HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S27 of 2022

BETWEEN:

SDCV
Appellant

and

DIRECTOR-GENERAL OF SECURITY
First Respondent

and

ATTORNEY-GENERAL OF THE COMMONWEALTH
Second Respondent

SUBMISSIONS FOR THE ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND (INTERVENING)

PART I: Internet publication

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

PART II: Basis of intervention

2. The Attorney-General for Queensland (**Queensland**) intervenes in this proceeding pursuant to s 78A of the *Judiciary Act 1903* (Cth), in support of the respondents.

PART III: Reasons why leave to intervene should be granted

3. Not applicable.

Filed on behalf of the Attorney-General for the State of Queensland, Intervening

17 May 2022

PART IV: Submissions

SUMMARY OF ARGUMENT

4. Queensland submits that if enacted by a Parliament of a State, s 46(2) of the *Administrative Appeals Tribunal Act 1975* (Cth) (**AAT Act**) would be valid. The accommodation by s 46(2), of the weighty public interest of national security, does not result in 'practical injustice' and would not infringe the *Kable* principle.[1]

5. Any application by the Appellant for leave to re-open *Gypsy Jokers Motorcycle Club Inc v Commissioner of Police* (***Gypsy Jokers***),[2] *Assistant Commissioner Condon v Pompano Pty Ltd* (***Pompano***)[3] and *Graham v Minister for Immigration and Border Protection* (***Graham***)[4] should be refused.

STATEMENT OF ARGUMENT

The relevance of cases applying the *Kable* principle

6. The parties proceed on the basis that both federal and State courts must possess certain 'essential characteristics' (**AS [18]**; **RS [17]**), and that those essential characteristics include the requirement 'to provide procedural fairness' (**AS [20]**; **RS [17]**). Further, the Second Respondent equates the procedural fairness requirements of federal courts with those imposed on the States by the *Kable* principle (**RS [24]-[27]**).[5]

7. In that context, Queensland's submissions below proceed on the assumption that it is an 'essential characteristic' of State courts, protected by the *Kable* principle, to provide procedural fairness.[6] Such a principle would not prevent a State from enacting legislation to the same effect as s 46(2) of the AAT Act. If the Second Respondent is correct to equate State and federal procedural fairness requirements, then it follows

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1 *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 ('*Kable*').

2 (2008) 234 CLR 532.

3 (2013) 252 CLR 38.

4 (2017) 263 CLR 1.

5 The Appellant's position appears to be that the principles which protect procedural fairness at State and Commonwealth level 'share a common foundation in constitutional principle' (**AS [18]**), but are not necessarily the same: see **AS [51], [54]-[55], [57]**. The Second Respondent also appears implicitly to acknowledge that the requirements at the federal level may be more stringent: see **RS [40]**.

6 The plurality in *Pompano* (2013) 252 CLR 38 said that '[t]o observe that procedural fairness is an essential attribute of a court's procedures is descriptively accurate' (at 99 [156]), but also that 'Parliament can validly legislate to exclude or modify the rules of procedural fairness' (98 [152]) (cf **RS [17]**).

that s 46(2) is valid. As to whether the Second Respondent is correct to equate State and federal requirements, Queensland takes no position; but submits that aspects of the Second Respondent's reasoning to that result ought to be rejected.

8. As the parties accept (**AS [20]**; **RS [17]**), the requirement to observe procedural fairness is a 'dimension' of the judicial power of the Commonwealth.[7] That common position makes it unnecessary to frame the issue in this case, as the parties have, as going to the 'essential characteristics' of 'courts'.

