IN THE NAURU COURT OF APPEAL
CIVIL APPELLATE JURISDICTION
AT YAREN

Civil Appeal Number 10 of 2025
Supreme Court Civil Case Number 09 of 2025

BETWEEN:	AI 25	Appellant
AND:	The Republic of Nauru	Respondent

BEFORE: Khan P
Palmer JA
Coates JA

Date of Hearing: 16 June 2026
Date of Judgment: 25 June 2026

Case may be cited as: AI 25 v The Republic of Nauru

CATCHWORDS: APPEAL - Refugees — Refugee Status Review Tribunal —whether the Tribunal failed to afford procedural fairness to the Appellant in failing to notify him of adverse conclusion — Appellant had notice of relevant issues - the Tribunal did not breach the requirements of procedural fairness - appeal dismissed

APPEARANCES:

Counsel for the appellant: M Kenneally (Playfair Legal Pty Ltd)
Counsel for the respondent: R O'Shannessy (instructed by the Republic of Nauru)

JUDGMENT

Introduction

1. **BY THE COURT**: This appeal concerns the requirements of procedural fairness in proceedings before the Refugee Status Review Tribunal ("the Tribunal") under the Refugees Convention Act 2012(the Act).

2. The appellant is a citizen of Bangladesh. He sought recognition as a refugee and alternatively complementary protection on the basis that he feared serious harm from a creditor whom he characterised as a politically connected loan shark or “mastaan”. He also relied upon his support for the Bangladesh Nationalist Party ("BNP") and his status as a failed asylum seeker.

3. On 4 February 2025, the Tribunal affirmed the Secretary's determination that the appellant was neither a refugee nor a person owed complementary protection.

4. An appeal to the Supreme Court pursuant to s 43 of the Act was dismissed by Brady J on 8 August 2025.

5. The appellant now appeals from that decision.

The Appeal

6. The appeal is confined to a single question of law. As amended, it reads:

> “The appellant hereby appeals pursuant to section 43(1) of the *Refugees Convention Act 2012* (**the Act**) against the decision of the Refugee Status Review Tribunal (**the Tribunal**) made on the 4th day of February 2025 on the following grounds:
>
> 1. The Tribunal made errors of law in its decision. The Tribunal did not afford procedural fairness to the appellant, in failing to notify him of the adverse conclusion at [54].”

7. The appellant contends that the Tribunal denied him procedural fairness by failing to notify him of the adverse conclusion contained in paragraph [54] of its reasons, namely:

> "*However, the applicant's non-repayment of at least part of the loan adds to doubts about the seriousness of any threats from an unpaid creditor, towards him and his family.*"

8. It is argued that this conclusion was not obvious from the material before the Tribunal and was never put to the appellant for comment.

9. The respondent on the other hand, submits that the issue was plainly identified throughout the review process, including by the Secretary, during the Tribunal hearing itself, and in submissions made on the appellant's behalf.

Brief Background Claims of the Appellant.

10. The appellant fears persecution in Bangladesh due to his political opinion as a Bangladesh Nationalist Party (BNP) supporter, and because he owes money to a powerful Awami League (AL) supporter.

11. The appellant was raised in a family that supported the BNP, although his family were not politically involved as they were impoverished and focused on survival.

12. In 2016, the appellant says that his family borrowed money, approximately Tk 900,000 from Mr Robikul [R], a wealthy and influential Awami League-linked individual, to support his family and to pay back the loan. He was unable to make any significant loan repayments.

13. Additionally, the lender was charging a lot of interest, and the appellant was unable to make a dent in the loan amount.

14. The appellant contends that the lender began threatening his family unless the loan was repaid. The lender threatened that his family would be badly beaten and killed. The appellant contends that his family could not complain to the authorities against the lender — whom he describes as a *mastaan*, or thug - as he has AL backing and the appellant's family are BNP supporters. He says he could not obtain effective State protection in the circumstances.

15. He also feared harm as a supporter of the Bangladesh Nationalist Party (BNP), and as a failed asylum seeker returning to Bangladesh.

