should be disqualified.[59] That is shown by the appeal to this Court. That Bromwich J was one of the 3 judges who sat together as the Full Court, which gave judgment in exercise of its appellate jurisdiction under s 25(1), has grounded this appeal against the judgment of the Federal Court, given by the Full Court,[60] and not an appeal against a judgment or order of the Federal Court constituted by Bromwich J alone.[61]

27 An objection of that kind goes to the authority of the court to decide the substantive matter. As such, it is the "first duty" of the court to determine whether that challenge to its authority is sustained, before continuing to hear the matter.[62]

28 The approach for which the Appellant contends has been adopted by multi-member courts in other comparable countries.[63]

55 Enid Campbell, "Review of Decisions on a Judge's Qualification to Sit" (1999) 15 *Queensland University of Technology Law Journal* 1, 7.

56 Sir Anthony Mason, 'Judicial Disqualification for Bias or Apprehended Bias and the Problem of Appellate Review' (1998) 1 *Constitutional Law and Policy Review* 2, 26. Sir Grant Hammond described the arguments in favour of Sir Anthony's proposition as 'utterly compelling': see *Judicial Recusal: Principles, Process and Problems* (Hart Publishing, 2009) 83, 113. See also Gabrielle Appleby and Stephen McDonald, 'Pride and Prejudice: A Case for Reform of Judicial Recusal Procedure' (2017) 20(1) *Legal Ethics* 89, 107–108.

57 Mason (n 56), 24; Appleby and McDonald (n 56), 95; ALRC Bias Report, 266 [7.114].

58 See ALRC Bias Report, 235–236 [7.16]–[7.19].

59 See, by analogy, *Raven v Burnett* (1895) 6 QLJ 166, 168–169 (Griffith CJ).

60 Constitution, s 73; FCA Act, s 33(3).

61 *Michael Wilson & Partners Ltd v Nicholls* (2011) 244 CLR 427, 450–451 [83] (Gummow ACJ, Hayne, Crennan and Bell JJ).

62 *Re Nash (No 2)* (2017) 263 CLR 443, 450 [16] (the Court).

63 See ALRC Bias Report, 265 [7.110] and fnn 173–177, Appendix G (see Recusal Guidelines for NZ Supreme Court (Te Kōti Mana Nui o Aotearoa) and Court of Appeal (Te Kōti Pīra o Aotearoa), 575–578). See also ALRC Bias Report, 225–226 [6.127]–[6.128].

29 It is also consistent with a recent recommendation by the ALRC.[64]

30 When objection was made that the Full Court was affected by apprehended bias, by reason of the circumstances of Bromwich J, argument should have been heard, consideration given, and a decision on reconstitution made, by the Full Court, not by Bromwich J alone. The failure of the Full Court to decide the question caused appellable error.

The judge's prior involvement as DPP gave rise to apprehended bias

31 In *Isbester v Knox City Council* (2015) 255 CLR 135 (***Isbester***): (a) a council officer, Ms Hughes, determined that charges should be laid in respect of a dog attack, then instructed solicitors to prosecute the charges in the Magistrates' Court and negotiate pleas; (b) in a distinct, subsequent process, enlivened by the finding of guilt for those charges, the Council convened a panel of its officers, including Ms Hughes, which decided that the dog should be destroyed. The question for this Court was whether the panel's decision was affected by apprehended bias.

32 The Council contended (at [40]) that Ms Hughes's interest as prosecutor in the Magistrates' Court ended with the finding of guilt, and did not carry over to the distinct, subsequent panel process. The joint judgment disagreed (at [50]), characterising the case as one involving "incompatibility" between Ms Hughes's previous role as prosecutor and her subsequent role in the panel: a line could not be drawn so as to quarantine her role as prosecutor from her role as panel member.[65]

33 *A fortiori*, Bromwich J's previous role as DPP was incompatible with his later role as a member of the Full Court in the circumstances of this case.

