IN THE SUPREME COURT OF NAURU

AT YAREN

Refugee Appeal No. 10 of 2024

IN THE MATTER OF an appeal against a decision of the Refugee Status Review Tribunal brought pursuant to s.43 of the *Refugees Convention Act* 2012

BETWEEN:

AJ 24

Appellant

AND:

REPUBLIC OF NAURU

Respondent

BEFORE: Brady J

DATE OF HEARING: 11 February 2025

DATE OF JUDGMENT: 28 April 2025

CITATION: *AJ 24 v Republic of Nauru*

CATCHWORDS:

APPEAL - *Refugees – Refugee Status Review Tribunal – Whether standard of interpretation before Tribunal such as to deprive Appellant of natural justice or breach s 48 of Refugees Convention Act – Requirements of natural justice observed – Whether Tribunal failed to consider passage from Appellant's statement – No failure to consider effect of statement – Whether Tribunal breached it obligation under s 34(4)(d) of Refugees Convention Act by failing to set out evidence on which findings of fact based – Breach of Act established – Whether Tribunal failed to deal with a substantial claim – Claim not clearly articulated and in any event unnecessary to address in light of prior findings – APPEAL ALLOWED*

LEGISLATION AND OTHER MATERIAL:

Refugees Convention Act 20212 (Nr) ss 4, 22, 24, 34, 40, 43, 44; *International Covenant on Civil and Political Rights,* Art 6; *General Comment 36 – The Right to Life* (UN Human Rights Committee); Policy Position Paper No 3, *Complementary Protection*, August 2017, Republic of Nauru

CASES CITED:

Perera v Minister for Immigration and Multicultural Affairs (1992) 92 FCR 6 at [38], [45]; *Applicant P 119/2002 v Minister for Immigration & Multicultural & Indigenous Affairs* [2003] FCAFC 230 at [16]-[18]; *SZHEW v Minister for Immigration and Citizenship* [2009] FCA 783 at [52]; *SZRMQ v Minister for Immigration and Border Protection* (2013) 219 FCR 212 at [9], [44], [66]; *WET054 v Republic of Nauru* [2018] NRSC 21 and on appeal [2023] NRCA 8 at [29]; *AVQ15 v Minister for Immigration and Border Protection* [2018] FCAFC 133; *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 651 at [135]; *Chief Commissioner of Police v Crupi* [2024] HCA 34; *DL v The Queen* (2018) 255 CLR 1; [2018] HCA 26; *Re Minister for Immigration and Multicultural and Indigenous Affairs; ex parte Palme* (2003) 216 CLR 212; *WET040 v Republic of Nauru* [2018] HCA 60; (2018) 93 ALJR 102 at [29]-[31]; *Applicant WAEE v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 236 FCR 593, [46]-[47]; *Dranichnikov v Minister for Immigration and Multicultural Affairs* [2003] HCA 26; (2003) 77 ALJR 1088 at [24]

APPEARANCES:

Counsel for Appellant:	Dr A McBeth (instructed by Craddock Murray Neumann)
Counsel for Respondent:	Mr R O'Shannessy (instructed by Republic of Nauru)

JUDGMENT

INTRODUCTION

1. The Appellant is a national of Bangladesh. He arrived in Australia in early February 2024 and was transferred to Nauru pursuant to the Memorandum of Understanding between the Governments of Nauru and Australia on 18 February 2024. He made an application for refugee status in Nauru on 14 March 2024.

2. The Appellant claims to be a supporter of the Bangladesh National Party (**BNP**). He alleges that he was targeted by members of the Awami League (**AL**) and that, as a result, he was not safe.

3. Pursuant to s.43 of the *Refugees Convention Act 2012* (Nr) (**the Act**), the Appellant appeals from a decision of the Refugee Status Tribunal (**Tribunal**) made on 12 November 2024 (**Tribunal Decision**). The Tribunal affirmed a decision of the Secretary of the Department of Multicultural Affairs (**the Secretary**) dated 30 July 2024 not to recognise the Appellant as a refugee and the finding that he is not owed complementary protection under the Act.

4. By subsection 43(1) of the Act, the Appellant may appeal to this Court on a point of law. By section 44(1) of the Act, this Court may make either of the two following orders:

   (a) an order affirming the Tribunal Decision; or

   (b) an order remitting the matter to the Tribunal for reconsideration in accordance with any directions of this Court.

5. Section 44(2) of the Act provides what where this Court makes an order remitting the matter to the Tribunal, the Court may also make either or both of the following orders:

   (a) an order declaring the rights of a party or of the parties; and

   (b) an order quashing or staying the decision of the Tribunal.

GROUNDS OF APPEAL

6. By his Amended Notice of Appeal, the Appellant pursues four grounds as follows:[1]

   1. "The hearing before the Tribunal did not provide the Appellant with the meaningful opportunity to give evidence and present arguments required by section 48 (1) of the [Act] or alternatively, failed to comply with the principles of natural justice, or in the further alternative, the Tribunal unreasonably failed to take any or any adequate steps to ensure the Appellant understood the Tribunal's questions and that the evidence and arguments the Tribunal was receiving through the interpreter were the evidence and arguments the Appellant wished to give (**Ground 1**);

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[1] Particulars are given of each of these grounds in the Amended Notice of Appeal and considered further below.

2. The Tribunal failed to consider properly the Appellant's written statement or alternatively took an unreasonable approach to the review (**Ground 2**);

3. The Tribunal breached its obligation under s 34(4) of the [Act] to set out material findings of fact and the evidence or other material on which those findings of fact were based, or alternatively, made a finding based on no evidence or that was irrational (**Ground 3**); and

4. The Tribunal failed to consider and respond to a substantial claim concerning the Appellant's statement that he may have to commit suicide on return to Bangladesh due to being pursued for his substantial debts (**Ground 4**)."

THE FACTS AS CONTENDED BY THE APPELLANT

7. The Appellant makes the following contentions. From around 2009, his older brother [S] was a supporter of the BNP and worked for a BNP leader and candidate for parliament. In 2017, [S] was severely beaten and stabbed by members of the AL. In 2018, AL supporters again targeted [S].

8. Before the 2018 election, supporters of AL came to the family home looking for [S] and beat the Appellant, his younger brother, and his father. The men destroyed the family home. [S] left the country and travelled overseas.

9. The Appellant says that he is a BNP supporter and he attended some rallies and meetings for the BNP at the time of the 2014 and 2018 elections.

10. After [S] went overseas, the Appellant became the target of the local AL members in his village. This was because of his political activity in putting up posters.

11. The Appellant, his father and younger brother moved to a different city. In around September 2018, the Appellant's father was seen in that city by AL supporters and shortly afterwards he received a phone call from a friend of his from their village. The friend told the Appellant's father that he had been seen by the AL supporters in their new city and that the Appellant's father and family was at risk.

12. Thereafter, the Appellant and his father and younger brother relocated to a further city.

13. In late 2023 or early 2024, local BNP supporters in the second city came to know that the Appellant's father was a BNP supporter and asked him to participate in the election. His father decided that the town was not safe and suggested that the Appellant leave Bangladesh.

14. The Appellant says that he cannot return to Bangladesh because he will face danger from the people who attacked his brother [S], and his father.

PROCEDURAL HISTORY

15. On 14 March 2024, the Appellant made an application to be recognised as a refugee or a person owed complementary protection. On 30 July 2024, the Secretary determined that the Appellant is not a refugee and is not owed complementary protection.

16. On 15 August 2024, the Appellant applied to the Tribunal for review of the Secretary's determination.

17. On 27 September 2024, the Appellant appeared before the Tribunal to give evidence and present arguments. He was assisted at that hearing by an interpreter in the Bengali language. The Appellant's representative also attended the hearing.

18. On 12 November 2024, the Tribunal affirmed the Secretary's determination that the Appellant was not recognised as a refugee and was not owed complementary protection under the Act.

19. The Appellant lodged a notice of appeal to this Court on 2 December 2024. I heard this appeal on 11 February 2025.

GROUND 1 – THE STANDARD OF INTERPRETATION

Nature of Ground 1

20. The first of the Appellant's grounds is that the Tribunal did not provide him with a meaningful opportunity to give evidence and present his arguments as required by the Act because of a failure to ensure both that the Appellant understood the Tribunal's questions and that the Tribunal was accurately receiving the response of the Appellant to those questions.

21. The Appellant gives the following particulars of this ground:

    (a) The interpreter raised with the Tribunal on multiple occasions that he did not understand the Appellant and that the interpretation he was providing was, in effect, the interpreter's guess at what the Appellant was probably saying;

    (b) Separately, the Tribunal itself recognised on multiple occasions that the Appellant appeared not to understand, via the interpreter, the questions it had put;

    (c) The Tribunal did not exercise any of the powers available to ensure the Appellant had a meaningful hearing;

    (d) The Tribunal and this Court cannot have confidence that the Appellant received the meaningful opportunity to give evidence and present arguments required by s 40(1) of the Act;

    (e) Alternatively, the hearing afforded to the Appellant did not comply with the principles of natural justice; and

    (f) In the further alternative, the Tribunal's failure to take any or any adequate steps to ensure the Appellant understood the Tribunal's questions and that the evidence and arguments the Tribunal was receiving through the interpreter were the evidence and arguments the Appellant wishes to give was unreasonable.

Transcript of the Tribunal Hearing

22. The Appellant contends that the transcript of the Tribunal hearing shows at least nine separate occasions (although only eight were identified in argument) where the interpreter told the Tribunal that he could not understand the Appellant. On several of those occasions, the Appellant contends that the interpreter explicitly told the Tribunal that the translation of the Appellant's evidence was what the interpreter thought he had "probably" said.

