

HIGH COURT OF AUSTRALIA

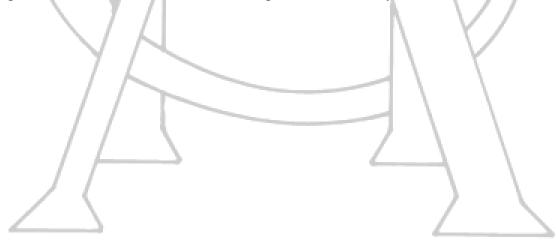
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	Details of Filing
File Number: File Title:	S27/2022 SDCV v. Director-General of Security & Anor
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IN THE HIGH COURT OF AUSTRALIA SYDNEY REGISTRY

BETWEEN:

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SDCV

Appellant

and

Director-General of Security

First Respondent

Attorney-General of the Commonwealth

Second Respondent

OUTLINE OF ORAL SUBMISSIONS OF THE20ATTORNEY GENERAL FOR NEW SOUTH WALES, INTERVENING

Part I: Publication

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

Part II: Outline of Oral Submissions

2. The general rule and its exceptions. Assistant Commissioner Condon v Pompano Pty Ltd (2013) 252 CLR 38 provides the framework for determining whether the requirements of procedural fairness under a particular statutory framework are constitutional. The constitutional question is essentially a practical one, and what is practical is ultimately a contextual question and one that is informed by

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S27/2022 considerations attending the particular subject-matter of legislative power. See Written Submissions (WS) at [6]-[16].

- 3. The national security context. The national security context has been recognised as one that is a particularly important responsibility of the federal government. The risk of disclosure of information that is prejudicial to the security or defence or international relations of Australia is potentially significant, and so it is to be expected that legislative schemes seek to restrict as much as possible the possibilities for the harmful disclosure of such information. This is an important part of the practical content of procedural fairness in the national security context. See WS at [19]-[22].
- 4. Comparative authority. Although there are limitations in what can be drawn from comparative authority, in considering the practical question it is useful to have regard to the way similar questions have been resolved elsewhere: Tariq v Home Office [2012] 1 AC 452; Haralambous v Crown Court at St Albans [2018] AC 236; In re National Security Agency Telecommunications Records Litigation (2011) 671 Fed 881; Fares v Smith (2018) 901 F 3d 315. See WS at [30]-[37].

20 Dated: 7 June 2022

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MG &ark

M G Sexton SC SG Ph: (02) 8688 5502 Michael.Sexton@justice.nsw.gov.au

MWRAdams Ph: (02) 8688 5504 Michael.Adams@justice.nsw.gov.au