9. Nonetheless, as federal courts may only exercise the judicial power of the Commonwealth[8] – which itself requires procedural fairness – it may be accurate to describe procedural fairness as an 'essential characteristic' of federal courts (**AS [21]**; **RS [17]**). By contrast, State courts are not limited to exercising judicial power, much less the 'narrow[er]'[9] concept of 'the judicial power of the Commonwealth'. The question in relation to a task conferred on a State court is instead whether that task would 'substantially impair[] the court's institutional integrity [and hence be] incompatible with that court's role as a repository of federal jurisdiction.'[10] A task will not substantially impair a State court's institutional integrity, simply because it does not have 'the same character or quality as the judicial power of the Commonwealth'[11] and could not have been given to a federal court.[12] In relation to such tasks, it is possible that the *Kable* principle will tolerate modifications to procedural fairness

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7 *TCL Air Conditioner (Zhongshan) Co Ltd v Judges of the Federal Court of Australia* (2013) 251 CLR 533, 553 [27] (French CJ and Gageler J); *Bass v Permanent Trustee Co Ltd* (1999) 198 CLR 334, 359 [56] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ).

8 Or power incidental thereto.

9 *Minister for Home Affairs v Benbrika* (2021) 95 ALJR 166, 201 [137] (Gordon J) ('*Benbrika*'), citing *Albarran v Companies Auditors and Liquidators Disciplinary Board* (2007) 231 CLR 350, 372 [73] (Kirby J). See also *Kable* (1996) 189 CLR 51, 136-7 (Gummow J) and *Benbrika* (2021) 95 ALJR 166, 173 [15] (Kiefel CJ, Bell, Keane and Steward JJ) ('Apart from its source, the judicial power of the Commonwealth is distinguished from the judicial power of a State by the separation of powers for which the *Constitution* provides and the requirement that its exercise be with respect to a "matter"').

10 *Attorney-General (NT) v Emmerson* (2014) 253 CLR 393, 424 [40] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ).

11 *Kable* (1996) 189 CLR 51, 142 (Gummow J).

12 *Pompano* (2013) 252 CLR 38, 53 [22] (French CJ), 90 [126] (Hayne, Crennan, Kiefel and Bell JJ); *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575, 598 [36] (McHugh J), 614 [86] (Gummow J), 630 [144(4)] (Kirby J), 656 [219] (Callinan and Heydon JJ).

which would be intolerable in relation to the exercise of the judicial power of the Commonwealth.[13]

10. That conclusion is open notwithstanding the accepted position that there are no 'different grades or qualities of justice' (cf **RS [26]**).[14] Justice Gaudron's statement to that effect was not intended to deny the equally well-established proposition (which her Honour also recognised[15]) that the requirements imposed by Ch III upon the Commonwealth are 'more stringent' or 'stricter' than those imposed on the States by *Kable*.[16] Her Honour's point was, and the doctrine of this Court is,[17] that protection against 'different qualities of justice' in the exercise of *Commonwealth* judicial power is achieved by protecting the institutional integrity of State courts.[18] As both McHugh J and Gummow J explained in *Kable*, the point is that '[t]here are not two grades of *federal* judicial power'.[19] The protection of the institutional integrity of State courts does not require that, when performing other tasks, State courts meet standards equal to those required of Commonwealth judicial power:[20]

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13 See, eg, *Re Ross* (2007) 19 VR 272, 276 [13] (Teague, Cummins and Coldrey JJ) where the Victorian Court of Appeal provided an advisory opinion in relation to a pardon without engaging in an adversarial process, without receiving written or oral submissions, and with 'the judges having no contradictor'. See also *Pompano* (2013) 252 CLR 38, 90 [126] (Hayne, Crennan, Kiefel and Bell JJ) ('[I]n applying the notions of repugnancy and incompatibility it may well be necessary to accommodate the accepted and constitutionally uncontroversial performance by State courts of functions which go beyond those that can constitute an exercise of the judicial power of the Commonwealth').

14 *Kable* (1996) 189 CLR 51, 103 (Gaudron J).

15 *Kable* (1996) 189 CLR 51, 103-4 (Gaudron J).

16 *Baker v The Queen* (2004) 223 CLR 513, 534 [51] (McHugh, Gummow, Hayne and Heydon JJ).