23. The relevant passages from the transcript are set out below.

The Relevant Passages from The Tribunal Decision

24. The Tribunal dealt with issues relevant to the Appellant's evidence and credit in considerable detail starting at [57]. Although the passage is lengthy, it is necessary for the purposes of this judgment to set out the Tribunal's treatment of aspects of the Appellant's evidence in full. So far as the Tribunal's findings are relevant to Ground 1, my attention was drawn specifically to the following passages of the Tribunal's Decision:

> 57. The [Appellant's] initial statement provided almost no detail in relation to what [S's] alleged BNP support entailed except to say [S] was a BNP supporter for 14 to 15 years and left the village five or six years ago. The [Appellant's] initial statement did not mention [S] was a bodyguard or driver for [A], the alleged local BNP candidate for parliament in 2014. That initial statement also said when [S] was attacked, he left the village and when he returned three months later, he as well as the rest of his family including the [Appellant] were attacked. However, the [Appellant's] subsequent statement dated 24 September 2024 only details one attack against [S] and at the hearing the [Appellant] stated the second time [S] was attacked, he was in the market area. In addition, and contrary to his initial statement, the [Appellant's] statement dated 24 September 2024 and his evidence at hearing was it was his father and brother who were beaten, and the [Appellant] was not there.
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> 58. While the [Appellant] has consistently stated [S] was a BNP supporter and was attacked, the [Appellant's] evidence in relation to who was also attacked alongside [S] has changed.
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> 59. If [S] was as high profile as the [Appellant's] statement dated 24 September 2024 suggests and if he was involved in activities that put the [Appellant] and the [Appellant's] family at risk of retribution, then the Tribunal would have expected the [Appellant] to have mentioned [S's] high-profile status in his initial statement. Similarly, if the [Appellant's] father was twice attacked in [D] village and again attacked in [N] as described in the [Appellant's] initial statement, then the Tribunal that the [Appellant] would have consistently stated that. [sic]
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> 60. Again, if the [Appellant] had, himself, alongside [S] participated in meetings, rallies and BNP events including the 2014 and 2018 election campaigns and in addition to his familiar ties meant he was targeted [sic], then the Tribunal would have expected him to have mentioned that in his initial statement.

Similarly, when the [Appellant] was initially asked at hearing if he went to meetings and processions and put up posters in 2018, he stated he did not as he was in [N] but when the Tribunal put to him his statement dated 24 September 2024 and said he did, he changed that evidence and said he was engaged in those activities but after he left his village, he did not do any of those things.

61. The Tribunal agrees with the adviser's submissions that the Tribunal should mindful of mitigating circumstances [sic] impacting behaviour or capacity to present claims, including mental health circumstances. However, the failure of the [Appellant] to mention these important aspects of his claims in his initial statement reflects adversely on his credibility.

62. The Tribunal considers that the [Appellant] has inflated [S's] and his own political profile. In reaching this conclusion, the Tribunal also considers that the [Appellant's] testimony concerning his own political activities was weak. That is the [Appellant's] latest claims were that not only [S] worked for the 2014 BNP National Parliament candidate, but he himself was involved in the 2014 and 2018 election campaigns. At the hearing he was unable to give spontaneous evidence in relation to basic details such as the BNP 2014 election boycott. He also initially incorrectly stated at hearing that the BNP boycotted the 2018 election and only corrected his evidence after he returned from an adjournment. He was also unable to give spontaneous evidence about the BNP 2018 election result.

63. If [S] worked for the 2014 BNP National candidate and if the [Appellant] had been involved in the 2014 and 2018 election campaigns as claimed, the Tribunal would have expected the [Appellant] to have been able to provide more spontaneous or insightful details about the BNP 2014 election boycott and evidence about the BNP participation in the 2018 election.

64. The [Appellant's] evidence also indicates to the Tribunal he has minimal engagement or interest in Bangladesh politics.

65. Accordingly, while the Tribunal accepts the [Appellant] and his father and brother moved from his village to [N] and then to [G], the Tribunal does not accept they did so because of attacks or threats from the Awami League.

66. The [Appellant's] latest evidence is that around December 2023, the Awami League received information he was in [G]. The Tribunal note this claim was not in his original statement. The Tribunal would have expected the [Appellant] to have mentioned this significant claim in his initial statement especially given he left Bangladesh in January 2024 and nothing else allegedly happened to him for some six years prior to his departure.

67. While the Tribunal is prepared to give the [Appellant] the benefit of the doubt and accept [S] was a BNP supporter and may even have been attacked in 2017, the [Appellant's] evidence in relation to [S's] further alleged political activities in [M] is vague and therefore inconclusive and lacking credibility.

68. Given the lateness of the [Appellant's] other claims and the [Appellant's] inconsistent evidence about the other alleged attacks and the [Appellant's] lack of displayed knowledge at hearing about the 2014 and 2018 elections, the Tribunal does not accept that anything else happened to either the [Appellant] or his family because of [S's] BNP support. The Tribunal does not accept the [Appellant] has been tortured. The Tribunal does not accept that the [Appellant] or his family were targeted because of [S's] activities or that his enemies would target the [Appellant] on return to Bangladesh.

69. While the Tribunal is prepared to accept the [Appellant] may support the BNP, his lack of knowledge about the 2014 and 2018 election as displayed at hearing means the nature and strength of that support was minimal. Nor does the Tribunal accept the [Appellant] or his family has a political profile that would mean it is reasonably possible the [Appellant] would be the subject of adverse interest or harm if he returns to Bangladesh. In reaching this conclusion, the Tribunal has considered the recent political developments in Bangladesh mean the Awami League is no longer the national government and as a result has lost the backing of institutions such as the police which means it can no longer operate with impunity. Accordingly, the Tribunal does not accept the Awami League are current power brokers or their ability to act with impunity as they had in the past continues. Neither does it accept that those at the local level are still subject to local Awami League administrators or security authorities who can continue to act with impunity.

70. The Tribunal has already found it does not consider the [Appellant] nor his family's support for the BNP resulted in him being targeted by the Awami League in the past. That in conjunction with the recent changes means that it does not consider there is a reasonable possibility the [Appellant] would be seriously harmed because of his continuing BNP support or because of his family membership. The Tribunal finds that the [Appellant] does not have a well-founded fear of persecution for reason of his or his family's political opinion or associations in favour of the BNP or his accepted albeit minimal activities in support of the BNP, and therefore he is not a refugee on this basis."

The Appellant's Arguments

25. The Appellant starts by drawing attention to s 40(1) of the Act which provides:

> "The Tribunal shall invite the applicant to appear before the Tribunal to give evidence and present arguments relating to the issues arising in relation to the determination or decision under review."

26. Section 22(b) of the Act provides that the Tribunal must act according to the principles of natural justice and the substantial merits of the case.

27. The Appellant submits that the combination of these two provisions means that someone in the position of the Appellant must have a "meaningful opportunity" to persuade the Tribunal to accept the truth of his or her claims. In order for an applicant for refugee status to have a meaningful opportunity to give evidence and present

arguments where an interpreter is used, the Tribunal must be able to have confidence that the evidence and arguments it hears in English are in fact the evidence and arguments of the applicant. Furthermore, the Appellant argues that natural justice requires that not only is justice done but that it is seen to be done in the form of procedures that are fair.

28. The Appellant contends that the extracts from the transcript set out below demonstrate the occasions where the interpreter told the Tribunal that he could not understand the Appellant. Separately, on other occasions, the Tribunal itself noted that the Appellant, via the interpreter, appeared not to have understood the Tribunal's question. Nevertheless, as the Appellant submits, the Tribunal pressed on.

29. The Appellant submits that in those circumstances, the Tribunal could not have had confidence that it had heard the actual evidence and arguments that the Appellant wished to make. His counsel submits that a reasonable observer might not perceive that the Appellant had received a meaningful opportunity to give evidence and present arguments that both the Act and the rules of natural justice required.

30. The Appellant then argues that the approach of the Tribunal to its decision underscores that the adverse credibility findings it made were crucial in rejecting the Appellant's claims. Those adverse credibility findings were made against a background where the Tribunal found the Appellant's evidence was "vague" and had altered over time.

31. In the alternative, the Appellant contends that it was legally unreasonable for the Tribunal in the circumstances of this hearing, where the interpreter had expressed doubts about accuracy and where the Tribunal itself recognised that some of its questions were not being understood by the Appellant, not to exercise the powers available to it to satisfy itself that the Appellant had the opportuuity to give his evidence and present his arguments in a fair manner. The Appellant submits that a reasonable Tribunal would have exercised its powers under s 24 of the Act to adjourn the hearing and to direct that the Appellant's evidence be given through a different interpreter. The Appellant also draws attention to s 22 of the Act which gives the Tribunal the power to determine its own procedure subject to affording natural justice.

The Republic's Arguments

32. The Republic submits that in cases of inadequacy in interpretation, the Court would usually expect to see what is called in some of the cases a "double-translated transcript". Such a transcript is evidence of all the words said during a hearing both in English and any other language, but all the words spoken are either set out in English or translated into English.

33. Whilst the Republic accepts that a double-translated transcript of this kind is itself an exercise in expert opinion, the preparation of a double-translated transcript of this kind (where the interpreter has the advantage of a recording and thus the option to relisten to more difficult segments of the transcript) is preferable to an assessment in real time.

34. The Republic submits that the Appellant's reliance simply on the transcription of the words said in English contained in the transcript annexed to the affidavit of Mr Zhang is insufficient to persuade this Court that there have been any errors of interpretation such as to suggest that the Appellant was deprived of procedural fairness.