34 In *Dimes v Proprietors of the Grand Junction Canal*,[66] the Master of the Rolls had taken a confined view of the maxim that one must not be judge in one's own cause (*nemo judex in sua causa*), declaring that the interest of the Lord Chancellor as a substantial shareholder of an incorporated company, which was a party, did not disqualify him from hearing the case, as he was not himself a party. The Solicitor-General argued that to confine the maxim by forms in this way "would lead to absurd and mischievous

[64] ALRC Bias Report, 263: "Recommendation 3: The Federal Court of Australia and the Federal Circuit and Family Court of Australia should, through the guidelines on judicial disqualification and, where necessary, rules of court, specify that objections on bias grounds to one or more judges sitting on a multimember court are to be determined by the court constituted".

[65] *Isbester* (2015) 255 CLR 135, 153 [49] (Kiefel, Bell, Keane and Nettle JJ).

[66] (1852) 3 HLC 759; [1852] 10 ER 301 (***Dimes***).

consequences".[67] His argument was accepted, over that of counsel for the respondents, who contended that "it may therefore be taken that the limit of direct interest as a party is that to which the rule is confined".[68] Lord Campbell made two important observations. First, that the maxim "is not to be confined to a cause in which [the judge] is a party, but applies to a cause in which [the judge] has an interest".[69] Second, that applying this extended maxim to the Lord Chancellor would be a lesson to all inferior tribunals "to take care not only that in their decrees they are not influenced by their personal interest, but to avoid the appearance of labouring under such an influence".[70]

35 As noted in the joint judgment in *Ebner*, his Lordship's extension of the maxim from "is a party" to "has an interest", as a ground for disqualification based on apprehended bias, reached fruition in *R v Bow Street Magistrate; Ex parte Pinochet Ugarte [No 2]*.[71] The applicant, Senator Pinochet, disclaimed actual bias, arguing only that Lord Hoffman's links to Amnesty International (through Lady Hoffman's work for Amnesty International and his own role as director and chairperson of Amnesty International Charity Ltd) were sufficient to give rise to apprehended bias.[72] The respondents contended that the application must fail, because, applying the test for apprehended bias in *R v Gough* [1993] AC 646, there was no "real danger of bias".[73] The applicant succeeded; the House of Lords set aside its earlier order and directed a rehearing of the appeal before a differently constituted committee. Lord Browne-Wilkinson,[74] Lord Goff,[75] Lord Hope[76] and Lord Hutton[77] each applied Lord Campbell's extension of the maxim from "party" to "interest", and held that "interest" was not limited to pecuniary interest.

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67 *Dimes* (1852) 3 HLC 759, 770–771; [1852] 10 ER 301, 306 (Sir John Romilly, Solicitor-General).

68 *Dimes* (1852) 3 HLC 759, 779; [1852] 10 ER 301, 310. Although, see the concession noted in *Ebner* (2000) 205 CLR 337, 356 [53] fn 19 (Gleeson CJ, McHugh, Gummow and Hayne JJ), which was made because the case was fought for the respondents on the question of necessity.

69 *Dimes* (1852) 3 HLC 759, 793; [1852] 10 ER 301, 315 (Lord Campbell).

70 *Dimes* (1852) 3 HLC 759, 793–794; [1852] 10 ER 301, 315 (Lord Campbell).

71 [2000] 1 AC 119 (***Pinochet***).

72 *Pinochet* [2000] 1 AC 119, 121F–122G, 124F–125C (Claire Montgomery QC), 129E–F (Lord Brown-Wilkinson).

73 *Pinochet* [2000] 1 AC 119, 123C–F (Alun Jones QC).

74 *Pinochet* [2000] 1 AC 119, 134F–135F (Lord Browne-Wilkinson, Lord Nolan (139F), Lord Hope (140A) and Lord Hutton (143F) agreeing).

75 *Pinochet* [2000] 1 AC 119, 137G–139E (Lord Goff, Lord Nolan (139F) and Lord Hope (140A) agreeing).

76 *Pinochet* [2000] 1 AC 119, 140C, 143C–D (Lord Hope).

77 *Pinochet* [2000] 1 AC 119, 143G–145F (Lord Hutton).

36 In *Ebner*, the joint judgment, referring to Lord Campbell's extension, characterised the concept of "interest" as "protean".[78] Their Honours observed that, in modern times when so much litigation is concerned with the enforcement of non-economic rights, the implications of Lord Campbell's extension of the maxim to "interest" went far beyond the interest of the Lord Chancellor in the case he was considering.[79] Their Honours held Australian law should not recognise a separate "automatic disqualification" rule, and that even a case falling within *Dimes* should be determined by the test for apprehended bias laid down in *Ebner* at 345 [8].[80]

37 However, their Honours also identified a distinct concern — "independence"[81] — referring to a line of cases where the decision-maker was either: (a) on the record as a necessary and proper party, or (b) in substance was a moving party, or member of a body instituting a prosecution (even though not named on the record).

