HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S142/2023

BETWEEN:

MJZP
Plaintiff

and

DIRECTOR-GENERAL OF SECURITY
First Defendant

and

COMMONWEALTH OF AUSTRALIA
Second Defendant

SUBMISSIONS FOR THE ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND (INTERVENING)

Filed on behalf of the Attorney-General for the State of Queensland

18 October 2024

PART I: Internet publication

1. These submissions are in a form suitable for publication on the Internet.

PART II: Basis of intervention

2. The Attorney-General for the State of Queensland (**Queensland**) intervenes in these proceedings pursuant to s 78A of the *Judiciary Act 1903* (Cth).

PART III: Reasons why leave to intervene should be granted

3. Not applicable.

PART IV: Submissions

SUMMARY OF ARGUMENT

4. Queensland adopts the Commonwealth's written submissions as to why ***SDCV*** *v Director-General of Security*[1] should not be re-opened. Also weighing against re-opening is that *SDCV* has been independently acted upon by the Parliament of Queensland.

5. If *SDCV* is re-opened, it should not be overruled, because:

   (a) s 46(2) of the *Administrative Appeals Tribunal Act 1975* (Cth) (**AAT Act**) is part of a statutory scheme designed to ensure meaningful review of executive action by the courts and therefore does not cause 'practical injustice';

   (b) the statutory scheme upheld in ***Gypsy Jokers*** *Motorcycle Club Inc v Commissioner of Police*[2] is indistinguishable; and

   (c) the conclusion that s 46(2) is valid would follow even if proportionality were relevant to whether a procedure is characterised as fair or not:

      (i) there is nothing in principle objectionable about modifying the rules of procedural fairness by means of a blanket rule;

      (ii) *ad hoc* balancing would not be an alternative, equally effective way to achieve the objectives of s 46(2) of the AAT Act; and

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1 (2022) 277 CLR 241.
2 (2008) 234 CLR 532.

(iii) the objective of ensuring meaningful review by the courts is consistent with the values underlying Ch III, particularly the rule of law.

STATEMENT OF ARGUMENT

A. *SDCV* should not be re-opened

6. To the Commonwealth's analysis of the *John* factors[3] may be added the Queensland Parliament's reliance on *SDCV* in enacting s 340AA of the *Corrective Services Act 2006* (Qld).[4]

B. If re-opened, *SDCV* should be affirmed

7. Procedural fairness has been described as essential to the exercise of Commonwealth judicial power.[5] It has also been said to be an essential characteristic of all Ch III courts[6] (at least where those courts exercise judicial power,[7] noting that State courts can and do exercise non-judicial functions[8]).

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3 DS [18]-[23].

4 See *Corrective Services (Promoting Safety) and Other Legislation Amendment Act 2024* (Qld) s 32; Transcript of Proceedings, Community Safety and Legal Affairs Committee, Queensland Parliament, Public Hearing – *Inquiry into the Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024* (18 March 2024) 7-8 (evidence of Angus Scott KC); Parliament of Queensland, Community Safety and Legal Affairs Committee (Report No 7, April 2024) 26-33 [2.5] (especially at 33, adopting recommendations of the Bar Association of Queensland); Queensland, *Parliamentary Debates*, Legislative Assembly, 21 May 2024, 1580 (the Hon N Boyd, Minister for Fire and Disaster Recovery and Minister for Corrective Services).

See also *Queensland Community Safety Act 2024* (Qld) s 73, inserting s 141ZT of the *Weapons Act 1990* (Qld) (Confidentiality of criminal intelligence).

5 *Bass v Permanent Trustee Co Ltd* (1999) 198 CLR 334, 359 [56] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ); *SDCV* (2022) 277 CLR 241, 285 [106] (Gageler J).

6 *SDCV* (2022) 277 CLR 241, 264 [50] (Kiefel CJ, Keane and Gleeson JJ), 304 [172] (Gordon J), 324-5 [228] (Edelman J).