35. In other words, the Republic submits that the Appellant must prove errors in translation and the interpreter's use of words such as "I think he said..." does not prove that there is any error in interpretation.

36. The Republic submits that it is not for it to prove anything in relation to this issue and that the Appellant has not discharged the onus on him to demonstrate that there have been errors in interpretation.

37. Even if that submission is not accepted, the Republic submits that the Appellant still fails because he has not attempted to show how any of the interpretation issues had a material impact on the Tribunal's understanding of his evidence.

Consideration of Ground 1

38. The principles of natural justice required by s 22(b) of the Act in the proceedings of the Tribunal require, in an appropriate case, the provision of an interpreter.

39. In an appeal such as this, the onus is on the Appellant to demonstrate that the Tribunal did not act according to the principles of natural justice and the substantial merits of the case. In effect, the Appellant must demonstrate on the balance of probabilities that there was in fact an operative error in the translation undertaken by the interpreter.

40. An interpreter need not be perfect. Indeed, given the very nature of the process of interpretation, where there is always the possibility that reasonable minds may differ about aspects of the process and it occurs "on the spot", perfection is not possible. Thus, not every departure from the highest standard of interpretation will have the effect that the Appellant will be denied natural justice: *Perera v Minister for Immigration and Multicultural Affairs* (1992) 92 FCR 6 at [38], [45]; *Applicant P 119/2002 v Minister for Immigration & Multicultural & Indigenous Affairs* [2003] FCAFC 230 at [16]-[18]. Whether any inadequacy in interpretation has been such as to deprive the Appellant of a hearing in accordance with the requirements of natural justice (as required by ss 22(b) and 40 of the Act) involves a qualitative assessment of the conduct of the hearing as a whole: *SZHEW v Minister for Immigration and Citizenship* [2009] FCA 783 at [52]. The standard of competence to be demanded of an interpreter is such that the Appellant had a meaningful opportunity to be heard and that the hearing was fair: ***SZRMQ*** *v Minister for Immigration and Border Protection* (2013) 219 FCR 212 at [9] per Allsop CJ; [44] per Flick J (in dissent); at [66] per Robertson J.

41. It is appropriate for this Court to evaluate the overall fairness of the hearing, as well as the individual instances of contended misinterpretation, to assess the quality of the process and whether the Appellant had a reasonable opportunity to be heard and to present his case: *SZRMQ* at [72] per Robertson J.

42. Before turning to the individual instances identified by the Appellant, it is appropriate to note that the Appellant has not obtained a double-translated transcript, which would provide evidence of all words said during the Tribunal hearing in English as well as Bengali, with all of the Bengali words translated into English. Thus, unlike some other cases (for example, *SZRMQ* itself), this Court does not have the benefit of exactly what words were spoken other than those recorded in English in the transcript. It is thus necessary for this Court to consider only those words and assess the fairness of the hearing in light of that information. It is not appropriate for this Court to engage in speculation as to what *may* have been said.

43. The hearing was about three hours in length, including two separate breaks. It must be understood that the various instances of alleged errors in interpretation referred to below occurred in the context of a much longer hearing.

44. As the Court of Appeal of this Court has found, it is "of the utmost significance that no room is left for any error of law" in determining the rights of persons in the position of the Appellant: *WET054 v Republic of Nauru* [2023] NRCA 8 at [29].

45. I shall now turn to consider each of the instances of alleged errors in interpretation highlighted by the Appellant on this appeal and set out in full above.

Instance 1

46. At T9 line 30, the following passage appears:

"The Interpreter:	No. He's [that is [S]] not a member, he worked as a bodyguard of a BNP leader.
Ms Cranston:	And when you say a BNP leader, what do you mean?
The Interpreter:	He is a big leader of BNP.
Ms Cranston:	When you say a big leader, what does that mean?
The Interpreter:	So he is saying, this [R] police station area, probably he's the member of the parliament.
Ms Cranston:	Okay. So do you know his name?
The Interpreter:	Yes.
Ms Cranston:	What's his name?
The Interpreter:	[AH]
Ms Cranston:	Thank you. And so when you're talking about he's a member of parliament, do you mean the central parliament?
The Interpreter:	He was not – *I think, I didn't understand quite properly*, but I think he said that guy was not elected.

Ms Cranston: Right. So you're saying – I think you're saying he's a candidate? is that right?

The Interpreter: Yes. Candidate.

Ms Cranston: And he was the candidate of central parliament, not a local parliament, not a local government, but central government?

The Interpreter: So he said he was a candidate for the national election, but he is a leader from the BNP, so he was not elected by the vote of the people"

47. It is true that in this passage the interpreter stated that "I didn't understand quite properly" (in italics in the above extract). However, it is apparent that any initial lack of understanding was immediately cleared up by Member Cranston. In any event, I am not satisfied that there was any error in interpretation. I am not persuaded on the material that follows immediately after the interpreter expressed uncertainty involved any substantial error on the part of the interpreter. For me to conclude that this aspect of the interpretation was substantially in error would, it seems to me, involve me indulging in speculation to an extent that is not proper on this appeal.

48. However, any error in interpretation (if, indeed, there was one) was apparently minor. Nothing turned on it. It did not lead to any adverse credit finding. It was immediately cleared up.

49. I am not satisfied that there was an error in interpretation. Even if there was an error, I am not satisfied that anything turned on it.

Instances 2 and 3

50. Given the proximity of these two instances in the transcript, it is appropriate to deal with them together.

51. Starting at T10, line 31:

"The Interpreter: At that time, BNP did not participate in the election.

Ms Cranston: BNP did not participate in the 2019 [sic] and 2024 elections?

The Interpreter: Yes.

Ms Cranston: Okay. I think they may have participated in the 2018 election. They didn't do very well, but I think they did participate.

The Interpreter: So they did not participate, somehow they got the result.

Ms Cranston: They did not participate, somehow they got?

The Interpreter: They got the result.

Ms Cranston: They got the result. Thank you. Do you know what result they got in the 2018 election?

The Interpreter: *I'm not quite understanding what they say – he say…*

Ms Cranston: … Thank you. Thank you, interpreter.

The Interpreter: Before the election day, they casted their vote and they stole the result.

Ms Cranston: Okay. I think the BNP did run in the 2018 election. I don't think they did very well.

The Interpreter: Now, in 2018, BNP was invited to participate in the election, but that was not an election. That's why BNP did not participate.

Ms Cranson: I think they got seven seats.

The Interpreter: No, they declared themselves the winner.

Ms Cranston: Sorry, Fadel?

Mr Mohamed: Maybe in his area it was not considered …

Ms Cranston: Thank you. Thank you very much. I'm very happy to hear from you at the end, but I might just take the evidence from [the Appellant] during this time. Thank you. Sorry interpreter, what did you say? Sorry, interpreter, what did you say?

The Interpreter: (indistinct)

Ms Cranston: Okay. So I think that at the that national election, the 2018 national election, they got - the BNP got seven seats."

The Interpreter: *So I'm not quite understanding what he's saying*, but he's…

Ms Cranston: Thank you.

The Interpreter: … saying that there was an election in 2018. Okay. And they organised – I don't know who are they – so he said they organised the election, and they published the result, but actually the result is – was not correct.

Ms Cranston: Thank you. And when you say they, you mean the Awami League, is that right.

The Interpreter: Yes."

52. There are two occasions in this passage (in italics) where the interpreter says "I'm not quite understanding" what the Appellant said. On both occasions, the interpreter then went on to translate his understanding of what the Appellant said. In light of that, and Member Cranston's subsequent clarification of those matters, I am not satisfied that the Appellant was deprived of any meaningful opportunity to present his case because of an error in interpretation. That the interpreter expressed some uncertainty in the

way he did is not sufficient for me to conclude that in fact there was an error of such a nature as to deprive the Appellant of a fair hearing.

53. My attention is drawn by counsel for the Appellant to the attempted intervention by Mr Mohamed, the Appellant's representative, mid-way through this passage. Mr Mohamed's attempted intervention was shut down by Member Cranston. It is possible that Mr Mohamed was attempting to clarify the evidence in a manner that may have been helpful to the Tribunal, but ultimately that attempt did not bear fruit. On the other hand, the Tribunal may have had a natural concern that in circumstances where the spontaneous evidence of the Appellant may not have been in conformity with the known facts about the 2018 election, it did not wish the representative to have the opportunity to "coach" the Appellant in a manner that may be used to repair his credit.

54. Regardless of Mr Mohamed's attempted intervention, it is apparent from a reading of the full passage that the initial expression of uncertainty by the interpreter was followed by clarification of the response by the Tribunal in a manner that does not persuade me that the Appellant was not given a fair and reasonable opportunity to engage with the particular questions. It is possible that the Appellant was confused or giving confusing answers to the interpreter, but in the absence of a double-translated transcript, it would be no more than speculation on my part as to whether that was the case.

55. I am therefore not satisfied that there was an error in interpretation.

56. If I am wrong about that, could any error have affected the quality of the Appellant's hearing, or the findings and the reasons? It is clear enough that the Appellant's lack of displayed knowledge about the 2018 election was a matter which fed into the Tribunal's conclusion that although the Appellant may have been a supporter of the BNP, the strength of that support was minimal and the Tribunal did not accept that anything happened to the Appellant or his family as a result of [S's] BNP support: at [62], [69] and [69] of the Tribunal Decision.

57. The problem that I have is that if there was an error in interpretation, I have no idea what evidence in fact the Appellant gave before the Tribunal. A double-translated transcript would permit me to know how important the evidence actually given by the Appellant was in the scheme of the Tribunal's ultimate decision. It would be no more than speculation on my part were I to draw some conclusion as to what actual evidence was given by the Appellant to the Tribunal. Accordingly, I am unable to weigh whether any error, if there was one, ultimately affected the quality of the hearing or the Tribunal's reasons.