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38 As to the first category, their Honours cited *Dickason v Edwards* (1910) 10 CLR 243 (***Dickason***). There the plaintiff sought relief in respect of his expulsion from a friendly society. In the Supreme Court of Victoria, his argument was: (1) the ordinary position in judicial proceedings was as stated in *Dimes*; (2) that position applied to a tribunal constituted by agreement, unless agreed otherwise; (3) here, it was not agreed otherwise; (4) the District Chief Ranger was both an officer of the executive who made the charge and chairman of the tribunal which tried the charge, and was therefore "prosecutor and judge".[82] At trial, he lost on (3), Hodges J concluding that the friendly society's rules permitted the District Chief Ranger to participate in both making and hearing the charge.[83]

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39 The decision was reversed on appeal. Justice Isaacs gave *Dimes* as authority for "pecuniary interest" requiring disqualification. His Honour continued, "there is another kind of disqualification and that is what I may term 'incompatibility.' If it is incompatible for the same man to be at once judge and occupy some other position which he really has in the case, then *prima facie* he must not act as a judge at all."[84] His Honour did not

78 *Ebner* (2000) 205 CLR 337, 349 [25] (Gleeson CJ, McHugh, Gummow and Hayne JJ).

79 *Ebner* (2000) 205 CLR 337, 349 [26]–[27] (Gleeson CJ, McHugh, Gummow and Hayne JJ).

80 *Ebner* (2000) 205 CLR 337, 356–357 [54] (Gleeson CJ, McHugh, Gummow and Hayne JJ).

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81 *Ebner* (2000) 205 CLR 337, 358 [59]–[62] (Gleeson CJ, McHugh, Gummow and Hayne JJ).

82 *Dickason v Edwards* [1909] VLR 403, 405–406 (Mitchell KC), 408.4–8 (Hodges J).

83 *Dickason v Edwards* [1909] VLR 403, 411.6 (Hodges J).

84 *Dickason* (1910) 10 CLR 243, 259.5 (Isaacs J).

consider whether that "other position" might constitute a non-financial interest such as to fall within Lord Campbell's extension to the maxim (perhaps unsurprisingly, given *Dickason* was decided 90 years before non-financial interests were allowed in *Pinochet*).

40 *Dickason* was followed in *Stollery v Greyhound Racing Control Board* (1972) 128 CLR 509 (***Stollery***), where a decision of the respondent Board was quashed because an association manager who was also a board member made the complaint (of bribery) and was then physically present at the board meeting (although he did not participate), both when the charge was formulated, and when the Board found Mr Stollery guilty and decided to disqualify him for twelve months.

41 At first instance in *Isbester*, Emerton J distinguished *Stollery*, on the basis that: (1) Ms Hughes was the accuser in the Magistrates' Court, not the panel; (2) the panel was not, having regard to the statute, bound to act in a judicial manner.[85]

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42 The Court of Appeal upheld that reasoning.[86] Further, their Honours distinguished both *Dickason* and *Stollery* on the ground that Ms Hughes had no special or personal interest, of the kind present in *Dickason* (where the District Chief Ranger had been the subject of the insults the subject of the charge) and *Stollery* (where the manager had received and reported the bribe the subject of the charge). Their Honours quoted the observation by Isaacs J in *Dickason* (set out in [39] above), but held that "the present case does not involve a conflict of interest in the sense identified", for six reasons: (1) the Magistrates' Court proceeding in which Ms Hughes was the accuser had been determined by the appellant's guilty plea and conviction; (2) the issue for the panel was different from the issue in the Magistrates' Court; (3) the panel hearing was not "quasi-judicial"; (4) Ms Hughes had no special personal interest in the matters in issue; (5) the reasonable observer would regard it as appropriate to have a person with Ms Hughes's practical understanding present in the panel hearing; (6) Ms Hughes did not take the position of an accuser at the panel hearing.[87]

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43 On appeal to this Court, the council argued, relevantly, that: (1) automatic disqualification had been rejected in *Ebner*, and could not be reintroduced for accuser cases in the

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[85] *Isbester v Knox City Council* [2014] VSC 286, [112] (Emerton J).

