HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA

SYDNEY REGISTRY No. S146/2025

BETWEEN: **TCXM**

Appellant

and

MINISTER FOR IMMIGRATION AND CITIZENSHIP

First Respondent

COMMONWEALTH OF AUSTRALIA

Second Respondent

and

HUMAN RIGHTS LAW CENTRE

Amicus curiae

OUTLINE OF ORAL SUBMISSIONS OF HUMAN RIGHTS LAW CENTRE

Part I. Form of submissions

1. This outline of oral submissions is in a form suitable for publication on the internet.

Part II. Outline of propositions that the HRLC intends to advance orally

2. ***M38**/2002 v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 131 FCR 146 (**JBA Vol 6, tab 33**), in which the Respondents say the "settled construction" of s 198 of the *Migration **Act** 1958* (Cth) "has its roots" (RS[41]), supports the HRLC's construction of s 198 of the *Act*, in that *M38*, correctly:

   (a) held that s 198 does not accommodate re-running protection claims outside of the "specialised administrative regime for the determination of [such] claims";

   HRLC[32], [51], [61]; *M38* at [5], [6], [8]–[11], [14]–[16], [71], [73], [78]. See also, consistently, *Re Minister for Immigration and Multicultural Affairs; Ex parte SE* (1998) 73 ALJR 123 (**JBA Vol 7, tab 40**) at [14], [18]-[19].

   (b) however, construed the phrase "as soon as reasonably practicable" in s 198 in a way that does <u>not</u> render as irrelevant circumstances in the country of removal threatening survival of the removee but not giving rise to protection obligations.

   HRLC[11], [14], [16], [17]; *M38* at [64]–[69]. See also *Minister for Immigration and Multicultural Affairs v **MZAPC*** (2025) 99 ALJR 385 (**JBA Vol 6, tab 35**) at [65]–[66].

3. The content of the phrase "<u>reasonably</u> practicable," in its application to a prospective removal, takes its colour from the statute and the statute's underpinning values, so that matters capable of bearing on the question include *inter alia*:

   (a) practical considerations, including those that present "from the officer's viewpoint," though the officer's view is not determinative;

   HRLC [16]–[17]; *M38* (2003) 131 FCR 146 at [66]–[67]; *Commonwealth v AJL20* (2021) 273 CLR 43 (**JBA Vol 3, tab 9**), at [8], [30]–[32], [52]–[53].

   (b) whether the removee will survive the voyage;

   HRLC[16]–[17]; *M38* at [69]; see ***NATB** v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 133 FCR 506 (**JBA Vol 6, tab 37**) at [52].

(c) circumstances in the country of removal threatening survival of the removee, but not engaging protection obligations, including "misfortunes such as earthquakes, plague and anarchy" or (as here) unavailability of medical facilities necessary for the survival of the removee.

HRLC[17]–[18], [53]–[54], [58]; *M38* at [69], *contra* RS[50]; *NATB* at [25], [48], [60]-[61].

4. Either *NATB* (despite purporting to adhere to the construction adopted in *M38*), or ***WAJZ*** *v Minister for Immigration and Multicultural and Indigenous Affairs (No 2)* [2004] FCA 1332 (**JBA Vol 7, tab 43**) (despite also purporting to adhere to and apply the same construction), or both, represented an erroneous departure from *M38*.

HRLC[61]–[63].

5. The departure is in the second sentence of *NATB* [53] (at least if read in in isolation), which is heavily relied on by the respondents, and which was critical to the holding of the primary judge at *J* [185]-[186]. It is not correct, and *M38* did not hold, that "what is likely, or even virtually certain, to befall the unlawful non-citizen after removal is complete" – i.e., upon admittance of the non-citizen in the receiving country – is necessarily irrelevant to whether removal to that country is "reasonably practicable".

HRLC[36]–[39], [40]–[43], [52], [61]–[63]; *NATB* at [25], [48], [51], [53], [55]–[59], [61]; *WAJZ* at [80], [82].

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