58. Accordingly, in the absence of any evidence before me as to what the Appellant's actual evidence was before the Tribunal (if it is materially different to that originally interpreted), I am unable to conclude that any error could have influenced the outcome of the Tribunal Decision.

Instance 4

59. At T13 starting at line 17, the following passage appears:

Ms Cranston: Okay. So when you say [S], there were two attacks, what do you mean?

The Interpreter: So firstly, he was attacked, and he was injured, then he went to hospital, took some treatment. After three months he came back to the village. Then he was attacked again, and the people slapped him with machete in his body, his leg. So he was taken to [N] Hospital. From there they sent him to Dhaka.

Ms Cranston: So where was he when he was attacked the second time?

The Interpreter: In the market area.

Ms Cranston: Because in your statement you say that he was attacked by Awami League people, then he returned three months later, and [S] as well as the rest of his family, including you, were attacked. And you said that that's - people came to your house. Looking for him.

The Interpreter: *I'm not understanding him properly, but...*

Ms Cranston: Thank you.

The Interpreter: *... probably he's saying that* his brother was attacked for the first time, then second time he was attacked again, and he was injured, then he left the village. After three months, those people came to his house and ransacked the house.

Ms Cranston: Okay. Well, as I said in your statement, it says that they came to the house and [S] your brother, as well as the rest of his family, including you, were attacked.

The Interpreter: At that time my brother was not there. At that time, I was in a school playground. At that time, I was playing, and then I got a call and somebody informed me that some people attacked my house as well as ransacked my house.

Ms Cranston: Okay.

Mr Mohamed: Member, can I (indistinct).

Ms Cranston: No, please put your...

Mr Mohamed: (indistinct)

Ms Cranston: Please put your submissions at the end. Thank you (indistinct) I can – no. Sorry...

Mr Mohamed: I think there's confusion about which brother you're talking about. The younger brother or the older brother?

Ms Cranston:	Yes, all right. Thank you. I mentioned that it was [S] I was talking about. Which statement are you referring to now?
Mr Mohamed:	I think he's referring to the first one.
Ms Cranston:	Yes, he is.
Mr Mohamed:	Yeah. which paragraph?
Ms Cranston:	Paragraph 15.
Mr Mohamed:	I think that he clarified that in the interview, and it was probably a mistake, I might be wrong.
Ms Cranston:	Well, that's for a submission at the end, yeah…"

60. The interpreter said (in the italicised passage above) that he was not understanding the Appellant properly, but that he was "probably saying" what follows in the transcript.

61. Again, without a double-translated transcript, it is not possible for me to conclude that what follows in the transcript involved some error in interpretation. There is no suggestion that the Appellant and the interpreter spoke different dialects. It is possible that the Appellant was confused, or giving confusing answers, but that the level of interpretation was adequate. It would be no more than speculation on my part as to whether what was said by the interpreter did not represent an adequate translation of what the Appellant said.

62. It may be (as the Appellant's representative clearly thought) that there was some uncertainty about which brother the Tribunal was referring to. However, if there was any initial uncertainty in that regard, it was cleared up by the Tribunal. I note that the Appellant's representative made submissions on the potential inconsistencies between the Appellant's first submission and his later evidence: see T25 lines 23ff.

63. Accordingly, I am unable to conclude that the Appellant has established any error in interpretation in respect of this passage.

64. If I am wrong about that, for the same reasons that I have explained in relation to instances 2 and 3 above, I am unable to reach any conclusion about what the Appellant's evidence before the Tribunal actually was. It is not appropriate for me to speculate on what that evidence may have been. Clearly, the Tribunal's perception of the Appellant having given "inconsistent evidence" about the alleged attacks (see [68] of the Tribunal Decision) was relevant to its ultimate findings. However, I am unable to make any finding as to whether the actual evidence given by the Appellant to the Tribunal might have had any bearing on the Tribunal's ultimate conclusion in that regard.

Instance 5

65. Commencing at T16, line 15, the following passage occurs:

"Mr Darcy:	Okay. And in 2003 [sic], when you were considering leaving Bangladesh, why didn't you think about moving to Chittagong,

by yourself, given that you don't have any children or dependents? 2023.

Ms Boddison: I think you said 2003. Sorry.

Mr Darcy: Sorry.

The Interpreter: I have left my country and I wanted to save myself, I wanted to ensure a bright future. So do you understand that I don't have anywhere else to go. So that's why, you know, I did not go to India, I just started my journey to go far away from home.

Mr Darcy: Okay. Well, that doesn't quite answer my question, but thank you.

Ms Boddison: Okay. I'll just got a couple of questions. Since your brother's been living in Malaysia, has he continued his involvement with politics?

The Interpreter: No, my brother?

Ms Boddison: Your brother. Yeah.

The Interpreter: *So I'm not understanding him properly*. He says that my brother was involved in politics, he was the bodyguard and the driver of the political leader. And we are in risk because my brother is in politics, so it's very harmful – they are threatening us, and it is very harmful for me if I go back.

Ms Boddison: Yeah. But I'm asking, your brother left Bangladesh to go to Malaysia in 2018, is that right?

Ms Cranston: 2016.

Ms Boddison. 16?

Ms Cranston: Yeah. Or 18? When did your brother leave Bangladesh to go to Malaysia?

The Interpreter: 2017.

Ms Boddison: Okay. And has he ever returned to Bangladesh?

The Interpreter: No.

Ms Boddison: Did he continue his political activities in Malaysia on behalf of the BNP?

The Interpreter:	So he says yes, and then he says it's been two and – more than two years, I don't have any contact with my older brother. So I don't have any accurate information.
Ms Boddison:	Well, you initially said yes, so what did you – what activities did you think he was involved in more than two years ago?
The Interpreter:	*I think he did not understand your question*, so he is describing his brother's political activity in his village.
Ms Boddison:	I'm talking about your brother, if your brother was involved in any political activity since he went to Malaysia or whether he stopped now that he's gone to Malaysia.
The Interpreter:	I can't tell you, I can't tell you the exact information, because my brother, he said it's very dangerous for us, so don't involve politics in your country. It's very dangerous for you to involve in politics, even, like, if you go to overseas, don't involve in politics, it will be too dangerous.
Ms Boddison:	But you don't know what your brother's been doing in Malaysia?
The Interpreter:	No, I haven't asked anything about it."

66. The first passage italicised in the above passage is to the effect that the interpreter did not understand the Appellant properly. There is no evidence to suggest that was a problem in interpretation. Witnesses who speak the same language as the questioner often misunderstand questions. Sometimes the question may not be framed in the clearest manner. Regardless, there is no reason for me to conclude that there was any error in interpretation in relation to this evidence. In any event, it is apparent that the Tribunal immediately clarified the answer about which the interpreter expressed uncertainty.

67. I am not satisfied that any relevant error in interpretation is made out. If there was an initial error, it was promptly clarified and did not impact on the Tribunal's eventual decision. The Tribunal's conclusion that the Appellant's evidence about his brother's political activities in Malaysia was "vague" (at [67] of the Tribunal Decision) could not have been affected by any error in interpretation which was so promptly clarified.

68. Likewise, the second passage italicised above (where the interpreter expressed the opinion that the Appellant did not understand the member's question) was promptly clarified. I am not satisfied that any relevant error in interpretation is made out or that if there was an error, that it could have made a difference to the outcome.

Instance 6

69. Commencing at T19, line 20, the following passages occur:

"Ms Cranston: Okay. All right. So what do you think will happen if you return?

The Interpreter: So my family is in danger. Even they are afraid of going back to their – going back into their area. So how can I go back there, when my family can't go back in their area?

Ms Cranston: I've seen reports that there have been attacks against Awami League supporters, but I haven't seen so many reports that there have been attacks against BNP members at this time or supporters – BNP supporters or members.

The Interpreter: *I didn't understand quite (indistinct)* He's saying that the government – the only government lost the power after that, within one week, several incidents happened, but now they are very strong.

Ms Cranson: So, the Awami League's very strong?

The Interpreter: Yeah, Awami League.

Ms Cranston: I haven't read that."

70. The interpreter in the italicised passage noted that he did not quite understand something, presumably the Appellant's answer. However, he then goes on to give an interpretation of what the Appellant said. I have no evidence to support a conclusion that there was any error in that interpretation. And Member Cranston also immediately proceeded to clarify the answer.

71. I am not persuaded that any relevant error in interpretation is made out. Again, if there was an error, it was promptly clarified. It did not impact on the Tribunal's eventual reasons.

Instance 7

72. Starting at T21, line 34, the following passage appears:

"Ms Boddison: Well, if you can't pay back your neighbours and relatives, what will happen?

The Interpreter: So they will attack us, say, now my brother or my dad, they cannot go to my village. Previously they could go there, and they could meet my family members, but at this time they are not going there anymore.

Ms Boddison: So they're not going there because they're afraid of the neighbours because they've loaned money, or they're not going there for other reasons?

The Interpreter: *I didn't understand properly*, the first part he said that...

Mr Mohammed: … Sorry, if you can't understand, just clarify it with him.

Ms Boddison: Nup, no, sorry. He can say that, and then we can clarify, okay?

The Interpreter: So first part he said that my dad and my brother and my younger brother, they could not go there because of the political reasons, and now my mum. And then he said my aunt was in another village, and they can't go like this.

Ms Boddison: Have you borrowed money from your neighbours or your relatives or are your neighbours your relatives?

The Interpreter: I have taken money from my aunt. I have taken money from my father's cousin. We have some close neighbours, like, our friends, so we have taken money from them."