[86] *Isbester v Knox City Council* [2014] VSCA 214, [78]–[79] (Hansen and Osborn JJA and Garde AJA).

[87] *Isbester v Knox City Council* [2014] VSCA 214, [70]–[75] (Hansen and Osborn JJA and Garde AJA).

Dickason/Stollery category;[88] (2) if there was an automatic disqualification category, it should be limited to cases of personal interest (such as *Dickason* and *Stollery*);[89] (3) in any event, Ms Hughes was not an accuser by the time of the panel, because the issues before the Magistrates' Court were conclusively determined by the conviction, and the panel had to decide a different set of issues.[90] As to those arguments, the joint judgment (Kiefel, Bell, Keane and Nettle JJ) held: (1) "[i]n cases of incompatibility, disqualification would seem to be the only possible outcome, because the second [*Ebner*] step will necessarily be satisfied";[91] (2) the personal interest of a prosecutor need not involve personal benefit of the kind present in *Dickason* and *Stollery*;[92] (3) a line could not be drawn to quarantine the Magistrates' Court proceedings from Ms Hughes's actions as a member of the panel.[93]

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44 In argument, Kiefel CJ asked, "if a person is a professional prosecutor, is a perfectly fair-minded prosecutor and is aware of all the requirements of the role, undertakes a prosecution and is later appointed to the court and the question of whether the assets of the person they prosecuted should be confiscated arises, should that person sit?"[94]

45 In *Isbester*, this Court effected a confluence of the "incompatibility" or "automatic disqualification" cases and the general *Ebner* test for apprehended bias. A similar confluence is evident in the UK. Following the move in *Porter v Magill*, to a "real possibility" test,[95] Lord Hope (delivering the judgment of the House of Lords) observed in *Meerabux v Attorney General of Belize*, that had the House of Lords "felt able to apply [the *Porter*] test in the *Pinochet (No 2)* case, it is unlikely that it would have found it necessary to find a solution to the problem that it was presented with by applying the automatic disqualification rule".[96]

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[88] *Isbester v Knox City Council* [2015] HCATrans 79 lns 1417–1520 (Stephen Donaghue QC).

[89] *Isbester v Knox City Council* [2015] HCATrans 79 lns 1579–1596, 1673–1684, 1751–1754, (Stephen Donaghue QC).

[90] *Isbester v Knox City Council* [2015] HCATrans 79 lns 2521–2561 (Stephen Donaghue QC).

[91] *Isbester* (2015) 255 CLR 135, 152 [47] (Kiefel, Bell, Keane and Nettle JJ).

[92] *Isbester* (2015) 255 CLR 135, 152 [46], 153 [49] (Kiefel, Bell, Keane and Nettle JJ).

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[93] *Isbester* (2015) 255 CLR 135, 152 [46], 151 [42] (Kiefel, Bell, Keane and Nettle JJ).

[94] *Isbester v Knox City Council* [2015] HCATrans 79 lns 2747–2752 (Kiefel CJ).

[95] [2002] 2 AC 357 (***Porter***), 494 [103] (Lord Hope).

[96] [2005] 2 AC 513 (***Meerabux***), 527 [22] (Lord Hope).

46 In *R v Abdroikov*,[97] the House of Lords allowed appeals and quashed convictions in two cases: in one a police officer sat on the jury; in the other, a solicitor employed by the Crown Prosecution Service sat on the jury. Having referred to the confluence in *Meerabux*, Baroness Hale observed that a fair-minded lay observer, understanding the real possibility of unconscious bias,[98] would understand why a person cannot be a judge in their own case, and so would consider the closeness of identification between a juror and the prosecutor.[99] Her Ladyship then observed, "[i]t is inconceivable that the Director of Public Prosecutions … could sit as a juror in a case prosecuted by the CPS, irrespective of whether or not he had been personally involved in the decision to prosecute".[100]