17 Eg, *Pompano* (2013) 252 CLR 38, 89 [123] (Hayne, Crennan, Kiefel and Bell JJ).

18 *Kable* (1996) 189 CLR 51, 103 (Gaudron J). In context, what her Honour said was: 'State courts are neither less worthy recipients of federal jurisdiction than federal courts nor 'substitute tribunals', as they have sometimes been called. To put the matter plainly, there is nothing anywhere in the Constitution to suggest that it permits of different grades or qualities of justice' (footnotes omitted).

19 *Kable* (1996) 189 CLR 51, 115 (McHugh J, emphasis added), 127-8 (Gummow J, accepting the submission that the *Constitution* 'does not permit of an Australian judiciary exercising the judicial power of the Commonwealth but divided into two grades').

Hence, *Kable* does not support the Second Respondent's submission that 'the standard of procedural fairness to be observed *in the exercise of State judicial power* cannot be relevantly different from the standard of procedural fairness to be observed *in the exercise of Commonwealth judicial power*, for otherwise there would be "different grades or qualities of justice"' (emphasis added) (**RS [26]**).

20 *Pompano* (2013) 252 CLR 38, 90 [125] (Hayne, Crennan, Kiefel and Bell JJ). See also *HA Bachrach Pty Ltd v Queensland* (1998) 195 CLR 547, 562 [14] (Gleeson CJ, Gaudron, Gummow, Kirby and Hayne JJ); *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575, 591 [18] (Gleeson CJ), 598-601 [36]-[42] (McHugh J), 614 [86]-[87] (Gummow J), 648 [198] (Hayne J), 655-6 [219] Callinan and Heydon JJ); *Kuczborski v Queensland* (2014) 254 CLR 51, 89 [103]-[104] (Hayne J).

> the notions of repugnancy to and incompatibility with the continued institutional integrity of the State courts are not to be treated as if they simply reflect what Ch III requires in relation to the exercise of the judicial power of the Commonwealth.

Yet that would be the result of reasoning – as the Second Respondent does – that a requirement which inheres in the judicial power of the Commonwealth is for that reason an 'essential characteristic' of federal courts (**RS [17]**); and, because there can be no 'different qualities of justice', the requirement must also be an 'essential characteristic' of State courts (**RS [26]**) (and consequently applicable to their exercise of *any* power). To the extent the Second Respondent's submissions invite the Court to reason in that way, they are inconsistent with authority and should be rejected.

Section 46(2) of the AAT Act strikes an appropriate balance

11. As noted above, the parties proceed on the basis that the requirement to provide procedural fairness is an essential characteristic of a court (**AS [20]; RS [17]**). The parties also agree that what is required to meet the description of 'procedural fairness' is not absolute (**AS [23], [29]; RS [18]**). As the joint judgment held in *Pompano*, there are circumstances in which competing interests may compel some qualification.[21] Determining when competing interests permit a qualification necessarily involves some form of balancing between the rules of procedural fairness and the relevant countervailing public interest. There must be '"balancing" in some form of the benefits of maintaining procedural fairness rights against the benefits of maintaining state secrecy'.[22] Importantly, the application of proportionality would not be a means of requiring a court to conduct a hearing which is not procedurally fair. Rather, it would determine whether the court is able to accord procedural fairness and avoid practical injustice, despite the modification of the rules of procedural fairness.[23] That

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[21] *Pompano* (2013) 252 CLR 38, 100 [157] (Hayne, Crennan, Kiefel and Bell JJ) (albeit in respect of the more specific rule of procedural fairness 'that opposing parties will know *what* case an opposite party seeks to make and *how* that party seeks to make it'). See also at 47 [5], 72 [68], 78 [86] (French CJ), 110-1 [195] (Gageler J). See also *HT v The Queen* (2019) 269 CLR 403, 422-4 [42]-[46] (Kiefel CJ, Bell and Keane JJ).