Appellant's Submissions

16. The appellant's submissions focused primarily on a single procedural fairness complaint, namely that the Tribunal failed to alert him that it intended to draw the adverse inference expressed at [54].

17. His submissions can be summarised as follows.

The Appellant's Core Case

18. The appellant accepts that the Tribunal was entitled to examine the credibility of his claim concerning:

- the existence of the debt;
- the alleged loan shark ("mastaan"); and
- the alleged threats arising from non-payment.

19. However, he argues that the Tribunal reached an adverse conclusion at [54] without first giving him a fair opportunity to address it.

20. The submission was that procedural fairness required the Tribunal to notify him of that concern before relying upon it against him.

How the Appellant Characterised Reason [54]

21. The appellant focused upon the Tribunal's reasoning that despite having access to substantial funds to facilitate his travel to Australia, he had not used any of those funds to repay at least part of the debt.

22. The Tribunal accordingly concluded at [54] that the failure to make even a partial repayment added to its doubts about the seriousness of the alleged threats from the creditor.

23. The appellant characterised this as a "substantial adverse conclusion". He argues that this was not merely a credibility assessment arising naturally from the evidence but a significant adverse inference which directly undermined his claim that he feared serious harm if returned to Bangladesh.

The Procedural Fairness Complaint

24. The appellant submits the following, that:

(i) The Tribunal never squarely raised this concern during the hearing.

(ii) It did not inform him that it might reason as follows:

> "*If the threats were genuine, why did you use the money for travel rather than use it to repay part of the debt?*", and

(iii) Because the issue was never properly identified, he was deprived of an opportunity to:

- explain his decision-making;
- provide further evidence; and
- make submissions directed to that particular concern.

Accordingly he submits the Tribunal denied him procedural fairness.

The Significance of Reason [54] in the Appellant's Argument

25. The appellant's case depended heavily upon the proposition that [54] was not an obvious conclusion arising from the evidence. His submission was that:

i. there may have been many reasons why a person in his position would use available funds to migrate rather than repay a debt;

ii. the Tribunal itself recognised there could be explanations for that conduct;

iii. yet the Tribunal still used that conduct adversely against him.

26. The appellant therefore argued that the Tribunal was obliged to alert him before relying on that reasoning.

27. In substance, the appellant's position was because the conclusion at [54] was not an obvious or inevitable inference from the evidence, procedural fairness required the Tribunal to identify it and provide an opportunity for response before making any finding.

Reliance on Procedural Fairness Principles

28. The appellant relied upon the well-established principle that a decision-maker must notify a person of an adverse conclusion that is not obviously open on the known material.

29. This is the language commonly associated with *Commissioner for ACT Revenue v Alphaone Pty Ltd*[1] and later authorities.

30. The appellant argues therefore that:

    (a) Reason [54] was an adverse conclusion;

    (b) it was not obviously open on the known material;

    (c) it was not put to him; and

    (d) therefore, procedural fairness was denied.

The Transcript Point Relied Upon by the Appellant

31. The appellant acknowledged one passage in the hearing transcript (ARB 164, lines 25-36) where the Tribunal touched on the issue. However, counsel argued that this exchange merely "flirted with the issue" and did not sufficiently notify the appellant that the Tribunal might draw the specific adverse inference ultimately expressed at [54].

32. The submission was that merely mentioning the existence of travel funds was not the same as notifying the appellant that the Tribunal might reason as follows that:

    "Your failure to use those funds to repay the debt causes us to doubt the seriousness of the alleged threats."

33. Accordingly, the appellant maintained that the hearing discussion fell short of the requirements of procedural fairness.

The Appellant's Essential Proposition

34. Reduced to its essence, the appellant's argument was that the Tribunal's finding at [54] was a new and significant adverse inference that was not clearly raised during the hearing. Because that inference was not obviously open on the known material, procedural fairness required the Tribunal to put it to the appellant and provide an opportunity to respond. Its failure to do so constituted jurisdictional error and required the matter to be remitted.

