



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: B58/2026  
File Title: Smith v. Chief Executive, Queensland Corrective Services & C  
Registry: Brisbane  
Document filed: Form 27F - First Respondent's outline of oral Submissions  
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#### Important Information

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**IN THE HIGH COURT OF AUSTRALIA  
BRISBANE REGISTRY**

B58/2026

BETWEEN:

**RACHEL SMITH**  
Appellant

and

**CHIEF EXECUTIVE, QUEENSLAND CORRECTIVE SERVICES**  
First Respondent

and

**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**  
Second Respondent

and

**QUEENSLAND HUMAN RIGHTS COMMISSION**  
Third Respondent

**FIRST RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS**

**PART I – FORM OF SUBMISSIONS**

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

**PART II – OUTLINE OF ORAL SUBMISSIONS**

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1. **This case turns on the proper construction of s 22(2) of the CSA** (R1 [2], [8])
  - (a) Accepted construction: A prisoner in a corrective services facility cannot participate, or apply for the chief executive's approval to participate, in procedures for the purpose of assisting reproduction: R1 [11].
  - (b) Appellant's apparent construction: A prisoner in a corrective services facility cannot participate, or apply for the chief executive's approval to participate, in procedures that are capable, by themselves, of resulting in a pregnancy: AS [8], AS [21], J at [39] (CAB 14), AJ at [19], [38], [56](b) (CAB 41-43, 46, 50).
2. **Section 48(1) of the HRA cannot assist if the appellant's construction is inconsistent with the provision's purpose** (R1 [6]-[7]).

3. **The appellant's construction is not consistent with the appellant's characterisation of the provision's purpose ("preventing procreation in prison") (R1 [36]-[40]).**
  - (a) The appellant's construction does not "close the path" for most prisoners to procreate artificially while in custody: cf AS [38]. It closes the path only for female prisoners who wish to become pregnant themselves: R1 [39].
  - (b) The appellant's construction would have an improbable result in respect of male prisoners – the majority of the prisoner population (CSA, Explanatory Notes at 15, **JBA 2513**) – and female prisoners with a female partner in the community. The prudential approach to determining issues of constitutional validity does not arise nor permit the improbability of result to be ignored in the process of statutory construction: cf R3 [26].
  - (c) The improbable result is not tied to, or even based on, concerns about deception, secrecy, or commercial surrogacy arrangements: cf ARep [10].
4. **The appellant's construction is not consistent with the first respondent's characterisation of the provision's purpose (R1 [42]).**
5. **The accepted construction is consistent with both the appellant's and the first respondent's characterisation of the provision's purpose (R1 [41]-[42]).**
6. **The proper construction of s 22(2) turns on the proper meaning of the provision, as a whole, not only the meaning attributed to "assisted reproductive technology" (R1 [2]; cf AS [2], R3 [2]).**
7. **The principle of legality and the interpretive mandate of s 48 of the HRA are fulfilled in this case (R1 [51]-[55]).**

Dated: 17 September 2026



**Sally Robb**



**Louise Kruger**



**Susanna Connolly**