[22] Gabrielle Appleby, 'Protecting procedural fairness and criminal intelligence: Is there a balance to be struck?' in Greg Martin, Rebecca Scott Bray and Miiko Kumar (eds), *Secrecy, Law and Society* (Taylor and Francis, 2015) 75, 76.

[23] See, by analogy, the application of proportionality to determine whether modification of the constituent elements of a fair trial results in a breach of the right to a fair trial (which itself may be absolute): *AB v CD & EF* [2017] VSCA 338, [166]-[168] (Ferguson CJ, Osborn and McLeish JJA); *Brown v Stott* [2003] 1 AC 681, 704 (Lord Bingham), 708 (Lord Steyn), 719-20 (Lord Hope); *R v Condon* [2007] 1 NZLR 300, 332-3 [77],

is, proportionality is relevant to the *content* of procedural fairness required, not *whether* procedural fairness is required.[24]

12. There are many examples of modifications of the rules of procedural fairness which do not result in procedural unfairness or practical injustice. For example, a law which prevents access to the counselling records of complainants modifies the right of full answer and defence, but it does not result in procedural unfairness. Rather, the law ‘alter[s] the balance that had previously been struck’ between the rules of procedural fairness and competing privacy interests.[25] Likewise, a law which prevents a self-represented accused from cross-examining a complainant in a sexual offence trial modifies the right to confront one’s accuser, but it does not result in procedural unfairness. In rejecting a *Kable* challenge to such a law, in *R v MSK*, the New South Wales Court of Appeal noted:[26]

> the High Court has never suggested that any departure from the common law of criminal procedure is necessarily unfair, let alone unfair in some manner attracting constitutional considerations. Many changes to the laws of evidence or procedure limit or vary the forensic choices available at common law to both the prosecution and the defence. The abolition of dock statements and the modification of the common law of hearsay has never been suggested to have been constitutionally flawed, as far as I am aware.

13. Moreover, to be proportionate, a modification to the rules of procedural fairness need not reserve a role for the court in carrying out ad hoc balancing on a case-by-case basis. As Toohey J said in *Nicholas v The Queen*, balancing competing public interests ‘is not the sole prerogative of the courts’.[27] More recently, six members of this Court

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[79] (Blanchard J for the Supreme Court). On the analogy, see also *Pompano* (2013) 252 CLR 38, 110 [193] (Gageler J).

[24] See *Pompano* (2013) 252 CLR 38, 72 [68] (French CJ), 90 [125], 99 [156] (Hayne, Crennan, Kiefel and Bell JJ), 105 [177], 109-10 [192], 110-1 [195] (Gageler J); *HT v The Queen* (2019) 269 CLR 403, 417 [18], 422-3 [42]-[44] (Kiefel CJ, Bell and Keane JJ), 430 [64], 433 [76]-[77] (Gordon J). See also *Gypsy Jokers* (2008) 234 CLR 532, 596 [182] (Crennan J) (‘Whether the obligation to accord procedural fairness is satisfied will always depend on all the circumstances’).

[25] *TRKJ v DPP (Qld)* [2021] QSC 297, [174] (Applegarth J).

[26] *R v MSK* (2004) 61 NSWLR 204, 212 [35] (Mason P, Wood CJ at CL, Barr J agreeing). The Court of Appeal held that this position was consistent with *Kable*: at 217-218 [60]. See also *Graham* (2017) 263 CLR 1, 22 [31]-[32] (Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ).