35. That was the foundation of the appellant's appeal and the basis upon which he sought to invoke the principles derived from *Kioa v West*[2], *Commissioner for ACT Revenue v Alphaone Pty Ltd*[3], and *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs*[4]. The central contention was that [54] represented an undisclosed adverse conclusion rather than a merely evaluative inference arising from issues already ventilated before the Tribunal.

The Respondent's Submissions

[1] (1994) 49 FCR 576 at 591-592.

[2] (1985) 159 CLR 550 at 587, 628;

[3] (ibid);

[4] (2006) 228 CLR 152.

36. The respondent's submissions were directed to demonstrating that the Tribunal's reasoning at [54] involved no procedural unfairness because the issue had been identified repeatedly throughout the decision-making process and the appellant had a full opportunity to address it.

37. The respondent's submissions can be summarised herewith.

The Respondent's Main Argument

38. The respondent's position was fairly straightforward, that the Tribunal did not decide the case on a new or undisclosed basis. The concern expressed at [54] had already been identified by the Secretary, was raised directly by the Tribunal at the hearing, and was expressly addressed by appellant's Counsel.

39. Accordingly, the appellant was fully aware of the issue and had every opportunity to respond to it.

40. The respondent therefore submitted that the procedural fairness complaint was without substance and that the appeal should be dismissed.

The Respondent's Characterisation of the Tribunal's Reasoning

41. The respondent began by identifying the central claim advanced by the appellant before the Tribunal, namely that:

    1) the appellant borrowed approximately 900,000 taka from Mr Rokibul;

    2) he failed to repay the debt;

    3) Mr Rokibul threatened him and his family;

    4) he therefore feared harm if he returned to Bangladesh.

42. The respondent emphasised that the Tribunal's assessment of this claim involved a broader credibility inquiry.

43. The Tribunal's concern was not confined to one isolated point but formed part of a wider evaluation of:

    - the appellant's financial circumstances;
    - his ability to raise money;
    - the nature of the alleged debt;
    - whether any repayments had in fact been made; and
    - whether the alleged threats were genuine.

44. The respondent therefore portrayed [54] **as one component of a larger credibility analysis** rather than a standalone adverse finding.

The Importance of Reason [54]

45. The respondent accepted that [54] formed part of the Tribunal's reasoning.

46. However, the respondent argued that the Tribunal's concern was straightforward. If the appellant and his family were able to raise another 900,000 taka to finance travel to Australia, that circumstance tended to cast doubt upon the claim that they were unable to make any repayment whatsoever toward the loan and therefore cast doubt upon the seriousness of the alleged threats.

47. The respondent submits that this was not a surprising or hidden concern, but rather, it was a natural issue arising from the appellant's own evidence.

Why the Respondent Said There Was No Procedural Unfairness

48. The respondent advanced three principal arguments. First, Mr. O'Shannessy says that the Secretary had already raised the issue.

49. He relied on the Secretary's original decision where he had expressly recorded the following:

    1) that the appellant's maternal uncle provided 900,000 taka to facilitate travel to Australia; and

    2) that the appellant had been asked why those funds were not used to reduce the debt.

50. More importantly, the Secretary had already concluded that the appellant's spending priorities did not reconcile with a genuine fear of harm arising from non-payment of the debt.

51. He argues therefore that the appellant entered the Tribunal proceedings already knowing that his failure to use available funds to repay the loan was regarded as damaging to his claim. and accordingly, the issue could not be characterised as new or unexpected.

52. Secondly, Mr. O'Shannessy says that the Tribunal had raised the matter directly during the hearing.

53. He refers to the hearing transcript, which sets this out and reiterated by Brady J. at paragraph 29 of his judgment as follows:

    "29. The relevant passages of the transcript before the Tribunal are on pages 19 to 20 of the transcript. At T20 line 19 - 27, the following passage is found:

Mr Silva:	Help me understand then, you had borrowed initially about the same amount from [R] and as a consequence of you not paying him back any money at all, not one taka, he was making your, I believe, he's been making your parents or family's life

miserable. Now, when the opportunity to come to Malaysia arose, however, you've explained that you were able to raise money.

