



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
CANBERRA REGISTRY

BETWEEN:

**MINISTER FOR IMMIGRATION,
CITIZENSHIP, MIGRANT SERVICES
AND MULTICULTURAL AFFAIRS**

First Appellant

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and

AAM17

First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL
Second Respondent

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FIRST RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Form of outline

1. This outline is in a form suitable for publication on the Internet.

Part II: Outline of oral submissions

Appeal ground 1/Notice of contention ground 1

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2. The first respondent does not seek to uphold that part of the Federal Court's reasoning at R[35] (CAB 60), R[41] (CAB 61) and R[51] (CAB 64) which is to the effect that the circumstances in which the Federal Circuit Court's reasons for decision are delivered can amount to a denial of procedural fairness by the Federal Circuit Court.
3. However, the Federal Court also reasoned at R[35] (CAB 60) and R[41] (CAB 62), in effect, that the circumstances of the delivery of the Federal Circuit Court's reasons can amount to a denial of procedural fairness in the exercise of appeal rights in the Federal Court.

4. That reasoning was correct. The duty of a court to provide reasons is well understood as an integral aspect of the judicial function. An important objective of that duty (although not the only one) is to enable a party to effectively exercise their appeal rights. In that regard, if the circumstances of delivery of the reasons for the decision under appeal impair a party's ability to advance its case on appeal by reference to those reasons, then the 'practical injustice' worked by that impairment can amount to a denial of procedural fairness.

10 5. Alternatively, for the reasons explained immediately above, the Federal Court should have concluded that the circumstances of the delivery of the Federal Circuit Court's reasons can amount to a denial of procedural fairness in the exercise of appeal rights in the Federal Court.

Appeal ground 2

6. The first respondent does not seek to uphold that part of the Federal Court's reasoning at R[37] (CAB 60) that is the subject of appeal ground 2.

Notice of contention ground 2

7. The appellant does not challenge Mortimer J's finding:

7.1 at R[23] (CAB 56) that the Federal Circuit Court's contemporaneous, oral reasons were not interpreted for the first respondent;

20 7.2 at R[20(h)] (CAB 55) to the effect that it was not possible for the Federal Court to compare the Federal Circuit Court's contemporaneous, oral reasons with its subsequent written reasons, including the extent of any similarity between them.

8. The contemporaneous, oral reasons were the operative reasons of the Federal Circuit Court. The subsequent written reasons published could not substantively add to or alter those oral reasons.

30 9. The denial of procedural fairness to the first respondent in the exercise of his appeal rights flowed from those factual circumstances and the Federal Court should have so found. The first respondent was deprived of the opportunity to formulate his argument on appeal having regard to the contents of the oral, reasons, including to investigate any difference of substance between the two sets of reasons.

Appeal ground 3/Notice of contention ground 3

10. The Federal Court concluded that there was no obvious jurisdictional error by the Tribunal. The first respondent does not contend to the contrary.
11. Nevertheless, in the factual circumstances found by her Honour referred to above, were the Federal Court to proceed to determine the jurisdictional correctness of the Tribunal's decision, then potentially it would do so without the benefit of or with regard to the operative reasons of the Federal Circuit Court. That would not be consistent with the administrative processes of review prescribed by the legislature as discussed by Flick J in *SZKLO* at [41], [43] (JBA, 1042-3).
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Dated: 2 December 2020

Patricia Cahill

Patricia Cahill