[27] *Nicholas v The Queen* (1998) 193 CLR 173, 203 [55]. See also *Gypsy Jokers* (2008) 234 CLR 532, 560 [39] (Gummow, Hayne, Heydon and Kiefel JJ).

confirmed in *Graham* that 'the question of where the balance may lie in the public interest has never been said to be the exclusive preserve of the courts, nor has it even been said that legislation may not affect that balance'.[28]

14. Section 46(2) of the AAT Act effectively represents a judgment call by the Commonwealth Parliament that the public interest in national security is so weighty that it cannot be outweighed in the circumstances of any particular case. In that sense, every application of s 46(2) will be proportionate, notwithstanding that a judge does not carry out any ad hoc balancing when applying s 46(2) of the AAT Act.[29] 'Parliament's choice to adopt a categorical prohibition against disclosure of sensitive information, as opposed to a balancing approach, does not as such constitute a breach of the right to a fair process'.[30]

15. In allowing the executive to provide sensitive information to the court and not others, s 46(2) of the AAT Act strikes the same balance which the Western Australian Parliament struck in s 76(2) of the *Corruption and Crime Commission Act 2003* (WA), and which this Court upheld in *Gypsy Jokers*.[31] It also strikes the same balance as s 503A(2)(c) of the *Migration Act 1958* (Cth) to the extent it was upheld by this Court in *Graham*.[32] In line with those authorities, it would be open to a State Parliament to strike the balance in the way the Commonwealth Parliament did in enacting s 46(2) of the AAT Act, taking into account that:

(a) the validity of the certificate remains a matter for the court in judicial review proceedings, and may be raised by the appellant[33] or the court itself in the appeal[34] (**RS [36]-[37]**);

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[28] *Graham* (2017) 263 CLR 1, 23 [35] (Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ).

[29] As a form of 'principled balancing formula'. See *McCloy v New South Wales* (2015) 257 CLR 178, 237 [147] (Gageler J).

[30] *Minister of Citizenship and Immigration and Minister of Public Safety and Emergency Preparedness v Harkat* [2014] 2 SCR 33, 66 [66] (McLachlin CJ for the majority).

[31] (2008) 234 CLR 532. In *Gypsy Jokers*, '[t]he plurality said nothing to indicate that s 76(2), by allowing only the Court to have access to the confidential information, might, on that account, be of doubtful validity': *Pompano* (2013) 252 CLR 38, 98 [152] (Hayne, Crennan, Kiefel and Bell JJ).

[32] (2017) 263 CLR 1, 81, 83.

[33] Provided the appellant did so before the tribunal.

[34] Just as '[t]he Court itself [could] question the evidence' in *K-Generation Pty Ltd v Liquor Licensing Court* (2009) 237 CLR 501, 543 [148] (Gummow, Hayne, Heydon, Crennan and Kiefel JJ).

(b) nothing in the AAT Act forces the court to take any particular course of action with respect to the certificated evidence (**RS [38]**);[35]

(c) s 46(2) is a statutory analogue of existing common law powers, such as the power to privately inspect documents the subject of a claim of public interest immunity (with the only difference being that the court may have regard to the documents in deciding the outcome of the proceeding) (**RS [20]**);[36] and,

(d) s 46(2) is part of a scheme designed to *promote* access to meaningful review by the courts (**RS [40]-[43]**), in circumstances where the alternative of leaving the general law to apply would mean that '[t]he Court would not be able to have regard to some, or perhaps [much], of the information on which the [tribunal's decision] was based'.[37]

16. To conclude that some form of balancing may be relevant to what is procedurally fair is not inconsistent with the observation in *Falzon v Minister for Immigration and Border Protection* (***Falzon***) that '[q]uestions of proportionality cannot arise under Ch III'.[38] That statement must be read in context. It was the conclusion to a paragraph in which the joint judgment observed that the separation of powers represents a hard rule, rather than a principle that can be outweighed. As McHugh J said in *Re Woolley*, '[a] law that confers judicial power on a person or body that is not authorised by or otherwise infringes Ch III cannot be saved by asserting that its operation is proportionate to an object that is compatible with Ch III'.[39] Likewise, it may be accepted that institutional integrity is binary; either a court has institutional integrity or it does not. Some form of balancing may be relevant to what is procedurally fair, and that may be relevant to whether a law substantially impairs a court's institutional integrity. But once it is concluded that a law substantially impairs the institutional integrity of a court, that law cannot be saved by recourse to proportionality.