Ms Cranston:	Australia.
Mr Silva:	I'm sorry. Towards Australia - when you have the opportunity to go towards Australia or to depart Malaysia, **you then manage to nonetheless raise the Tk 900,000.00, which might have met at least some, if not all, of (indistinct) demands**.
The Interpreter:	The thing is, originally the contract was only for 450,000 Taka but they sort of kept in a room while I was in Indonesia. I was beaten up and tortured. They wouldn't let me go anywhere until I paid them the other amount. So I had to arrange to give them the money." (Emphasis added).

54. He points out in particular the question posed by the Tribunal Member: "*you then manage to nonetheless raise the 900,000 taka, which might have met at least some, if not all, of the demands.*"

55. The respondent argues that this question made the Tribunal's concern perfectly clear.

56. The Tribunal was expressly drawing attention to the apparent inconsistency between the claimed inability to repay the debt on one hand and the ability to raise substantial funds for travel.

57. The respondent therefore submitted that the appellant was squarely confronted with the issue and given an opportunity to explain it.

58. Thirdly, Counsel submits that the appellant's representative was well aware of this issue and regarded this as particularly important.

59. He refers to the submissions made by the appellant's representative at the conclusion of the hearing, which is also referred to in the judgment of Brady J. at paragraph 34 as follows:

"34. Thirdly, the Republic notes that the appellant's agent clearly understood that this was a matter of concern to the Tribunal. This was squarely addressed by the appellant's representative at T26 lines 5 - 14 in these terms:

Mr Mohamed:	The other thing is, **there was a question why raise money to go to Australia and not pay what we got.** I think [the appellant] found himself in a predicament in that he had no visa to remain in Malaysia and he could not go back because of the fear of harm that might be caused to him for not paying the loan. So this is despite the fact that for eight years he hasn't visited his sick parents, and that's a big deal, very significant, I think, when in - the Bangladeshi culture, family and the parents are really important. And when they are sick, you just

stop everything and go and see them. But he couldn't do that. He had to find an alternative to not being deported back from Malaysia to Bangladesh. So his family has to come and help him in that process." (Emphasis added).

60. The respondent submits that the appellant's representative at the conclusion of the hearing was confronted with the proposition in the form of a question "*why raise money to go to Australia and not pay what we got.*"

61. In his response, his representative offered an explanation that the appellant could not remain lawfully in Malaysia, but feared returning to Bangladesh and that the only practical option for him was to travel to Australia.

62. The respondent argues that this passage demonstrated beyond doubt that the appellant and his representative understood clearly what concerned the Tribunal and actively sought to answer it.

63. Accordingly, any suggestion that the issue was undisclosed or that the appellant was not aware, was simply untenable.

Summary of the Issues for Determination in this Appeal – that of Procedural Fairness

64. It is common ground that whether procedural fairness has been afforded is a question of law.

65. This appeal is about the obligation of procedural fairness in the context of refugee status review proceedings.

66. The appellant submits that the Refugee Status Review Tribunal ("the Tribunal") failed to afford him procedural fairness by not notifying him that it proposed to draw an adverse conclusion from his failure to apply funds raised for travel to Australia towards repayment of a debt which he claimed had given rise to threats against him and his family in Bangladesh.

67. The appeal therefore raises a familiar but important question in administrative law, whether a decision-maker is obliged to disclose an evaluative conclusion which it may draw from material already known to the applicant, or whether fairness requires only that the applicant be given a reasonable opportunity to address the factual issue from which that conclusion may be drawn.

68. The answer to that question is found in the well-established authorities beginning with *Kioa v West*[5], developed in *Commissioner for ACT Revenue v Alphaone Pty Ltd*[6], and subsequently applied by the High Court of Australia in *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs*[7], principles which have also been recognised in this jurisdiction, including in *SOS 005 v Republic of Nauru*[8].

