



Federal Court of Australia

District Registry: Queensland Registry

Division: General

No: QUD387/2024

LLQQ

Applicant

**MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL
AFFAIRS** and others named in the schedule

Respondent

ORDER

JUDGE: Justice Meagher

DATE OF ORDER: 18 September 2024

WHERE MADE: Brisbane (in Chambers)

THE COURT ORDERS BY CONSENT THAT:

1. The application be allowed.
2. A writ in the nature of certiorari be issued to quash the decision of the Second Respondent dated 10 June 2024.
3. A writ in the nature of mandamus be issued, directing the Second Respondent to reconsider and re-determine the matter according to law.
4. The Second Respondent take all necessary steps to have the Second Respondent's decision dated 10 June 2024 removed from publication online.
5. The First and Second Respondents be prohibited from having regard to the transcript of proceedings and audio recordings related to the decision of 10 June 2024 in the Applicant's remittal proceedings.
6. The First Respondent pay the Applicant's costs to be agreed or assessed.

THE COURT NOTES THAT:

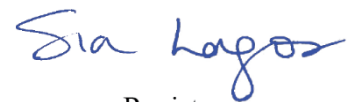
7. The First Respondent concedes that ground 1 to the application should succeed. In particular, it is conceded that the Second Respondent made a jurisdictional error by denying the Applicant



procedural fairness at the hearing of his application for merits review. That denial of procedural fairness arose from the following circumstances:

- (a) the Applicant was unrepresented at a hearing of his application;
 - (b) the Applicant was not advised by the Second Respondent of his right to invoke the privilege against self-incrimination (and there is no evidence that the Applicant otherwise had knowledge of that right at the time of the hearing);
 - (c) the Applicant was asked questions that exposed him to self-incrimination and, consequently, the privilege would have entitled the Applicant to refuse to answer those questions;
 - (d) in the face of that questioning, the Applicant did not invoke the privilege and provided answers; and
 - (e) evidence given by the Applicant in response to the questioning was ultimately relied upon by the Second Respondent in deciding the application.
8. On the basis of the First Respondent's concession with respect to ground 1, the parties are agreed it is unnecessary to reach a conclusion on ground 2 (breach of procedural fairness), ground 3 (whether the Tribunal's approach was infected by apprehended bias) and ground 4 (Tribunal engaged in illogical or irrational reasoning) or whether any of those grounds were material given the application must be allowed for the reasons identified earlier.

Date orders authenticated: 18 September 2024


Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



Schedule

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Second Respondent

ADMINISTRATIVE APPEALS TRIBUNAL