7 *SDCV* (2022) 277 CLR 241, 292 [106], [130] (Gageler J); *Assistant Commissioner Condon v* ***Pompano*** (2013) 252 CLR 38, 100 [157] (Hayne, Crennan, Kiefel and Bell JJ).

8 Eg *Director of Public Prosecutions (Vic) v Smith* [2024] HCA 32, [67]-[68] (Gageler CJ, Gleeson, Jagot and Beech-Jones JJ). The statement in *Oakey Coal Action Alliance v New Acland Coal Pty Ltd* (2021) 272 CLR 33, 48 [47] (Kiefel CJ, Bell, Gageler and Keane JJ)—that procedural fairness conditions a court's administrative functions 'no less' than it conditions a court's judicial functions—merely reflects the fact that 'observance of procedural fairness is an implied condition of jurisdiction by "everyone who decides anything" pursuant to statute to affect the interests of an individual by force of the statute, *unless and to the extent that procedural fairness is clearly excluded by the statutory scheme*': *CNY17 v Minister for Immigration and Border Protection* (2019) 268 CLR 76, 86 [16] (Kiefel CJ and Gageler J) (emphasis added). See also *CNY17* (2019) 268 CLR 76, 86-7 [53]-[54] (Nettle and Gordon JJ) and 117 [130] (Edelman J). Those passages from *CNY17* were cited in *Oakey* (2021) 272 CLR 33, 48 [47], fn 36.

8. However, what is required for procedural fairness is not absolute.[9] Competing interests may compel some qualification.[10] This Court laid down the test for when qualification is permissible in *Pompano* and again in *SDCV*.[11] The ultimate question is 'whether, taken as a whole, the court's procedures for resolving the dispute accord both parties procedural fairness and avoid "practical injustice".'[12]

9. While that may involve questions of degree, care should be taken not to import rigid concepts of structured proportionality, which is a tool better placed to justify a burden on a right or freedom, rather than to properly characterise a procedure as procedurally fair or not.[13] In particular, and contrary to what the plaintiff suggests,[14] whether a procedure is fair or unfair cannot turn on a rigid requirement that the Parliament must choose the least restrictive means of achieving a compelling public interest. Any such requirement would be at odds with judicial recognition that a procedure may be fair even though it is 'less than perfect'[15] and even though Parliament could have chosen to strike a *fairer* balance between the competing considerations.[16] As Crennan J said in *Gypsy Jokers*, '[t]he fact that the requirements of procedural fairness may be satisfied differently in other situations, including those arising in different constitutional settings', does not somehow lead to the conclusion that the option chosen by Parliament will result in practical injustice.[17]

10. In this case, s 46 of the AAT Act is addressed to the problem of how to make review of executive action meaningful in circumstances where the original decision-maker had regard to sensitive information when making their decision. Section 46(1) answers

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9 *Pompano* (2013) 252 CLR 38, 100 [157] (Hayne, Crennan, Kiefel and Bell JJ); *SDCV* (2022) 277 CLR 241, 307 [176] (Gordon J).

10 *Pompano* (2013) 252 CLR 38, 100 [157] (Hayne, Crennan, Kiefel and Bell JJ). See also at 47 [5], 72 [68], 78 [86] (French CJ), 110-1 [195] (Gageler J). See also *HT v The Queen* (2019) 269 CLR 403, 422-4 [42]-[46] (Kiefel CJ, Bell and Keane JJ); *SDCV* (2022) 277 CLR 241, 307-8 [176]-[177] (Gordon J), 326 [232] (Edelman J).

11 *SDCV* (2022) 277 CLR 241, 264 [50] (Kiefel CJ, Keane and Gleeson JJ), 306 [175], 308 [178] (Gordon J), 356 [313] (Steward J).

12 *Pompano* (2013) 252 CLR 38, 100 [157] (Hayne, Crennan, Kiefel and Bell JJ).

13 *Jones v Commonwealth* (2023) 97 ALJR 936, 946-7 [43] (Kiefel CJ, Gageler, Gleeson and Jagot JJ).