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[5] (1985) 159 CLR 550 at 587, 628.
[6] (1994) 49 FCR 576 at 591-592.
[7] (2006) 228 CLR 152.
[8] [2023] NRCA 18 at [73]-[78].

Applicable Principles - Procedural Fairness

69. The content of procedural fairness is variable and depends upon the statutory framework, the nature of the decision being made, and the practical circumstances of the case.

70. The fundamental requirement is that a person whose interests may be adversely affected by a decision be given a fair opportunity to address the critical issues upon which the decision may turn.

71. Those principles were authoritatively explained by the High Court of Australia in *Kioa v West*.

72. The central principle emerging from that decision is that a person whose interests may be adversely affected by an administrative decision must ordinarily be given an opportunity to address matters that are credible, relevant and significant to the proposed decision.

73. Mason J observed that fairness ordinarily requires that a person be given an opportunity to deal with adverse matters that may be taken into account against him or her. So procedural fairness is about ensuring that a person has a meaningful opportunity to be heard before adverse action is taken.

74. Importantly, however, *Kioa* did not establish an obligation upon decision-makers to reveal every provisional view or tentative conclusion formed during the decision-making process. Procedural fairness does not require a decision-maker to expose every aspect of its reasoning process or every tentative view formed during deliberation.

75. The law instead distinguishes between adverse material and the evaluation of that material. These principles were developed further in *Commissioner for ACT Revenue v Alphaone Pty Ltd* (1994) 49 FCR 576.

76. The Full Federal Court stated that a decision-maker is ordinarily not required to invite comment upon its evaluation of the evidence. Rather, fairness requires disclosure of adverse information, adverse material, or, critical issues which may not otherwise be apparent.

77. The Court stated at 591–592, that a person affected by a decision:

> "*...is entitled to respond to any adverse conclusion drawn by the decision-maker on material supplied by or known to the subject which is not an obvious and natural evaluation of that material.*"

78. Equally important is the Court's recognition that:

> "...a decision-maker is not obliged to expose his or her mental processes or provisional views to comment before making the decision in question."

79. Thus the distinction is between a new issue, concern or adverse matter requiring notification, and, an evaluative inference which is reasonably open on material already known to the affected person.

80. This distinction is fundamental. Procedural fairness requires notice of a critical issue. It does not require advance notice of every possible inference that may be drawn from evidence relating to that issue.

81. The principles in *Commissioner for ACT Revenue v Alphaone Pty Ltd* were subsequently considered by the High Court in *SZBEL Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 228 CLR 152.

82. The appellant relies principally upon this case.

83. In that case, the High Court held that procedural fairness had been denied because the tribunal's decision turned upon an issue that had not been identified by the delegate and had not otherwise been raised with the applicant.

84. The High Court held that an applicant is entitled to understand the issues that are dispositive of the review.

85. If a tribunal proposes to decide a matter upon a basis different from that adopted by the original decision-maker, fairness may require that the applicant be alerted to the new issue.

86. The Court emphasised that a person appearing before a tribunal is entitled to assume that the issues identified in the primary decision remain the issues to be determined unless informed otherwise.

87. The significance of *SZBEL* lies in its focus upon identifying the issue rather than the reasoning. Importantly, however, *SZBEL* was concerned with the emergence of a new issue. It was not concerned with a tribunal drawing evaluative conclusions from matters already identified and discussed during the hearing process.

88. The distinction is critical. *SZBEL* does not require a tribunal to disclose every possible inference that might be drawn from evidence before it. Rather, it requires that an applicant be informed of the issues which may determine the outcome of the review.

The case of SOS 005 v. Republic of Nauru[9] and the Nauruan Authorities

89. These principles have been recognised and applied within this jurisdiction.

90. In *SOS 005 v Republic of Nauru* this Court recognised the continuing relevance of *Kioa*, *Alphaone* and *SZBEL* in the refugee review context.

91. In *SOS 005*, the Court reaffirmed that procedural fairness requires an applicant to be given a reasonable opportunity to deal with issues that may prove decisive to the outcome of the review.

