



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: S27/2022  
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IN THE HIGH COURT OF AUSTRALIA  
SYDNEY REGISTRY

BETWEEN:

**SDCV**  
Appellant

and

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**Director-General of Security**  
First Respondent

**Attorney-General of the Commonwealth**  
Second Respondent

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**OUTLINE OF ORAL SUBMISSIONS OF THE  
ATTORNEY GENERAL FOR NEW SOUTH WALES, INTERVENING**

**Part I: Publication**

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

**Part II: Outline of Oral Submissions**

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2. *The general rule and its exceptions.* Assistant Commissioner Condon v Pompano Pty Ltd (2013) 252 CLR 38 provides the framework for determining whether the requirements of procedural fairness under a particular statutory framework are constitutional. The constitutional question is essentially a practical one, and what is practical is ultimately a contextual question and one that is informed by

considerations attending the particular subject-matter of legislative power. See Written Submissions (WS) at [6]-[16].

- 10 3. ***The national security context.*** The national security context has been recognised as one that is a particularly important responsibility of the federal government. The risk of disclosure of information that is prejudicial to the security or defence or international relations of Australia is potentially significant, and so it is to be expected that legislative schemes seek to restrict as much as possible the possibilities for the harmful disclosure of such information. This is an important part of the practical content of procedural fairness in the national security context. See WS at [19]-[22].
4. ***Comparative authority.*** Although there are limitations in what can be drawn from comparative authority, in considering the practical question it is useful to have regard to the way similar questions have been resolved elsewhere: Tariq v Home Office [2012] 1 AC 452; Haralambous v Crown Court at St Albans [2018] AC 236; In re National Security Agency Telecommunications Records Litigation (2011) 671 Fed 881; Fares v Smith (2018) 901 F 3d 315. See WS at [30]-[37].

20 Dated: 7 June 2022



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