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[35] As in *Gypsy Jokers* (2008) 234 CLR 532, 561 [44] (Gummow, Hayne, Heydon and Kiefel JJ), 594 [174] (Crennan J); *Pompano* (2013) 252 CLR 38, 75 [78] (French CJ).

[36] *Gypsy Jokers* (2008) 234 CLR 532, 550-1 [5] (Gleeson CJ), 559 [36] (Gummow, Hayne, Heydon and Kiefel JJ), 595-6 [178]-[183] (Crennan J); *Pompano* (2013) 252 CLR 38, 63 [46], 74 [74] (French CJ), 97 [148] (Hayne, Crennan, Kiefel and Bell JJ), cf 113 [204] Gageler J).

[37] *Gypsy Jokers* (2008) 234 CLR 532, 551 [5] (Gleeson CJ).

[38] *Falzon v Minister for Immigration and Border Protection* (2018) 262 CLR 333, 344 [32] (Kiefel CJ, Bell, Keane and Edelman JJ). See also at 359-60 [95] (Nettle J).

[39] *Re Woolley; Ex parte M276/2003* (2004) 225 CLR 1, 34 [80].

Institutional integrity – like the separation of powers – is a 'balance-resisting fixed point'.[40]

17. Further, the broader context of the passage in *Falzon* was a rejection of a submission that the structured form of proportionality should be used to determine whether detention is punitive.[41] However, to accept that some form of balancing is involved in assessing adherence to procedural fairness does not necessarily entail accepting that *structured* proportionality must be applied.[42] It is submitted that those are the senses in which '[q]uestions of proportionality cannot arise under Ch III'.[43]

Leave to reopen *Gypsy Jokers*, *Pompano* and *Graham* should not be granted

18. The Appellant has indicated that, if necessary, he will seek leave to re-open *Gypsy Jokers*, *Pompano* and *Graham* (**AS fn 94**). In the event he does, leave to reopen should not be granted. In the first place, *Gypsy Jokers* and *Pompano* stand in the *Kable* line of authority, and therefore do not speak directly to what Ch III requires for a court created by or under Ch III.[44] In any event, these cases do not disclose any error. *Gypsy Jokers* and *Pompano* form part of a 'definite stream of authority' on what the *Kable* principle requires, cohering with 'well established principle'.[45] *Graham* is also consistent with this Court's body of jurisprudence on impairment of a court's institutional integrity. All three cases have been relied upon in subsequent cases, in this Court or lower courts.[46] The States have also relied upon those cases in crafting legislation,[47] 'in a manner which militate[s] against reconsideration'.[48] In those

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40 Matthias Jestaedt, 'The Doctrine of Balancing – its Strengths and Weaknesses' in Matthias Klatt (ed), *Institutionalized Reason* (Oxford University Press, 2012) 152, 171-2.

41 *Falzon* (2018) 262 CLR 333, 343-4 [25], [28]-[32] (Kiefel CJ, Bell, Keane and Edelman JJ), 359-60 [95] (Nettle J). See also *Palmer v Western Australia* (2021) 95 ALJR 229, 260 [150] (Gageler J).

42 Cf *Benbrika* (2021) 95 ALJR 166, 223 [226] (Edelman J); Gabrielle Appleby, 'Protecting procedural fairness and criminal intelligence: Is there a balance to be struck?' in Greg Martin, Rebecca Scott Bray and Miiko Kumar (eds), *Secrecy, Law and Society* (Taylor and Francis, 2015) 75, 91-2.

43 *Falzon* (2018) 262 CLR 333, 344 [32] (Kiefel CJ, Bell, Keane and Edelman JJ).

44 *Pompano* (2013) 252 CLR 38, 90 [125]-[126] (Hayne, Crennan, Kiefel and Bell JJ).

45 *Queensland v Commonwealth* (1977) 139 CLR 585, 630 (Aickin J); *Wurridjal v Commonwealth* (2009) 237 CLR 309, 351 [68] (French CJ); *Alqudsi v The Queen* (2016) 258 CLR 203, 235 [66] (French CJ).