92. At the same time, the Court recognised that refugee review proceedings are not rendered procedurally unfair merely because an applicant is dissatisfied with the way in which the tribunal ultimately evaluated the evidence.

[9] [2023] NRCA 18 at [73] – [74]

93. The focus remains upon whether the applicant was aware of the issue and had a meaningful opportunity to address it. However, fairness does not require a tribunal to reveal every step in its reasoning process nor to provide advance notice of every conclusion that may ultimately be drawn from the evidence. Whether procedural fairness has been afforded depends upon the practical realities of the proceedings viewed as a whole.

94. The authorities therefore reveal a consistent theme. Procedural fairness is concerned with participation in the decision-making process. It is not concerned with guaranteeing acceptance of the submissions advanced.

CONSIDERATION

95. The issue in this appeal. The central question is whether the concern expressed by the Tribunal at paragraph [54] was a matter of which the appellant had notice and an opportunity to address.

96. First, the Secretary's decision. His determination expressly identified this issue.

97. He recorded that the appellant had obtained approximately Tk 900,000 from his maternal uncle to finance his attempted journey to Australia. He then asked the obvious question, why those funds had not been used to reduce the debt which allegedly exposed the appellant and his family to harm. He then concluded that the appellant's spending priorities did not sit comfortably with his claimed fear of harm arising from non-payment of the debt.

98. Consequently, before the Tribunal review even commenced, the appellant was already on notice that this aspect of his conduct was regarded as potentially undermining the credibility of his claims.

99. We are satisfied this issue was canvassed thoroughly in the judgment of the Court (Brady J.), from paragraphs 38 – 47 of his judgment. At paragraph 38, this is what he concludes:

> "38. The Appellant's written argument (based on the amended notice of appeal) that he was not afforded procedural fairness in respect of the adverse conclusion in paragraph [54] of the Tribunal Decision cannot be accepted. The Tribunal's concern as expressed in [54] that the Appellant's non-repayment of at least part of the loan cast doubts on the seriousness of any threats was a matter of which the Appellant was given adequate notice. He knew that it was a relevant matter for the Tribunal."

100. His Honour next discussed at paragraph 39, how this was raised by the Secretary in his decision.

> "39. First, it is apparent from the Secretary's Decision that the way the Appellant prioritised his spending (i.e. to use money to pay to travel to Australia and other expenses rather than to repay [R]) was not consistent with a fear of harm for not repaying the loan. Thus, the Appellant was on notice from the Secretary's Decision that the non-repayment of his loan was a matter inconsistent with his case that he feared harm."

101. Secondly, we are satisfied the Tribunal itself squarely raised the issue during the hearing. Tribunal Member Silva observed that the appellant had managed to raise approximately Tk 900,000 for travel to Australia despite claiming that his family was suffering serious consequences because no repayments had been made to the creditor.

102. The member expressly observed that those funds, "*might have met at least some, if not all*" of the creditor's demands.

103. In our view, that observation identified with complete clarity the concern later reflected in paragraph [54].

104. The appellant was therefore afforded an opportunity to respond, and we note he did so. He explained that additional funds became necessary during his journey and referred to his treatment in Indonesia.

105. Whether that explanation was persuasive was a matter for the Tribunal. Procedural fairness guarantees an opportunity to answer, it does not guarantee acceptance of the answer.

106. We are satisfied the learned Judge at paragraph 40 of his judgment adequately covered this as well. This is what his Honour states:

> "40. Second, the Tribunal itself in questioning the Appellant indicated that this was an issue that may impact on the credibility of his claim. I have set out above the relevant passage of the transcript of the Tribunal hearing that deals with that question."

107. Thirdly, the appellant's representative's submissions. It is plain he understood the significance of the issue. During submissions, the representative stated, "*There was a question why raise money to go to Australia and not pay what we got.*" The representative then advanced a detailed explanation seeking to reconcile the appellant's conduct with his asserted fear of harm.

108. That submission demonstrates that the issue was not only understood but actively contested before the Tribunal. It also demonstrates that the appellant was afforded a genuine opportunity to address it.