73. In this passage, it is apparent that after the interpreter stated that he did not understand properly, the Appellant's representative asked him to clarify the answer with the Appellant. Member Boddison again stopped the representative seeking to obtain clarity. Despite this, I certainly could not conclude based on the evidence available to me that there was some error in interpretation. The interpreter expressing some uncertainty in the way that he did is not sufficient to satisfy me that there was a failure to provide the Appellants with a meaningful opportunity to put his case.

74. If I am wrong about that, I do not have any basis to know what evidence was in fact given by the Appellant. I cannot speculate on that question. Accordingly, I am unable to conclude that any error in interpretation could have had a material impact on the Tribunal's ultimate reasons, particularly at [71]-[73] of the Tribunal Decision where the Tribunal dealt with the risk to the Appellant of serious harm because of the debts he owed.

Instance 8

75. Commencing at T23 line 31, the following passage appears:

"Ms Boddison: So because you've made an application for asylum, how will that cause you problems?

The Interpreter: He is saying that because we are afraid of [T] and [N], secondly, my family, they are not living together, and thirdly, we have lots of loans.

Ms Boddison: Yeah. I think you might have slightly misunderstood the question. I'm saying just the mere fact that you've come to a foreign country and asked to be recognised as a refugee, do you think that's going to cause you any problems with the Bangladesh authorities if you go back?

The Interpreter: I don't want to go back.

Ms Boddison: No. Sorry.

The Interpreter: I don't want to go back.

Ms Boddison: No, but do you think that the Bangladesh authorities will be upset because you've applied for asylum?

The Interpreter: *So I think he didn't understand the question.*

Ms Boddison: Okay.

The Interpreter: *Or I could not make it understandable for him.* So he is saying that if I go back, the [T] and [N] and they will attack me, and they will (indistinct).

Ms Boddison: I have oue more shot. Some countries get upset if their nationals apply for refugee status in other countries. Do you think the Bangladeshi authority will be concerned that you've applied for refugee status?

The Interpreter: I don't know."

76. It is apparent from this passage that the Appellant was having problems understanding the question he was being asked. There is no evidence that this was because of some error in the interpretation process. And, indeed, the interpreter expressed his view that this was the case, and the Member proceeded to make efforts to clarify her question. My sense from this passage is that any lack of understanding on the part of the Appellant was not because of any error in the interpretation process.

77. I am therefore not satisfied that there was any material error in the interpretation of the Appellant's answers in this passage. Any uncertainty was cleared up by the Tribunal. If there was an error, then in my view it could not have been material to the eventual decision of the Tribunal.

Considering all instances together

78. I have concluded that I am not satisfied that any of the conteuded errors in interpretation were made out. I am also not satisfied, if there was an error, that it was material to the eventual outcome.

79. However, the Appellant submits that I should also consider each of the identified instances together. That is consistent with the approach of the Australian Federal Court in *SZRMQ* as noted above. This Court ought to evaluate the overall fairness of the hearing, as well as the individual instances of contended misinterpretation, in order to assess the quality of the process of the process. The question is whether the Appellant had a reasonable opportunity to be heard and to present his case.

80. I have considered the instances collectively. The interpreter did state on a number of occasions that he was uncertain about, or may not have understood, an answer from the Appellant. The Appellant's representative, quite properly it seems to me, did seek to clarify these matters on several occasions. However, even considering each of these instances collectively, I am unable to conclude that there was any failure to accord the Appellant natural justice in relation to the hearing. Where uncertainty was expressed by the iuterpreter, the Tribunal generally took immediate steps to attempt to

clarify the answer. I am not satisfied that any errors (if there were any) were ultimately material to the Tribunal's conclusions. And, as I have expressed above, in the absence of a double-translated transcript, I am unable to conclude merely from the interpreter's expression of tentativeness that the actual translation ultimately given by the interpreter was erroneous.

81. The Appellant further submitted that the Tribunal acted in a legally unreasonable manner by failing to take any of the steps open to it to ensure that it had reliable evidence. Those steps included things such as adjourning the hearing, changing interpreters or to have directed the interpreter to attempt to clarify matters with the Appellant. In my view, there was no such legal unreasonableness. Given the conclusions that I have reached above, there was nothing unreasonable about the Tribunal proceeding as it did and not, for example, adjourning the hearing so that another interpreter could be engaged.

82. As I have already said, there is no such thing as a "perfect" translation. Having considered the instances relied on by the Appellant both individually and collectively, I am not satisfied that there was any failure on the part of the Tribunal to give the Appellant a meaningful opportunity to present his evidence and arguments. There was no failure to comply with the requirements of natural justice. Nor was there any element of legal unreasonableness in the Tribunal's approach to the hearing or its ultimate findings in respect of the matters relevant to Ground 1.

83. No error of law is demonstrated in respect of Ground 1.

GROUND 2 – FAILURE TO CONSIDER EVIDENCE

Nature of Ground 2

84. By his second ground of appeal, the Appellant alleges that the Tribunal failed to properly consider his written statement or, alternatively, took an unreasonable approach to the review. The Appellant contends that the Tribunal overlooked or ignored the qualification at the beginning of his first written statement that it was only intended to be a summary of his claims for protection and that further information about his claims for protection would be provided during the subsequent interview.

85. Alternatively, the Appellant contends that the Tribunal's reliance on omissions from his initial written statement, whilst ignoring the qualification of the intended scope of the statement, is indicative of an unreasonable approach to the review, or a failure to appreciate the nature of the task on review, or a "quest to disbelieve" the Appellant.

Relevant Evidence

86. The Appellant provided an initial written statement in support of his application for refugee status which was provided to the Secretary (**Initial Statement**). The Initial Statement is dated 14 March 2024 and signed by the Appellant.

87. The Initial Statement is comprised of 21 paragraphs spread over two pages. The substantive paragraphs, paragraphs 9 to 19, deal relatively briefly with the answer to the question "why I left Bangladesh".

88. Paragraph 1 of the Initial Statement is in the following terms:

> "1. The following is a summary of my claims for protection. I will provide further information in relation to my protection claims as required during an interview with the person who is considering my matter."

89. The Appellant submits that this statement was intended to be a short summary of his claims, rather than any form of comprehensive statement of the nature of the claims upon which he based his claim to refugee status.

90. The issue of the nature of this Initial Statement was dealt with by the Appellant's representative before the Tribunal. At T25 line 23, the following passage occurred:

> "Mr Mohamed: Yeah, I think there was some issues raised in the first submission, not-that's taken place. That was - that, you know, there could have been some inaccuracies due to interpretation and the fact that it was done really in a rushed way. I thought [the Appellant] had the opportunity to clarify, you know, those issues during his interview today. But it's also a fact that silence occurs because of the trauma they go through and in this case, it was the stress and difficulties he faced in his homeland and also with his journey by sea. And the fact that he was, you know, transferred to an isolated area and was detained for a while.
>
> And because of his lack of sophistication and education, and has had no experience with turning into this person in all these formal settings. So all of that taken together would have had an impact on some of the information he has given. But (indistinct) and also various legal cases have affirmed that, you know, asylum seekers cannot be expected to provide all the information in their first statement of claim. I'd like to call your attention to the decision of the secretary, page 5, where he said the [Appellant] did not appear to exaggerate, and he said that he found the [Appellant] to be a witness credit. The secretary goes on, on page 14 of the decision, to state that if the [Appellant], he says, "I accept that if the applicant visibly returns to the village, there is a reasonable possibility of him being identified by one of his supporters"."

The Tribunal's Relevant Findings

91. At paragraph [42] of the Tribunal Decision, the Tribunal said:

> "The adviser submitted the [Appellant's] initial statement had been completed in a rushed way but his claims [had] been clarified at the RSD interview. He also stated the [Appellant's] stress, because of his journey by sea and transfer to an isolated area and his lack of sophistication and no interview experience, had impacted some of the information given. He also submitted asylum seekers should not be expected to provide complete claims at the initial stage."

92. At paragraph [48] of the Tribunal Decision, the Tribunal said:

> "In his latest statement, the [Appellant] said when his RSD statement was prepared, he was unfamiliar with the RSD legal process, had limited education and no knowledge of Nauru's immigration law, was nervous and worried and was not aware of what information and details he was expected to provide. He also stated he was told his RSD statement needed to be short and that he did not need to provide all the details related his claims because there would be an interview. During the RSD interview, he was asked specific questions to which he responded however there was other important and relevant information he should have put forward."

93. Despite the submission by the Appellant's representative and the content of the further statement before the Tribunal, the Tribunal was critical of aspects of the Initial Statement. At paragraphs [57] to [59] of the Tribunal Decision, the Tribunal found that the appellants' initial statement "provided almost no detail in relation to what [S's] alleged BNP support entailed except to say [S] was a BNP supporter for 14 to 15 years and left the village five or six years ago".

94. The Tribunal also found that the Initial Statement "did not mention [S] was a bodyguard or driver for [A] the alleged local BNP candidate for parliament in 2014".

95. The Tribunal also found at [57] that the Initial Statement said that when [S] was attacked, he left the village and when he returned three months later, he as well as the rest of the family, including the Appellant, were attacked. However, the Appellant's subsequent statement dated 24 September 2024 only details one attack against [S]. At the Tribunal hearing, the Appellant stated that the second time [S] was attacked, he was in the market area. According to the Tribunal, the Appellant's evidence in relation to those attacks has changed during the course of his application for recognition of refugee status.

96. According to the Tribunal at [59], it "would have expected" the Appellant to have mentioned [S's] high profile in his Initial Statement. Similarly, if the Appellant's father was twice attacked in the village and again attacked in the town of [N] as described in the Initial Statement, then the Tribunal would have expected the Appellant to have consistently stated that.

