



HIGH COURT OF AUSTRALIA

6 August 2025

MJZP v DIRECTOR-GENERAL OF SECURITY & ANOR
[2025] HCA 26

Today, the High Court unanimously held that s 46(2) of the *Administrative Appeals Tribunal Act 1975* (Cth) ("the Act") is not invalid on the basis that it infringes Ch III of the *Constitution*.

Section 44(1) of the Act provided that a party to certain proceedings before the Administrative Appeals Tribunal ("the Tribunal") may appeal to the Federal Court of Australia, on a question of law, from any decision of the Tribunal in such a proceeding. On the institution of such an appeal, s 46(1) of the Act required the Tribunal to cause to be sent to the Court all documents that were before the Tribunal in connection with the proceeding to which the appeal related and which were relevant to the appeal. Section 46(2) of the Act provided that, if there is in force a certificate certifying that disclosure of matter contained in a document would be contrary to the public interest, the Federal Court must do all things necessary to ensure that the matter is not disclosed to any person other than a member of the Court as constituted for the purposes of that proceeding. For the purposes of s 46(2) of the Act such a certificate, in accordance with s 39B(2) of the Act, included a certificate issued by the "ASIO Minister" certifying that the disclosure of information with respect to a matter stated in the certificate, or the disclosure of the contents of a document, would be contrary to the public interest on one or more of three specified grounds, including that it would prejudice security or the defence or international relations of Australia.

The plaintiff brought a proceeding under s 44(1) of the Act in the Federal Court alleging error of law in a decision of the Tribunal. Section 46(2) of the Act precluded disclosure by the Federal Court to the plaintiff or its legal representatives of the certified matter. The plaintiff commenced proceedings against the Director-General of Security and the Commonwealth in the original jurisdiction of the High Court seeking a declaration that s 46(2) of the Act was invalid. The parties filed a special case stating one substantive question of law for the opinion of the Full Court – is s 46(2) of the Act invalid on the basis that it infringes Ch III of the *Constitution*? The plaintiff's principal contention was that s 46(2) of the Act was invalid because it required the Federal Court to depart from the "general rule" of procedural fairness more than was reasonably necessary to protect a compelling and legitimate public interest and thereby deprived it of an essential characteristic of a "court" under Ch III of the *Constitution*. The plaintiff submitted that the earlier decision of the High Court in *SDCV v Director-General of Security* (2022) 277 CLR 241 was not authority to the contrary but, to the extent necessary, sought leave for *SDCV* to be re-opened and overruled.

The Court held that *SDCV* provided a complete answer to the plaintiff's case and leave to re-open *SDCV* should not be granted. A party seeking to re-open an earlier decision of the Court and challenging the validity of the same provision that the earlier decision held to be valid, on the same basis as the challenge rejected in the earlier decision, carries a particularly heavy persuasive burden which the plaintiff did not discharge. The essence of the plaintiff's complaint was not new – it was put for the plaintiff in *SDCV* and not accepted by a majority of the Court. The plaintiff sought to raise the same question, yet nothing had changed since *SDCV* was decided except the constitution of the Court. The substantive question in the special case was answered: "No".

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.