109. We are satisfied this issue was adequately addressed also by the learned Judge at paragraphs 41 – 43 of his judgment:

> "41. Third, the appellant's representative clearly appreciated the significance of this issue as also recorded in the transcript reference above.
>
> 42. The appellant thus was given an opportunity to appreciate the significance of the issue identified in paragraph [54] of the Tribunal Decision. He was given a sufficient opportunity to give evidence and make submissions in relation to that issue in accordance with the requirements of SZBEL and SOS 005.

> 43. The appellant's argument as developed orally had a different focus from the written submission. The appellant fixed instead on paragraph [55] of the Tribunal Decision. He submitted that there were three adverse conclusions, only one of which was "obliquely" raised by the Tribunal and the other two not at all."

The Nature of Paragraph [54]

110. The appellant's argument depends upon characterising paragraph [54] as a new adverse conclusion requiring separate notification.

111. We cannot accept that characterisation. Paragraph [54] did not introduce a new issue, nor did it rely upon previously undisclosed information. It did not raise a matter external to the appellant's own evidence. Rather, it reflected an evaluative inference drawn from facts known to the appellant and discussed during the hearing.

112. The Tribunal reasoned that if the appellant genuinely feared serious harm because of a longstanding unpaid debt, the availability of substantial funds coupled with a complete failure to make any repayment tended to weaken the plausibility of that claim.

113. Whether one agrees with that reasoning or not, it is plainly an inference capable of being drawn from the evidence.

114. It is therefore precisely the kind of evaluative conclusion which *Commissioner for ACT Revenue*[10] recognises need not be separately disclosed before a decision is made. To require otherwise would effectively oblige tribunals to expose their entire reasoning process to comment before reaching a decision. That is not what procedural fairness requires.

Procedural Fairness and Merits Review

115. In our view, the appellant's argument ultimately confuses procedural fairness with merits review. The Tribunal was entitled to consider whether the appellant's conduct was consistent with his asserted fear. That assessment was a quintessential question of fact and credibility. Whether the Tribunal's reasoning was persuasive, compelling, or even correct is not the question before this Court.

116. The Court's concern is whether the appellant had an opportunity to address the matter from which that reasoning was drawn.

117. Once the issue was identified and ventilated during the hearing, procedural fairness did not require the Tribunal to provide a running commentary on the inferences it might ultimately draw. To impose such an obligation would fundamentally alter the character of administrative decision-making.

118. It would require tribunals to expose their evolving reasoning processes and invite submissions on every possible adverse inference. Neither *Kioa v. West*, *Commissioner of ACT Revenue v. Alphaone*, *SZBEL v. Minister for Immigration*, nor the authorities of this Court support such a proposition. Indeed, the authorities consistently reject it.

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[10] Commissioner for ACT Revenue v. Alphaone Pty Ltd (1994) 49 FCR 576

Conclusion

119. The appellant was on notice that his failure to repay the debt was regarded as relevant to the credibility of his claim. That issue had been identified in the Secretary's decision. It was expressly explored during the Tribunal hearing. And it was addressed by the appellant and by his representative.

120. The Tribunal's ultimate conclusion represented an evaluative assessment of material already known to the appellant and openly debated before the Tribunal. The Tribunal was not required to provide advance notice of the precise inference it intended to draw.

121. Accordingly, we are satisfied the requirements of procedural fairness, as explained in *Kioa v. West*, *Commissioner of ACT Revenue v. Alphaone*, *SZBEL v. Minister for Immigration and Multicultural and Indigenous Affairs*, and *SOS 005 v. Republic of Nauru*, were satisfied.

122. We have carefully considered the judgment of Brady J. and are satisfied those matters were thoroughly covered by him. We are satisfied no error of law has been established and accordingly the appeal should be dismissed.

ORDER OF THE COURT:

1. The appeal is dismissed.

Dated this 25 day of June 2026

Khan P
President of the Nauru Court of Appeal

Palmer JA
Justice of the Nauru Court of Appeal

Coates JA
Justice of the Nauru Court of Appeal