14 PS [39].

15 *SDCV* (2022) 277 CLR 241, 305 [174] (Gordon J), quoting *Dietrich v The Queen* (1992) 177 CLR 292, 365 (Gaudron J).

16 *SDCV* (2022) 277 CLR 241, 328 [237] (Edelman J).

17 *Gypsy Jokers* (2008) 234 CLR 532, 597 [191].

that quandary by providing for the sensitive information to be given to the reviewing court, but on the condition set out in s 46(2) that the information is not to be shared with anyone else. That procedure avoids the prospect of a court being called on to review a decision without knowing the basis on which it was made, and therefore avoids the prospect of a meaningless review.[18] Given that s 46(2) is part of a statutory scheme designed to ensure meaningful review—as an additional avenue of review—s 46(2) does not lead to practical injustice.

Section 46(2) causes no 'practical injustice': *Gypsy Jokers* is indistinguishable

11. The dilemma about how to facilitate meaningful review of a decision made in light of sensitive information is a recurring one.[19] Section 46(2) solves the dilemma in the same way as s 76(2) of the *Corruption and Crime Commission Act 2003* (WA) (**CCC Act**), upheld in *Gypsy Jokers*.[20]

12. In *Gypsy Jokers*, s 72(2) of the CCC Act allowed the Commissioner of Police to issue a 'fortification removal notice' if the Commissioner reasonably believed the premises were 'heavily fortified' and 'habitually used' by persons who were members of 'a class of people a significant number of whom may reasonably be suspected to be involved in organised crime'.[21] The Commissioner was entitled to take into account confidential information to form that belief. Section 76 provided for a limited form of judicial review of fortification removal notices, on the ground that the Commissioner could not have reasonably formed the belief required by s 72(2). As in this case, the statutory right of judicial review gave rise 'to problems of confidential information'.[22] As in this case, the legislature resolved those problems by permitting the court to use information which was not to be disclosed to the applicant. Section 76(2) of the CCC Act allowed the Commissioner to identify, and provide to the court, information which 'might prejudice the operations of the Commissioner of Police'. The Supreme Court

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18 *SDCV* (2022) 277 CLR 241, 354-6 [311]-[314] (Steward J). See also at 275-6 [74], 276-8 [78]-[83] (Kiefel CJ, Keane and Gleeson JJ).

19 See, eg, GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Report, 3 July 1989) 315.

20 (2008) 234 CLR 532, 449-50 [1] (Gleeson CJ), 553 [12], 561 [45] (Gummow, Hayne, Heydon and Kiefel JJ), 598 [193]-[194] (Crennan J). See *SDCV* (2022) 277 CLR 241, 266-9 [55]-[57] (Kiefel CJ, Keane and Gleeson JJ).

21 See *Gypsy Jokers* (2008) 234 CLR 532, 554 [16], 557 [27] (Gummow, Hayne, Heydon and Kiefel JJ).

22 *Gypsy Jokers* (2008) 234 CLR 532, 551 [5] (Gleeson CJ).

could decide for itself whether the information was actually within that class; but if it was, the information was 'for the court's use only and is not to be disclosed to any other person, whether or not a party to the proceedings'.[23]

13. That is, like s 46(2) of the AAT Act, s 76(2) of the CCC Act modified the rules of procedural fairness to facilitate a meaningful review of the Commissioner's decision by a court.[24]

14. This Court has said that there is no distinction between the 'essential characteristics' of federal and State courts.[25] If that is correct, and if the requirements of procedural fairness applying to federal and State courts are the same,[26] *Gypsy Jokers* cannot now be distinguished or disregarded.