97. At [61] the Tribunal found the failure of the Appellant to mention important aspects of his claims in his Initial Statement reflected adversely on his credibility.

98. At [68] the Tribunal found that given "the lateness" of the Appellant's other claims and the Appellant's inconsistent evidence about the alleged attacks, the Tribunal did not accept that anything else happened to the Appellant or his family because of [S's] BNP support. The Tribunal did not accept that the Appellant or his family were targeted because of [S's] activities.

99. At [51] the Tribunal said:

> "Given the [Appellant's] statement was specifically prepared in response to the [questions such as "why did you leave your home country?"] and that it was prepared with the help of a qualified professional advisor and interpreter, the

> Tribunal does not accept the [Appellant] was not aware of what information and details he was expected to provide. Neither does it accept that he was not given an opportunity to answer the above questions and thereby put forward the substantive elements of his claims."

100. Further, the Tribunal considered that the Appellant was given a fair opportunity, both before and during the hearing, to provide all the evidence and arguments that he wanted the Tribunal to consider. The Tribunal noted that there was no medical evidence to support a contention that any earlier omissions to provide evidence and arguments were attributable to any significant mental health symptoms: at [53] of the Tribunal Decision.

Appellant's Arguments

101. The Appellant contends that despite the clear framing in the initial statement itself as being no more than a summary to be supplemented at interview, and despite the submission of the Appellant's representative before the Tribunal, the Tribunal nevertheless relied heavily on the fact that some of the events described in the Appellant's oral evidence in the RSD interview and the Tribunal hearing had been omitted or not fully elaborated upon in his initial statement. That finding permitted the Tribunal to make adverse credibility findings against him.

102. The Appellant notes that the Tribunal made no mention of the clear statement at paragraph [1] of the appellant's initial statement that he intended to provide further information in relation to his protection claims during the forthcoming interview. The Appellant submits that the failure to consider the first paragraph of the appellant's initial statement is indicative of either overlooking that evidence, or of what the Courts have sometimes called a "quest to disbelieve": ***AVQ15*** *v Minister for Immigration and Border Protection* [2018] FCAFC 133. The Appellant submits that either approach is impermissible and would constitute an error of law.

103. In *AVQ15* at [24]-[25], the Full Court of the Federal Court of Australia underscored the necessity for care, fairness and a reasonable approach to the assessment of credit in refugee matters to avoid a "quest to disbelieve", or to avoid irrationality or legal unreasonableness in an approach to credibility assessment. To have to give a decision-maker multiple versions of the basis for the claim leaves the refugee applicant in an invidious position, even in the case of an honest applicant. It is inevitable that each version will be slightly different and may even be very different once the impact of the interpreter is considered.

104. Of most relevance to the matters in this case, the Full Court (Kenny, Griffiths and Mortimer JJ) said at [28]:

> Thirdly, even where it is reasonably open to find that a person has given inconsistent evidence, the decision-maker needs to assess the significance of that inconsistency and the weight to be given to it. This requires consideration of, for example, the significance of the inconsistency having regard to the person's case as a whole and whether the inconsistency is on a matter which is central to the person's case or is at its periphery and involves an objectively minor matter of fact. It also requires the decision maker to remain conscious

of the particular challenges facing asylum seekers in giving accounts of why they fear persecution, including that they may have to give multiple accounts, using interpreters, and that they may reasonably expect an interview or a review process will provide an opportunity for them to elaborate on, or explain, the narratives they have previously given. Consideration should also be given to whether there is an acceptable explanation for the person having given inconsistent evidence such that the fact of the inconsistency should attract little, if any, weight. How all these matters are weighed and evaluated in a particular case is a matter for the decision-maker, but a failure by the decision-maker to appreciate the particular nature of the task, or to perform it reasonably and fairly, may be the subject of judicial review.

105. The Appellant argues that, similarly to what occurred in *AVQ15*, the Tribunal ignored the statement by the Appellant about the summary nature of his first statement in order to make adverse credibility findings against him, when the Appellant did exactly what he said he would do: elaborate on his summarised claims at the subsequent interview.

106. The Appellant argues that the Tribunal might not have made the same adverse credibility finding had it not overlooked paragraph [1] of the initial statement.

107. Alternatively, the Appellant submits that the error of law here can properly be characterised as having overlooked (whether inadvertently or out of a "quest to disbelieve") the first paragraph of the Initial Statement, or as taking an unreasonable approach to the review by expecting the Appellant to set out all the details of his claims in his Initial Statement, despite paragraph [1] of that Initial Statement making clear that it was no more than a summary. In those circumstances, the Tribunal should not have used the Initial Statement in the way that it did to make adverse credibility findings against the Appellant.

Republic's Argument

108. The Republic submits that the Tribunal was aware of the Appellant's arguments about the limitations of his initial statements and refers specifically to paragraph [48] of the Tribunal's Decision. The Republic argues that when using the word "summary", on any reasonable understanding of the meaning of that word, the Appellant was not only setting out a short statement of his claims but was also, by obvious inference, setting out a summary of *all of his claims*.

109. As an example, the Republic says that it is striking that the Appellant overlooked the fact in his Initial Statement that he too was an active BNP supporter, as well as his older brother. Accordingly, even at the "summary" level, it is highly probative that the Appellant did not mention that he too, like his older brother, was a BNP supporter. The Republic contends that the probative weight of this circumstance is not at all diminished by the "summary" nature of the Initial Statement.

110. The Republic notes that the difficulties with the Appellant's evidence were not limited to this issue. As set out above, the Tribunal noted that the problems with his evidence extended to changes in the narrative, as to when his father was harmed. Indeed, the

Tribunal catalogued a list of issues at [59]-[60] of the Tribunal's reasons, only one of which could be defended through reference to the "summary" Initial Statement.

111. Taking all of this together, this was not a case of "a quest to disbelieve". Rather, the Republic contends, the Appellant changed his story from its initial telling and failed to meet a basic expectation in being able to discuss the 2014 and 2018 elections in Bangladesh.

112. The Republic also contends that the appellant is mistaken in his reliance on *AVQ15*. The Tribunal in *AVQ15* had altogether failed to consider early statements from the appellant in that case. No such failure is alleged in this instance.

Consideration of Ground 2

113. As the Court in *AVQ15* made clear, an applicant giving a version of events on multiple occasions is in a very difficult position. Differences in those accounts are inevitable, to either a greater or lesser degree. So much may be accepted.

114. However, in this case, unlike in *AVQ15*, the Tribunal was clearly conscious of the Appellant's explanation for the brevity of his Initial Statement. Paragraph [48] of the Tribunal's Decision makes plain that those explanations were considered by the Tribunal. The "rushed" nature of the preparation of the Initial Statement was recorded by the Tribunal at [42]. However, the Tribunal ultimately did not accept those explanations at [51].

115. It is true that the Tribunal did not expressly record the terms of paragraph 1 of the Initial Statement. However, the *effect* of that paragraph was clearly appreciated by the Tribunal and recorded: see paragraphs [91] to [100] above.

116. It was a matter for the Tribunal whether that explanation was accepted by it. The explanation was considered and ultimately rejected, with reasons given for its rejection. In my view, the Tribunal's rejection of the Appellant's explanation for the brevity of his Initial Statement does not bespeak some "quest to disbelieve" the Appellant. Whether this Court, or some other decision-maker, would reach the same conclusion about the adequacy of the Initial Statement is beside the point. The Tribunal considered the relevant matters and decided to reject the Appellant's submission for stated reasons that are not irrational.

117. As the Full Conrt made clear in *AVQ15* at [28], what is required is a consideration by the Tribunal of the significance of the inconsistency between the Appellant's versions of events. Consideration should be given to whether there is some acceptable explanation for the person having given inconsistent versions. But ultimately how all those matters are weighed is a matter for the Tribunal. It is not for this Court to gainsay that process by the Tribunal. The Tribunal here cannot be said to have failed to appreciate the nature of its task.

118. I therefore reject the Appellant's contention that the Tribunal overlooked or ignored the Appellant's explanation for the brevity of his Initial Statement. The Tribunal weighed that against the other matters in its decision. I also reject the alternative argument that the Tribunal adopted an unreasonable approach to the review or

misunderstood its task. It clearly understood its task and in adopting the process that it did, the Tribunal did not engage in legal unreasonableness.

119. The Appellant has thus not made out Ground 2 of his appeal.

GROUND 3 – FAILURE TO SET OUT MATERIAL FINDINGS

Nature of Ground 3

120. The Appellant argues that the Tribunal breached its obligation under s 34(4)(d) of the Act to set out material findings of fact and the evidence or other material on which those findings of fact were based. Alternatively, the Appellant contends that the Tribunal's finding was based on no evidence or was irrational.

121. The Appellant complains that at [69] the Tribunal made substantive findings about the situation at the local level in Bangladesh in the reasonably foreseeable future, which were material to its disposition of the review.

122. The Appellant contends that the Tribunal failed to set out the evidence or other material on which those findings of fact were based. In the alternative, the Appellant contends that the Tribunal's findings at [69] were based on no evidence and were entirely speculative. In the further alternative, the Appellant argues that the Tribunal's findings at [69] were irrational in the sense that there was no connection between the Tribunal's findings and the evidence on which it relied for that finding.

The Appellant's Arguments

123. Paragraph 69 of the Tribunal's findings is set out above. The Appellant draws particular attention to the conclusion that because of recent political developments in Bangladesh, the AL has lost the backing of institutions such as the police which means it can no longer operate with impunity. Further, the Tribunal did not accept that those at the local level were still subject to local AL administrators or security authorities.