47 In *R (Kaur) v ILEX Appeal Tribunal*, the Court of Appeal concluded that the vice-president of the Institute of Legal Executives was precluded from sitting on one of its disciplinary tribunals, given her specific involvement with the Institute. Having considered *Abdroikov* and other relevant prosecutor cases, Rix LJ observed that "[p]articipation in a prosecutorial capacity, <u>even if not in the case in question</u>, will disqualify or else raise concern in the mind of the fair-minded observer about the appearance of impartial justice".[101] (Despite here using them as alternatives, Rix LJ expressed scepticism that *Pinochet* and *Porter* stood for two separate doctrines.[102])

48 In *Isbester*, Gageler J observed that "a person who has been the adversary of another person in the same <u>or related proceedings</u> can ordinarily be expected to have developed in that role a frame of mind which is incompatible with the exercise of that degree of neutrality required".[103] The underlined words are the functional equivalent of those underlined in the quote from Rix LJ in the previous paragraph.[104]

[97] [2007] 1 WLR 2679.

[98] See also *GetSwift Ltd v Webb* (2021) 283 FCR 328, 337–341 [31]–[45] (Middleton J, McKerracher J and Jagot J).

[99] *R v Abdroikov* [2007] 1 WLR 2679, 2698 [50] (Baroness Hale).

[100] *R v Abdroikov* [2007] 1 WLR 2679, 2698 [51] (Baroness Hale).

[101] *Kaur* [2012] 1 All ER 1435, 1448–1449 [35] (Rix LJ, Sullivan and Black LJJ agreeing at [54], [55]) (emphasis added).

[102] *Kaur* [2012] 1 All ER 1435, 1448–1449 [35] (Rix LJ, Sullivan and Black LJJ agreeing at [54], [55]).

[103] *Isbester* (2015) 255 CLR 135, 157 [63] (Gageler J) (emphasis added).

[104] Whether incompatibility can be extended to prosecutorial conduct in a prior, related proceeding was (making allowances for different legal systems and terminology) a key issue between the majority and minority opinions in *Williams v Pennsylvania* 136 S.Ct. 1899 (2016).

49 In *Dickason*, Isaacs J observed that "[w]hether this incompatibility exists in any particular case depends upon the facts".[105] Here, the facts are set out in Part V above.

50 In *Isbester*, the power in s 84P(e) of the *Domestic Animals Act 1994* (Vic) was enlivened by the finding of guilt for the offence under s 29, prosecuted in the Magistrates' Court. Here, the liability to cancellation was a consequence of the conviction and sentence in the County Court, then secured by the Court of Appeal's dismissal of the conviction appeal.

51 Each case is different. The present case is different from *Isbester*, in that Bromwich J: (1) was not merely involved in the prosecution, but was the DPP, on whose behalf the trial was conducted, and against whom the conviction appeal was brought; (2) appeared as DPP, as senior counsel, to oppose the conviction appeal; and (3) did not decide to 10 cancel the Appellant's visa, or to not revoke the cancellation on the merits, but sat on appeal from the exercise of the supervisory jurisdiction of the Federal Court.

52 The DPP: (1) is appointed by the Governor-General, for a period not exceeding 7 years, on the terms of the DPP Act and such other terms and conditions determined by the Governor-General;[106] (2) must take an oath or affirmation of allegiance to the Crown before performing the duties of that office;[107] (3) is subject to direction by the Attorney-General, including in relation to particular cases;[108] (4) may be terminated only for misbehaviour or physical or mental incapacity;[109] (5) is paid such remuneration as is determined by the Remuneration Tribunal;[110] (6) must not engage in practice as a legal practitioner outside the duties of that office;[111] (7) controls the Office of the DPP,[112] and 20 is the Head of a Statutory Agency, constituted by the DPP and staff of the Office;[113] and (8) has immunity from civil proceedings for things done as DPP.[114]

105 *Dickason* (1910) 10 CLR 243, 259.7 (Isaacs J).
106 DPP Act, s 18.
107 DPP Act, s 25(1), Schedule.
108 DPP Act, s 8, see in particular s 8(2)(c).
109 DPP Act, s 23(1).
110 DPP Act, s 19(1).
30 111 DPP Act, s 22(a).
112 DPP Act, s 5(4).
113 DPP Act, s 27.
114 DPP Act, s 32A.