15. *First*, the appellants in *Gypsy Jokers* challenged the validity of s 76(2) on the ground that it denied them procedural fairness.[27] Six judges of this Court upheld s 76(2) as valid. Although only Crennan J (with whom Gleeson CJ agreed) dealt expressly with the procedural fairness argument, it was necessarily also rejected by Gummow, Hayne, Heydon and Kiefel JJ. That is, the joint judgment in *Gypsy Jokers* cannot be treated as if it left that aspect of the appellant's challenge undecided.[28] Any doubt in that regard was removed by the observation of four justices in *Pompano* that the joint judgment in *Gypsy Jokers* 'proceeded from an acceptance that, as Crennan J rightly pointed out, "Parliament can validly legislate to exclude or modify the rules of procedural fairness".'[29] As the subsequent discussion in *Pompano* revealed, Parliament may do so where the exclusion or modification does not result in 'practical injustice'.[30]

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23 *Gypsy Jokers* (2008) 234 CLR 532, 558 [30], [33] (Gummow, Hayne, Heydon and Kiefel JJ).

24 *Gypsy Jokers* (2008) 234 CLR 532, 551 [5] (Gleeson CJ).

25 *SDCV* (2022) 277 CLR 241, 269 [58] (Kiefel CJ, Keane and Gleeson JJ), 285 [106] (Gageler J), 303-4 [172] (Gordon J), 323-4 [225] (Edelman J). Note, it appears that this position was 'common ground', at least between the parties: 264 [50] (Kiefel CJ, Keane and Gleeson JJ).

26 Compare PS [25.2]; *Pompano* (2013) 252 CLR 38, 89-90 [125]-[126] (Hayne, Crennan, Kiefel and Bell JJ) (observing that 'the notions of repugnancy to and incompatibility with the continued institutional integrity of the State courts are not to be treated as if they simply reflect what Ch III requires in relation the exercise of the judicial power of the Commonwealth').

27 *Gypsy Jokers* (2008) 234 CLR 532, 535 (Submissions of D Grace QC).

28 Compare *SDCV* (2022) 277 CLR 241, 317-8 [205] (Gordon J), 322-3 [221] (Edelman J).

29 *Pompano* (2013) 252 CLR 38, 98 [152] (Hayne, Crennan, Kiefel and Bell JJ).

30 *Pompano* (2013) 252 CLR 38, 99-100 [156]-[157] (Hayne, Crennan, Kiefel and Bell JJ).

16. *Second*, this Court in *Gypsy Jokers* did not construe s 76(2) as involving an *ad hoc* balancing of competing public interests by the Court. Given the text of s 76(2), such a construction would have been implausible. The section involved the Supreme Court in an assessment of the prejudice that might be caused to the Commissioner of Police by disclosure. It did not involve the Supreme Court in weighing that prejudice against the limits imposed on the ability of the opposing party to present their case (or any other competing public interest). It is true that Gummow, Hayne, Heydon and Kiefel JJ noted that the operation of s 76(2) had 'an *outcome* comparable with that of the common law respecting public interest immunity, but with the difference that the Court itself may make use of the information in question'.[31] But that comment does not suggest that the *process* to be undertaken by the Supreme Court in applying s 76(2) was comparable with that of the common law respecting public interest immunity.[32] It was not.

17. *Third*, it is not the case that any unfairness which arose from the application of s 76(2) could have been ameliorated by the Supreme Court refusing to 'use' the material where it would be procedurally unfair to do so.[33] The primary decision-maker in *Gypsy Jokers* was the Commissioner of Police, who had already issued a fortification removal notice on the basis of confidential information. The Gypsy Jokers Motorcycle Club applied for review of that decision. On review, a decision by the Supreme Court to decline to 'use' the confidential information would not have relieved the motorcycle club of any prejudice; on the contrary, refusal to use the information would have 'exacerbated' the prejudice.[34] That is because, without that information, the motorcycle club's application for review would have been 'bound to fail'.[35]

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[31] *Gypsy Jokers* (2008) 234 CLR 532, 559 [36] (Gummow, Hayne, Heydon and Kiefel JJ) (emphasis added). See also at 595 [181], 596 [183] (Crennan J).

[32] Compare *SDCV* (2022) 277 CLR 241, 296-7 [148] (Gageler J).