124. The Appellant contends that no evidence was cited for these propositions. That finding was said to be significant because it directly contradicted a submission made on behalf of the Appellant, supported by evidence, that AL members and thugs were very much entrenched in the Appellant's local area and that they enjoyed the support of the army, police and local government authorities at the local level. That submission was made despite the more recent changes at the national level.

125. The Appellant gave a statement dated 24 September 2024 in which he stated at [31]:

> "Although there have been some recent changes in Bangladesh, I do not believe this makes any difference to my fear of returning to that country. The Awami League members and thugs are very much entrenched in my area and also in every part of the country. They enjoy the support of the army, police and local government employees who were all appointed by the AL Government."

126. In submissions made by way of letter to the Tribunal dated 25 September 2024, the Appellant's representative noted a column on Al Jazeera that the previous leader's "political DNA" is still found in every corner of Bangladesh in her hand-picked judges, bureaucrats, police and military commanders. It was said to still be too early to predict how the changes will affect the lives of those subject to local administrations and security authorities.

127. The Appellant also provided "generic" submissions to the Tribunal on the issue headed "Recent Changes in Bangladesh". That submission included the following passage:

> In conclusion we submit, the establishment of an interim government under Yunis is a dramatic and potentially extremely positive change in country conditions. However, it is still too early to be able to predict how these changes will impact the lives of average person in Bangladesh, particularly those in rural areas, whose lives are subject to local administration and security authorities the majority of which have acted with impunity, particularly as AL powerbrokers."

128. The Appellant also gave evidence to similar effect before the Tribunal: see e.g. T18 lines 18-20. His representative's oral submissions to the Tribunal underscored the volatility of the situation in Bangladesh: T28 line 10 to T29 line 8.

129. The rejection of the Appellant's submission on that issue was said by Dr McBeth to be central to the disposition of the review.

130. In failing to refer to any evidence to support those conclusions, the Appellant contends that the Tribunal has breached its obligation under s 34(4) of the Act which is in the following terms:

> The Tribunal shall give the applicant for review and the Secretary, a written statement that:
>
> (a) sets out the decision of the Tribunal on the review;
>
> (b) sets out the reasons for the decision;
>
> (c) sets out the findings on any material questions of fact; and
>
> (d) refers to the evidence or other material on which the findings of fact were based.

131. Counsel for the Appellant argues that the Tribunal made a legal error in failing to comply with sub-paragraph (d).

132. Alternatively, the Appellant contends that the appropriate characterisation of the error is that the finding at [69] was made with no evidence or was irrational in the sense that there was no logical connection between the Tribunal's finding and the evidence (if any) on which it relied for that finding. The Appellant cites *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 651 at [135] which he argues was applied in this Court in *WET 054 v Republic of Nauru* [2018] NRSC 21 at [27].

133. The Appellant also relies upon comments of the High Court of Australia about the adequacy of reasons contained in judgments. In *Chief Commissioner of Police v Crupi* [2024] HCA 34, Gageler CJ, Edelman and Beech-Jones JJ said at [19]:

> "Although the "content and detail of reasons 'will vary ...'" according to the jurisdiction of the court and the subject matter being considered, the usual baseline for adequacy of reasons is that they "identify the principles of law applied by the judge and the main factual findings on which the judge relied". In cases involving an assessment of public interest immunity, such as the balancing exercise in s 130(1) of the Evidence Act, the reasons that are publicly given or available will generally need to be expressed in a form that does not compromise the very interest that is held, or might be held on appeal, to be in need of protection. Nevertheless, the reasons must still reveal that the court has, in relation to the relevant part of each document or class of document, "evaluate[d] the respective public interests and determine[d] whether on balance the public interest which calls for non-disclosure outweighs the public interest in the administration of justice that requires that the parties be given a fair trial on all the relevant and material evidence". (footnotes omitted)

134. I also had my attention drawn to the decision in ***DL v The Queen*** (2018) 255 CLR 1; [2018] HCA 26 where, at [32], Kiefel CJ, Keane and Edelman JJ said:

> "The content and detail of reasons "will vary according to the nature of the jurisdiction which the court is exercising and the particular matter the subject of the decision". In the absence of an express statutory provision, "a judge returning a verdict following a trial without a jury is obliged to give reasons sufficient to identify the principles of law applied by the judge and the main factual findings on which the judge relied". One reason for this obligation is the need for adequate reasons in order for an appellate court to discharge its statutory duty on an appeal from the decision and, correspondingly, for the parties to understand the basis for the decision for purposes including the exercise of any rights to appeal." (footnotes omitted)

The Republic's Arguments

135. The Republic submits that the context of the finding at [69] of the Tribunal's reasons is important. The Republic draws attention to the submissions made on behalf of the Appellant in a document headed "Recent Changes in Bangladesh" as extracted above.

136. If the Appellant's complaint is that the Tribunal failed to mention the relevant sources for that information in paragraph [69], the Republic submits that the only relief that this Court could grant is an order that the Tribunal prepare a further statement of reasons which cites the source of the country information. In that regard, the Republic cites *Re Minister for Immigration and Multicultural and Indigenous Affairs; ex parte* ***Palme*** (2003) 216 CLR 212.

137. As to the Appellant's argument that the conclusion at paragraph 69 of the Tribunal's reasons was made with "no evidence" or was irrational, the Republic submits that those arguments also should be rejected.

138. Here, relevant facts before the Tribunal included that conditions in Bangladesh had recently changed – so much was uncontroversial and indeed, was part of the Appellant's own case.

139. The Tribunal drew an inference from this fact that the AL was no longer in control of government institutions. The Republic contends that this was a valid inference for which direct evidence was not required as the very notion of being "in government" implies a *de jure* control of institutions such as the police. The notion of being "out of government" implies the loss of such *de jure* control. The Tribunal then made a further inference that the loss of *de jure* control also impacted *de facto* control. In the Republic's submission, that too was a valid (and obvious) inference. When another political party was in *de jure* control, there comes a high likelihood of at least a lack of substantial *de facto* control over the police and other institutions of the state.

140. As the Republic submitted, to step out this process of thinking and writing might suggest that there is more complexity to the idea than there really is. The proposition that the AL lost power to another group, and thus lost at least a lot of their control over the police and civil institutions in Bangladesh was, according to the Republic, an obvious finding.

141. From there, the Republic submits that the Tribunal was entitled to analyse those facts to reach the critical conclusion that the AL would not have "impunity" to act with violence towards BNP supporters. It was this point – AL impunity – which was essential to the Appellant's case.

142. In the Republic's submission, that is as far as the Tribunal went. It involved simply a rejection that the AL still enjoyed anything like the impunity that was claimed by the Appellant in this case. As the Republic submitted, the Tribunal did not go so far as to say that local police are entirely free from AL influence. It simply excluded the notion of local impunity. That, together with the Appellant's limited profile, was said to be probative of the risk of harm he might face if he returned to Bangladesh.

Consideration of Ground 3

143. The relevant process of reasoning of the Tribunal was as follows:

(a) The Tribunal accepted that the Appellant supported the BNP;

(b) That support of the BNP was "minimal";

(c) The Tribunal did not accept that the Appellant or his family had a political profile such that he would be the subject of adverse interest or harm if he returned to Bangladesh;

(d) The AL is no longer the national government of Bangladesh;

(e) As the AL is no longer the national government, it has "lost the backing of institutions such as the police which means it can no longer operate with impunity";

(f) The Tribunal did not accept that the AL are current powerbrokers or that they could act with impunity as they had in the past;

(g) The Tribunal did not accept that those at the local level are still subject to AL administrators or security authorities who can continue to act with impunity;

(h) Given the Tribunal's finding that neither the Appellant nor his family's support for the BNP resulted in him being targeted in the past, in conjunction with the recent changes, it follows that there is no reasonable possibility that the Appellant would be seriously harmed because of his continuing BNP support or because of his family membership;

(i) The Appellant thus does not have a well-founded fear of persecution for reason of his or his family's political opinions or associations.

144. Steps (e), (f) and (g) in that process of reasoning are what is challenged here. The Appellant says that there is no evidence to support those findings. The Republic says that they are reasonable inferences from the undisputed fact of the fall of the Hasina Government in early August 2024.

145. A proper process of reasoning may, in appropriate circumstances, involve the drawing of inferences from known facts. However, the Tribunal cannot simply draw inferences divorced from the evidence before it. It cannot proceed simply on the basis of speculation or conjecture: *WET040 v Republic of Nauru* [2018] HCA 60; (2018) 93 ALJR 102 at [29]-[31]; nor can it engage in "conjectural analysis or mere guesswork": *WET054 v Republic of Nauru* [2018] NRSC 21 at [35] (an appeal from this judgment was dismissed [2023] NRCA 8).

146. Section 34(4) of the Act requires the Tribunal to "refer to the evidence or other material on which the findings of fact were based". The Tribunal here did not comply with that obligation. There is no reference by the Tribunal to the evidence or other material on which the following findings of fact at [69] and [70] were based:

(a) The finding summarised at 143(e) above that the AL has lost the backing of institutions such as the police which means it can no longer operate with impunity;

(b) The finding summarised at 143(f) above that the AL are not current powerbrokers or that they could act with impunity as they had in the past; and

(c) The finding summarised at 143(g) above that those at the local level are not still subject to AL administrators or security authorities who can continue to act with impunity.