46 Eg, *Pompano* (2013) 252 CLR 38, 97-8 [149]-[153] (Hayne, Crennan, Kiefel and Bell JJ); *Lawrence v New South Wales* (2020) 103 NSWLR 401, 426-8 [82]-[97] (Bathurst CJ, Bell P and Leeming JA agreeing); *Hayward v The Queen* [2019] NSWDC 464, [47]-[50] (Norrish QC DCJ).

47 For example, after the High Court upheld the validity of the *Criminal Organisation Act 2009* (Qld) in *Pompano*, New South Wales and South Australia both adopted the Queensland model. The extrinsic material to the *Crimes (Criminal Organisations Control) Amendment Act 2013* (NSW) refers expressly to *Pompano*:

circumstances, granting leave to reopen would undermine 'the interests of continuity and consistency in the law'.[49]

PART V: Time estimate

19. It is estimated that 10 minutes will be required for presentation of Queensland's oral argument.

Dated: 17 May 2022



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New South Wales, *Parliamentary Debates*, Legislative Assembly, 21 March 2013, 19116 (Greg Smith, Attorney-General); Explanatory note, Crimes (Criminal Organisations Control) Amendment Bill 2013 (NSW) 1-2. The extrinsic material to the *Serious and Organised Crime (Control) (Declared Organisations) Amendment Act 2013* (SA) also refers to *Pompano*: South Australia, *Parliamentary Debates*, House of Assembly, 4 July 2013, 6420-1 (JR Rau, Deputy Premier, Attorney-General).

[48] *John v Commissioner of Taxation (Cth)* (1989) 166 CLR 417, 439 (Mason CJ, Wilson, Dawson, Toohey and Gaudron JJ); *Wurridjal v Commonwealth* (2009) 237 CLR 309, 352 [69] (French CJ); *Alqudsi v The Queen* (2016) 258 CLR 203, 234 [66] (French CJ).

[49] *Attwells v Jackson Lalic Lawyers Pty Ltd* (2016) 259 CLR 1, 19 [28] (French CJ, Kiefel, Bell, Gageler and Keane JJ), 45 [131] (Gordon J agreeing), quoting *Wurridjal v Commonwealth* (2009) 237 CLR 309, 352 [70] (French CJ).

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SYDNEY REGISTRY

No. S27 of 2022

BETWEEN:

SDCV
Appellant

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DIRECTOR-GENERAL OF SECURITY
First Respondent

and

ATTORNEY-GENERAL OF THE COMMONWEALTH
Second Respondent

ANNEXURE TO SUBMISSIONS FOR THE ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND (INTERVENING)

Statutes and Statutory Instruments referred to in the submissions

Pursuant to *Practice Direction No. 1 of 2019*, Queensland sets out below a list of the constitutional provisions, statutes and statutory instruments referred to in these submissions.

No.	Description	Version	Provisions
	Constitutional provisions		
1.	Commonwealth Constitution	Current	Ch III
	Statutes		
2.	*Administrative Appeals Tribunal Act 1975* (Cth)	Compilation No. 46 (11 May 2018 to 31 December 2020)	ss 39A, 39B, 44, 46(2)
3.	*Corruption and Crime Commission Act 2003* (WA)	Compilation No. 01-00-01 (5 January 2004 to 6 July 2006)	s 76(2)
4.	*Crimes (Criminal Organisations Control) Amendment Act 2013* (NSW)	As enacted	
5.	*Criminal Organisation Act 2009* (Qld)	As at 6 December 2011 to 4 April 2013	
6.	*Migration Act 1958* (Cth)	Compilation No. 129 (24 March 2016 to 15 June 2016)	s 503A(2)(c)
7.	*Serious and Organised Crime (Control) (Declared Organisations) Amendment Act 2013* (SA)	As enacted	