[33] Compare *SDCV* (2022) 277 CLR 241, 318-9 [207] (Gordon J), 330-1 [244]-[245] (Edelman J).

[34] Compare *SDCV* (2022) 277 CLR 241, 331 [245] (Edelman J).

[35] *Gypsy Jokers* (2008) 234 CLR 532, 551 [5] (Gleeson CJ). Alternatively, if Gordon J is right—that without access to the confidential information the court would allow the application and remit the matter to the original decision-maker—the applicant would still be prejudiced because the decision-maker would then remake the decision having regard to the confidential information, locking the applicant into an 'endless loop': *SDCV* (2022) 277 CLR 241, 314 [192] (Gordon J). That result may be contrasted with *Pompano* (2013) 252 CLR 38, 115 [212] (Gageler J). As Gageler J said in *SDCV*, the law in *Pompano* relieved the respondent of the burden of confidential information being deployed against them as a 'sword', rather than

18. As it is not distinguishable, *Gypsy Jokers* thus stands as authority against the plaintiff's case.

The same conclusion would apply even if concepts of proportionality were relevant

'Ad hoc' balancing is not required to avoid practical injustice or to be proportionate

19. Even if a form of 'proportionality' were relevant to the analysis, that reasoning would lead to the result accepted in *Gypsy Jokers*.

20. The plaintiff accepts that, to be proportionate, a modification to the rules of procedural fairness need not reserve a role for the court in carrying out *ad hoc* balancing on a case-by-case basis.[36] That proposition is plainly correct. As Toohey J said in *Nicholas v The Queen*, balancing competing public interests 'is not the sole prerogative of the courts'.[37] Six members of this Court confirmed in ***Graham*** *v Minister for Immigration and Border Protection* that 'the question of where the balance may lie in the public interest has never been said to be the exclusive preserve of the courts, nor has it ever been said that legislation may not affect that balance'.[38] In *SDCV*, the plurality reiterated that '[n]o decision of this Court supports a constitutional imperative that the balance of competing public interests in litigation must always be struck on a case-by-case basis by a court'.[39] Likewise, as the Canadian Supreme Court said in a similar context, 'Parliament's choice to adopt a categorical prohibition against disclosure of sensitive information, as opposed to a balancing approach, does not as such constitute a breach of the right to a fair process'.[40]

21. Barak also recognises a place for what he calls 'principled balancing formulas'—general rules that produce proportionate outcomes even though the rule does not

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deprived them of the benefit of deploying confidential information as a 'shield': (2022) 277 CLR 241, 294 [140].

36 PS [49].

37 *Nicholas v The Queen* (1998) 193 CLR 173, 203 [55]. See also *Gypsy Jokers* (2008) 234 CLR 532, 560 [39] (Gummow, Hayne, Heydon and Kiefel JJ).

38 *Graham* (2017) 263 CLR 1, 23 [35] (Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ).

39 *SDCV* (2022) 277 CLR 241, 278-9 [85]. See also at 280 [90] (Kiefel CJ, Keane and Gleeson JJ), 297 [150] (Gageler J).

40 *Minister of Citizenship and Immigration and Minister of Public Safety and Emergency Preparedness v Harkat* [2014] 2 SCR 33, 66 [66] (McLachlin CJ for the majority).

require *ad hoc* balancing on a case-by-case basis.[41]

22. Section 46(2) of the AAT Act operates in that way. It effectively represents a judgment call by the Commonwealth Parliament that the public interest in national security is so weighty that it cannot be outweighed by any unfairness caused to a person in the circumstances of any particular case. That is, due to the weighty public interest at stake, Parliament has formed the view that every application of s 46(2) will be proportionate, notwithstanding that a judge does not carry out any *ad hoc* balancing when applying s 46(2) of the AAT Act.