147. The Tribunal did not refer to any country information in support of those findings. There was evidence before the Tribunal which was counter to those findings, including from the Appellant and also the evidence noted above about Hasina's

judges, bureaucrats, police and military commanders remain in substantial control at the local level. I do not accept the Republic's submission that the evidence of the Appellant at T20 lines 25 to 30 of the Tribunal transcript is evidence which supports the conclusions at 143(e) to (g). Regardless, the Tribunal referred to none of that evidence in its decision. It is simply not possible to know what evidence was relied on by the Tribunal on this issue, and why.

148. In an analogous fashion to the observations of the Australian High Court in *DL*, s 34(4)(d) of the Act requires that the Tribunal discharge its obligation in a manner to permit the parties, and this Court, to understand the evidential basis for the decision. I am unable to understand the basis for the findings recorded at 143(e) to (g) because I do not understand what evidence, if any, formed the basis of the Tribunal's findings of fact in that regard. It may be that the Tribunal considered the evidence that ran counter to the conclusions at 143(e) to (g) and rejected that evidence. Perhaps the Tribunal considered those conclusions nevertheless to follow ineluctably from the fact of the fall of the Hasina government regardless of evidence to the contrary. Or maybe those conclusions were simply based on speculation or conjecture. In the absence of compliance with the requirements of s 34(4)(d) of the Act however, I simply do not know if that is so.

149. I am satisfied that there was an error of law in that the Tribunal did not comply with the mandatory requirements of s 34(4)(d). The Tribunal failed to refer to the evidence or other material on which it based its conclusions at paragraph [69] and [70] about the impact of the fall of the previous government on local institutions or AL supporters. The failure to refer to any evidence may have made a difference to the outcome of the application and the outcome of this appeal. The terms of [69] and [70] demonstrate that the situation of the local AL supporters and authorities after the fall of the Hasina government was important to the finding that the Appellant did not have a well-founded fear of persecution.

150. I reject the Republic's contention that the appropriate relief for a breach of s 34(4) is an order in the nature of mandamus. The Australian cases relied upon by the Republic (such as *Palme*) are in a context where the Courts were considering prerogative relief because of a jurisdictional error and in a quite different statutory environment. That is not the test for this Court. The question for me is whether the appeal ought to succeed "on a point of law". In my view, it should.

151. Accordingly, I find that Ground 3 of the Notice of Appeal is made out.

GROUND 4

Nature of Ground 4

152. The Appellant contends that the Tribunal failed to consider and respond to a substantial claim. The Appellant alleges that he claimed that he may have to commit suicide on return to Bangladesh due to being pursued for his substantial debts. The Appellant argues that the Tribunal recognised, but failed to deal with, that claim. The obligation not to return a person to a place where they would face arbitrary deprivation of life is a relevant international obligation under s 4(2) of the Act.

The Tribunal's Findings

153. The Tribunal dealt with this issue as follows:

> "71. [The Appellant] stated in his recent statement dated 24 September 2024 that he and his father borrowed AUD 19,500.00 from various lenders and were not able to repay that debt. At hearing, he said he had borrowed 800,000.00 taka and needed to pay a further 200,000.00 taka in interest to his father's cousin and some neighbours and they would pressure him when he returned, and he might need to commit suicide.
>
> 72. While the Tribunal accepts the [Appellant] has borrowed money from family and friends with interest payable, to finance his trip that he will have to repay. It also finds he has been working up until he departed Bangladesh in January 2024 and given his work history, the Tribunal is satisfied he will be able to work on his return. In addition, family and neighbours presumably loaned him the money hoping he would find himself in circumstances where he could repay the debt and, in those circumstances, it is difficult to accept they would want to harm or hurt him thereby jeopardising his ability to repay them.
>
> 73. In these circumstances, the Tribunal does not consider there is a reasonable possibility the [Appellant] would be seriously harmed by others because of his debt and his fear is not well founded and he is not a refugee on this basis."

The Appellant's Arguments

154. The Appellant argues that the finding at [73] of the Tribunal's reasons referred to above focused on harm "by others" and did not address the issue of whether he may commit self-harm. The Appellant also noted that the Tribunal did not revisit the claim when it came to consider complementary protection at [82]-[86].

155. The Appellant contends that the authoritative interpretation of article 6 of the *International Covenant on Civil and Political Rights* (**ICCPR**) by the United Nations Human Rights Committee in its *General Comment 36: the Right to Life* has held that the right to life in article 6 "should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts that are intended or may be expected to cause their unnatural or premature death...": Republic of Naurn, Policy Position Paper No 3: Complementary Protection, August 2017, Part 3.

156. The same General Comment also provides that states have an obligation under article 6 of the ICCPR "to prevent suicides, especially among individuals in particularly vulnerable situations."

157. The Appellant argues that his submission that returning him to Bangladesh would lead to a real risk of suicide was something which the Tribunal was obliged to deal with in its complementary protection consideration. Dealing only with whether there was a reasonable possibility of harm "by others" did not deal with this aspect of the Appellant's submission. Risk of premature and preventable death by suicide is within the scope of the international law obligations that, according to the Appellant, needed

to be considered. The failure of the Tribunal to deal with this substantial submission was said to have constituted an error of law.

Republic's Arguments

158. The Republic notes that the relevance of suicide was addressed during the Tribunal hearing. At T22, commencing at line 33, the following passage occurs:

"

Ms Boddison:	Okay. But when you said they'll pressure you, what do you think I'll [sic] actually do:
The Interpreter:	So he's saying that if I can't return the money, there are no – I might need to commit suicide. Then he said my family, and then he said that my brother, he is not working, my father he can go back to the house, so they can't support my family. That's the problem."

159. The Republic submits that this passage makes clear that the relevance of suicide was premised on an inability for the Appellant to repay money and that pressure had been applied by the lenders to have their money returned. That is, the Appellant's claim that his suicide would be necessary was in order to manage the pressure being applied to him to return the money which he borrowed. The Republic submits that the nature of any such "pressure" was not well articulated beyond the mere request or expectation to be repaid.

160. The Tribunal found that the lenders would not wish harm to the Appellant because to do so would jeopardise their prospects of repayment. In light of that finding, the Republic submits that the premise of the Appellant's fear of being "pressured" falls away. Accordingly, so the Republic argues, the Tribunal has dealt with this issue by rejecting a factual premise to the claim: *Applicant WAEE v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 236 FCR 593, [46]-[47].

Consideration of Ground 4

161. Nauru has an obligation under Art 6 of the ICCPR not to return the Appellant to a place where he may be subjected to the arbitrary deprivation of life. As General Comment 36 makes clear, that concerns his entitlement to be free from acts that are intended, or may be expected, to cause his premature or unnatural death. There was no legal error in the Tribunal's conclusion that the Appellant does not face the reasonable possibility of serious harm *by others* caused by his debts.

162. The Appellant's case about his potential suicide was unclear. It did not arise from his written statement to the Tribunal or in his submissions to that body. It was not an issue addressed by the Secretary.

163. The issue of suicide, as far as I can tell, first arose from the oral evidence of the Appellant before the Tribunal. At T20 line 35, he said "I have lots of debts". Member Cranston then asked "Why do you have debts" at T21 line 12. The Appellant explained that they were because of his journey and he took loans from his relatives and neighbours. Member Cranston asked if there was any other reason that he could

not return to Bangladesh at T21 line 30. Member Boddison asked what would happen to him if he could not repay the debts. The Appellant responded at T22 line 1 that "they will attack us, say, now my brother or my dad, they cannot go to my village". He said that the lenders (being relatives and neighbours) would ask for their money and they would "pressurise" him to return that money: at T22 line 22. When asked what they would do to pressure him, the Appellant responded that if he cannot return the money he "might need to commit suicide": T22 line 34.

164. These passages are summarised at [36] of the Tribunal Decision.

165. This is the only reference in all the evidence before the Tribunal of the Appellant's possible suicide. Nor, as far as I can tell, was there any reference to the Appellant's suicide in the written or oral submissions made on behalf of the Appellant before the Tribunal. There was reference to the Appellant's "huge debts" (T28 line 1), but no reference to pressure to pay them or the risk of suicide.

166. To fail to respond to a substantial, clearly articulated argument relying upon established facts would be to fail to accord the Appellant natural justice: *Dranichnikov v Minister for Immigration and Multicultural Affairs* [2003] HCA 26; (2003) 77 ALJR 1088 at [24]. That would constitute a breach of s 22(b) of the Act.

167. However, I do not consider that the argument about the Appellant's possible suicide resulting from his unpaid debts was a "clearly articulated argument". It arose only glancingly in the context of his oral evidence. It did not feature in his multiple written statements, his extensive written submissions or his representative's oral submissions.

168. There is a lack of clarity in the evidence as to what, precisely, might lead the Appellant to self-harm. The Tribunal explored in his evidence the factors that might lead his debtors to pressure him to repay. The Tribunal found that such "pressure" would not constitute serious harm. There is no contended error in that finding. Considering that finding, and the way the Appellant conducted his case before the Tribunal, it was not necessary for the Tribunal to go on and make a further finding about the Appellant's risk of suicide arising from that pressure. Having found no reasonable possibility of serious harm from the debtors, it was not necessary to go on to make separate findings as to the risk of suicide.

169. Ground 4 of the Notice of Appeal is not made out.

CONCLUSION AND DISPOSITION OF THE APPEAL

170. For the reasons set out in this judgment, I have found that:

(a) ground 3 of the Notice of Appeal is made out; and

(b) grounds 1, 2 and 4 of the Notice of Appeal are not made out.

171. The Appeal is allowed. Pursuant to s.44 of the Act, I make orders:

(a) quashing the decision of the Tribunal; and

(b) remitting the matter to the Tribunal for reconsideration.

172. I make no order as to the costs of the Appeal.

JUSTICE MATTHEW BRADY

28 April 2025