53 The DPP Act confers on the DPP many functions traditionally belonging to the Attorney-General, albeit subject to the Attorney's direction.[115] For example, the DPP may: (1) institute a prosecution on indictment for an indictable offence against the laws of the Commonwealth,[116] even if the accused has not been committed for trial;[117] (2) carry on a prosecution by indictment in the DPP's official name;[118] and (3) take over a prosecution on indictment instituted by another person (other than the Attorney-General or a Special Prosecutor),[119] and may decline to carry it on.[120]

54 The DPP may appear in such proceedings in person, or by a range of lawyers, including counsel.[121] The DPP is, in their official capacity, entitled to practice as a barrister, solicitor, or barrister and solicitor, in a federal court or court of a State or Territory, and is entitled to all relevant privileges.[122]

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55 One object of having a DPP is to ensure independence in the vital task of making prosecution decisions and exercising prosecutorial discretions.[123] As to independence from the Executive, that observation must be qualified, as the DPP is subject to direction by the Attorney-General (whose own independence in the exercise of prosecutorial functions is contested and contestable[124]). The DPP, by necessity, performs a role independent from the courts.[125] That role imposes grave responsibilities of fairness to the accused and detachment,[126] not expected of other litigants. However, that is not to say that a prosecutor is dispassionate in the same way as the court.[127]

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[115] DPP Act, ss 7 and 8; Commonwealth, *Parliamentary Debates*, Senate, 10 November 1983, 2497 (Gareth Evans, Attorney-General).

[116] DPP Act, s 6(1)(a).

[117] DPP Act, s 6(2D); *Barton v The Queen* (1980) 147 CLR 75.

[118] DPP Act, ss 6(1)(b), 9(1); *Judiciary Act 1903* (Cth), s 69(1) and (2A)(a); *Taylor v Attorney-General of the Commonwealth* (2019) 268 CLR 224, 232–233 [18]–[21], 237 [33] (Kiefel CJ, Bell, Gageler and Keane JJ).

[119] DPP Act, s 9(3).

[120] DPP Act, s 9(4) and (5); *Beckett v State of New South Wales* (2013) 248 CLR 432.

[121] DPP Act, s 15.

[122] DPP Act, s 16.

[123] *Price v Ferris* (1994) 74 A Crim R 127, 130 (Kirby P); *Re Grinter; Ex parte Hall* (2004) 28 WAR 427, 471 [190] (McKechnie J).

[124] See, eg, David Bennett, "The roles and functions of the Attorney-General of the Commonwealth" (2002) 23 *Aust Bar Rev* 61.

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[125] See, eg, *Maxwell v R* (1996) 184 CLR 501, 513.8 (Dawson and McHugh JJ), 534.5 (Gaudron and Gummow JJ).

[126] See, eg, *MG v The Queen* (2007) 69 NSWLR 20.

[127] *Barbaro v The Queen* (2014) 253 CLR 58, 71 [29] (French CJ, Hayne, Kiefel and Bell JJ).

56 Nevertheless, in the Appellant's trial and conviction appeal, the DPP executed and embodied the prosecutorial functions of the Commonwealth Executive, the result of which was the exercise of the judicial power of the Commonwealth to convict and sentence the Appellant, and to dismiss his appeal. A statutory consequence of his conviction and sentence was visa cancellation by a Minister of State for the Commonwealth. The final check on the refusal (by the delegate, and then the Tribunal) to revoke that cancellation was to permit the Appellant once more to invoke the judicial power of the Commonwealth, on judicial review. The Federal Court's jurisdiction to require officers of the Commonwealth to act within the law, thereby invoked by the Appellant, "secures a basic element of the rule of law".[128] Justice Bromwich's role as a member of the Full Court was incompatible with his role as DPP in the prior, related proceeding.[129]

57 In any event, the fair-minded lay observer is "not to be assumed to have a detailed knowledge of the law".[130] Indeed, it is "inconsistent with the apprehension of bias principle and its operation and purpose" to align the fair-minded lay observer too closely to the judiciary or the legal profession.[131] The observer was created to allow a viewpoint from which the judicial branch may examine itself, from the perspective of the public whose confidence in its impartiality is essential to its integrity. The adjective "lay" creates the requisite distance, such that "[i]t would defy logic and render nugatory the principle to imbue the hypothetical observer" with the professional self-appreciation of a lawyer[132] — let alone that of an experienced judge.[133]

58 The fair-minded lay observer would see the DPP embodied not only in the official name in which the Appellant was prosecuted, and the conviction appeal defended, but in the person of senior counsel who stood at the bar table in the Court of Appeal on 12 August

[128] *Plaintiff S157/2002 v Cth* (2003) 211 CLR 476, 482 [5] (Gleeson CJ).