23. As s 46(2) of the AAT Act prescribes a rule, the question is whether that rule is justified, not whether each and every application of the rule would be justified. When assessing the proportionality of a rule, inevitably 'there may be hard cases which sit just on the wrong side of [the rule]'.[42] What matters is 'the proportionality of the categorisation and not of its impact on individual cases. The impact on individual cases is no more than illustrative of the impact of the scheme as a whole'.[43]

'Ad hoc' balancing is not a reasonably available, less restrictive alternative

24. The legitimate aim, according to the plaintiff, is 'prevention of the disclosure of information where that disclosure would be injurious to the public interest because it would prejudice the security of Australia or involve the disclosure of deliberations or decisions of the Cabinet'.[44] That is part of the aim, but it misses the reason for having a blanket rule.[45]

25. One reason for the blanket approach in s 46(2) is that, without it, confidential sources

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[41] Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (Cambridge University Press, 2012) 542-5. See also *McCloy v New South Wales* (2015) 257 CLR 178, 237 [147] (Gageler J).

[42] *R (Tigere) v Secretary of State for Business, Innovation and Skills* [2015] 1 WLR 3820, 3835 [36] (Baroness Hale) (concerning justification of a rule in a different context).

[43] *R (P) v Secretary of State for Justice* [2020] AC 185, 241-2 [50] (Lord Sumption) (concerning justification of a rule in a different context).

[44] PS [44].

[45] The legitimate aim is also misdescribed because the blanket rule only relates to, relevantly, information the disclosure of which would prejudice security or the defence or international relations of Australia (s 39B(2)(a) of the AAT Act). There is no blanket rule when it comes to Cabinet documents (s 39B(2)(b)) or other grounds of public interest immunity (s 39B(2)(c)). Under s 46(3) of the AAT Act, the court has a discretion to disclose material falling within s 39B(2)(b) or (c). The purpose of a blanket rule cannot extend to something the rule does not cover.

cannot be reliably assured that the information they provide will be kept confidential.[46] If a court is to make that assessment on a case-by-case basis, it will always be possible that the information could be revealed, which may result in sources of information drying up. Accordingly, *ad hoc* balancing would not achieve the aim of s 46(2).

26. Another reason for the blanket approach is that the balance to be struck between the competing public interests turns on 'consideration of expert opinion, predictive assessments, and political and social evaluations' which is more appropriately dealt with by Parliament and the executive than the courts.[47]

The broader purpose is access to a meaningful review

27. Moreover, the plaintiff's narrow articulation of the legitimate aim misses the reason for s 46 as a whole, which is to facilitate access to a meaningful review. Without s 46, an appeal under s 44 of the AAT Act may need to proceed on a different factual basis from the original decision under review. That is because the primary decision-maker may legitimately take into account sensitive information. On appeal, that sensitive information would be the subject of a claim of public interest immunity, and if successful (as it often would be), the normal rules of procedural fairness would prevent the court from having regard to it.[48] Regardless of whether that would result in the appeal being allowed or refused,[49] it would render the appeal unreal and 'productive potentially of injustice and absurdity'.[50]

28. To avoid that 'iniquitous' result,[51] s 46(1) requires the information to be given to the court, but only because the information is protected from further disclosure by s 46(2). Without s 46(2), there would be no s 46(1): 'one comes with the other'.[52] As the

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46 *SDCV* (2022) 277 CLR 241, 280 [88] (Kiefel CJ, Keane and Gleeson JJ). See also DS [56].

47 *SDCV* (2022) 277 CLR 241, 280-1 [89]-[90] (Kiefel CJ, Keane and Gleeson JJ).

48 *SDCV* (2022) 277 CLR 241, 277 [81] (Kiefel CJ, Keane and Gleeson JJ), 356 [313] (Steward J); *Gypsy Jokers* (2008) 234 CLR 532, 551 [5] (Gleeson CJ), 556 [23]-[24] (Gummow, Hayne, Heydon and Kiefel JJ).

49 Compare *SDCV* (2022) 277 CLR 241, 277 [79] (Kiefel CJ, Keane and Gleeson JJ), 353 [307] (Steward J) with 314 [192] (Gordon J).