[129] *Isbester* (2015) 255 CLR 135, 157 [63] (Gageler J). See also *McCreed v The Queen* (2003) 27 WAR 554, where Steytler J, with whom Malcom CJ agreed, observed (at 560 [16]) that "the fact that a defendant in criminal proceedings has previously been prosecuted for a serious criminal offence by the judge who is to preside over his trial on unrelated charges will often be sufficient to result in the judge's disqualification", opining (at 561 [17]) that one relevant factor was "whether there is any connection between the two cases".

[130] *Johnson v Johnson* (2000) 201 CLR 488, 493 [13] (Gleeson CJ, Gaudron, McHugh, Gummow and Hayne JJ).

[131] *Charisteas* (2021) 393 ALR 389, 395 [21] (the Court).

[132] *Charisteas* (2021) 393 ALR 389, 395 [21] (the Court).

[133] *Johnson v Johnson* (2000) 201 CLR 488, 493 [13] (Gleeson CJ, Gaudron, McHugh, Gummow and Hayne JJ).

2014 and persuaded Priest JA and the other members of the Court to dismiss the appeal.[134] They would understand that the Appellant's legally-represented appeal to the Full Court was the last check on the power and obligation of the Executive to remove him from Australia. They would conclude that the result of his presence on the Full Court was that justice had not manifestly and undoubtedly been seen to be done,[135] and if given the *Ebner* test, would conclude that it was satisfied.

Bromwich J's subjective perception and memory was irrelevant

59 Further, or alternatively, Bromwich J fell into error by relying on his subjective recollection of the conviction appeal,[136] shortly after having come to appreciate his prior involvement. "No question as to the understanding … of the particular judge arises".[137] The *Ebner* test "requires no conclusion about what factors *actually* influenced the outcome" and accordingly "[n]o attempt need be made to inquire into the actual thought processes of the judge".[138]

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60 There are two obvious difficulties with a judge relying on their memory at the time of a recusal application. First, the content of memory is ephemeral: the judge may remember an important detail, or an impression may surface, on leaving the bench, or when sitting in chambers preparing the judgment. Second, the content of the judge's mind is opaque to, and unexaminable by, the notional observer.

The judgment below should be set aside, despite its apparent numerical immateriality

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61 If the Appellant succeeds on ground 2 in his Notice of Appeal, the Court would need to be satisfied, before granting order 2 sought in that Notice (that the Full Court's order be set aside), that it should do so even though Bromwich J "did not cast a deciding vote".[139]

62 On challenge to a decision made by a multi-member administrative body, it is generally no answer that only a minority was biased.[140] Were it otherwise, a court on review would

134 See, similarly, the observations by Refshauge J in *Eastman v Chief Executive Officer of the Department of Justice and Community Safety (No 2)* [2010] ACTSC 13, [63].

135 *R v Sussex Justices, Ex p McCarthy* [1924] 1 KB 256, 259 (Lord Hewart CJ).

136 J [61] (**CAB 158–159**).

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137 *Charisteas* (2021) 393 ALR 389, 394–395 [18] (the Court).

138 *Ebner* (2000) 205 CLR 337, 345 [7] (Gleeson CJ, McHugh, Gummow and Hayne JJ) (emphasis in original).

139 *Williams v Pennsylvania* 136 S Ct 1899 (2016) (***Williams***), 1909.

140 *IW v City of Perth* (1997) 191 CLR 1, 51 (Gummow J).

be faced with challenging evidentiary questions as to the extent to which a person in the minority may have influenced the majority.[141]

63 There is no reason why the same conclusion should not apply to a court comprising more than one judicial officer. That has been the approach in the United States Supreme Court and the Privy Council.

64 In *Williams v Pennsylvania*, after noting the Supreme Court had not previously had to decide whether a due process violation "arising from a jurist's failure to recuse amounts to harmless error if the jurist is on a multimember court and the jurist's vote was not decisive", the majority held that "an unconstitutional failure to recuse constitutes structural error even if the judge in question did not cast a deciding vote".[142] As the majority observed, "[t]he deliberations of an appellate panel, as a general rule, are confidential. As a result, it is neither possible nor productive to inquire whether the jurist in question might have influenced the views of his or her colleagues during the decision-making process".[143] That observation is apposite to the decision-making process of a Full Court constituted under s 14(2) of the FCA Act for the purpose of exercising the appellate jurisdiction conferred by s 25(1) of that Act. The *Williams* majority's reasons for rejecting "harmless error review"[144] are consonant both with: (a) the association between apprehended-bias recusal and the requirement that "justice must be seen to be done";[145] and (b) the incongruity of adding a materiality requirement to a conclusion of apprehended bias.[146]

65 To similar effect, in *Stubbs v The Queen*, the Privy Council observed that, if there were valid grounds requiring a judge who sat as part of a multi-member bench to recuse himself, "they apply with equal force whether he sat alone or in company. Each member of the Court of Appeal will have played a full part in the deliberation and resolution of the issues raised on the appeal. The mutual influence of each member of the court over

141 *IW v City of Perth* (1997) 191 CLR 1, 50 (Gummow J). And see *Isbester* (2015) 255 CLR 135, 153 [48] (Kiefel, Bell, Keane and Nettle JJ).

142 *Williams* 136 S Ct 1899 (2016), 1909.

143 *Williams* 136 S Ct 1899 (2016), 1909.

144 *Williams* 136 S Ct 1899 (2016), 1909.

145 *Re JRL; ex parte CRL* (1986) 161 CLR 342, 352 (Mason J).

146 *MZAPC v Minister for Immigration and Border Protection* (2021) 95 ALJR 441, 453 [33] (Kiefel CJ, Gageler, Keane and Gleeson JJ).

the others necessarily means that if any of them was affected by apparent bias the whole decision would have to be set aside”.[147]

66 If it is accepted that the *Ebner* test was satisfied in relation to Bromwich J, a structural error arose in relation to the constitution of the Full Court. The fact that Bromwich J concurred with two other justices is immaterial.

PART VIII — ORDERS SOUGHT

67 The Appellant seeks the orders set out in his Notice of Appeal.

PART IX — ESTIMATE OF TIME

68 It is estimated that up to half a day will be required for the presentation of the Appellant’s oral argument.

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Dated: 30 September 2022

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147 *Stubbs v The Queen* [2019] AC 868, 882-883 [33].

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

QYFM
Appellant

and

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
First Respondent

Administrative Appeals Tribunal
Second Respondent

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ANNEXURE TO THE SUBMISSIONS OF THE APPELLANT

Pursuant to Practice Direction No.1 of 2019, the Appellant sets out below a list of the constitutional provisions, statues and statutory instruments referred to in these submissions.

No.	Description	Version	Provisions
Constitutional provisions			
1.	*Commonwealth Constitution*	Current	Ch III, s 73
Statutory provisions			
2.	*Director of Public Prosecutions Act 1983* (Cth)	Current	ss 5, 6, 7, 8, 9, 15, 16, 18, 19, 21, 22, 23, 25, 27, 32A, Schedule
3.	*Director of Public Prosecutions Act 1983* (Cth)	No. 113 (Compilation start date 1 July 2014)	ss 5, 6, 7, 8, 9, 15, 16, 18, 19, 21, 22, 23, 25, 27, 32A, Schedule
4.	*Federal Court Act 1976* (Cth)	Current	ss 6, 14, 19, 20, 24, 25, 33
5.	*Federal Court Rules 2011* (Cth)	Current	r 31.22, Form 70
6.	*Judiciary Act 1903* (Cth)	Current	s 69
7.	*Migration Act 1958* (Cth)	Compilation No. 62 (Compilation start date 23 November 2013)	s 501

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No.	Description	Version	Provisions
8.	*Migration Act 1958* (Cth)	Compilation No. 136 (Compilation date 20 September 2017)	s 501
9.	*Migration Act 1958* (Cth)	Current	s 476A, s 501
10.	*Migration Amendment (Character and General Visa Cancellation) Act 2014* (Cth)	Current	s 2, Sch 1 (item 8)

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