50 *R (Haralambous) v Crown Court at St Albans* [2018] AC 236, 271 [57] (Lord Mance DPSC), cited in *SDCV* (2022) 277 CLR 241, 275-6 [74] (Kiefel CJ, Keane and Gleeson JJ), 314 [192] (Gordon J).

51 *SDCV* (2022) 277 CLR 241, 356 [313] (Steward J).

52 *SDCV* (2022) 277 CLR 241, 278 [83] (Kiefel CJ, Keane and Gleeson JJ). The dissenting judges also accepted that s 46 as a whole operates as an integrated scheme for the purposes of severance: at 302 [164] (Gageler J), 316 [200] (Gordon J), 322 [221] (Edelman J, agreeing with Gordon J).

condition precedent for the existence of s 46(1), s 46(2) shares the same legitimate aim as s 46 as a whole:[53] to allow a meaningful review rather than a meaningless one.[54]

29. Moreover, that legitimate aim coheres with the values underlying ch III. Promoting meaningful review by the courts promotes the rule of law.[55] Accordingly, s 46(2) of the AAT strikes a balance between competing values underpinning ch III itself.[56] Ultimately, as Steward J said in *SDCV*, rather than denying justice, justice is served by s 46(2).[57]

30. For these reasons, the questions should be answered in the manner proposed by the defendants.

PART V: Time estimate

31. It is estimated that 15 minutes will be required for presentation of Queensland's oral argument.

Dated 18 October 2024.

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[53] The purpose of a particular provision of an Act will generally take its colour from the higher-level purpose of the higher unit of the Act of which the provision forms a part: *Re Islam* (2010) 4 ACTLR 235, 250 [52] (Penfold J). See also *Unions NSW v New South Wales* (2019) 264 CLR 595, 657 [172] (Edelman J).

[54] *SDCV* (2022) 277 CLR 241, 356 [314] (Steward J). See also *R (Haralambous) v Crown Court at St Albans* [2018] AC 236, 269 [52] (Lord Mance DPSC) ('Judicial review should be effective and able to address the decision under review on the same basis that the decision was taken').

[55] Compare *Graham* (2017) 263 CLR 1, 25 [44], 28-9 [53] (Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ), 48 [105] (Edelman J).

[56] Similar to the justification analyses in *Clubb v Edwards* (2019) 267 CLR 171, 209 [101] (Kiefel CJ, Bell and Keane JJ); *McCloy v New South Wales* (2015) 257 CLR 178, 220-1 [93] (French CJ, Kiefel, Bell and Keane JJ).

[57] *SDCV* (2022) 277 CLR 241, 354 [310] (Steward J).

Annexure 1

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S142/2023

BETWEEN:

MJZP
Plaintiff

and

DIRECTOR-GENERAL OF SECURITY
First Defendant

and

COMMONWEALTH OF AUSTRALIA
Second Defendant

ANNEXURE TO SUBMISSIONS FOR THE ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND (INTERVENING)

Statutes and Statutory Instruments referred to in the submissions
Pursuant to *Practice Direction No. 1 of 2019*, Queensland sets out below a list of the constitutional provisions, statutes and statutory instruments referred to in these submissions**.**

No.	Description	Version	Provisions
Constitutional provisions			
1.	*Commonwealth Constitution*	Current	Ch III
Statutes			
2.	*Administrative Appeals Tribunal Act 1975* (Cth)	Compilation 53 (12 August 2023 to 21 May 2024)	ss 39B, 44, 46
3.	*Corrective Services Act 2006* (Qld)	Current (30 September 2024)	s 340AA
4.	*Corrective Services (Promoting Safety) and Other Legislation Amendment Act 2024* (Qld)	As made (6 June 2024)	s 32
5.	*Corruption and Crime Commission Act 2003* (WA)	Reprint 1 (5 January 2004)	ss 72, 76
6.	*Queensland Community Safety Act 2024* (Qld)	As made (30 August 2024)	s 73 (inserting s 141ZT)