

JUDGMENT

1. **BY THE COURT:** This is an appeal from the judgment of his Honour Brady J delivered on 15 August 2025 dismissing an appeal brought by the appellant from a decision of the Refugee Status Review Tribunal (“the Tribunal”).
2. The Tribunal, by decision dated 27 March 2025, affirmed the decision of the Acting Secretary of the Department of Multicultural Affairs (“the Secretary”) refusing to recognise the appellant as a refugee and finding that he was not owed complementary protection under the *Refugees Convention Act 2012 (Nr)* (“the Act”).
3. The appeal before the Supreme Court, and now before this Court, concerns a single issue of procedural fairness. The appellant contends that the Tribunal failed to give him adequate notice of a matter which ultimately proved significant to the Tribunal’s adverse credibility findings.
4. The appeal is filed under section 19(2)(d) of the Nauru Court of Appeal Act 2018 (Court of Appeal Act), which provides:

“An appeal shall lie under this Part in any civil proceeding to the Court from any final judgment, decision or order of the Supreme Court sitting under the Refugees Convention Act 2012 in its appellate jurisdiction on questions of law only”.
5. The appeal is on an error of law being committed by the Tribunal in its decision:

“1. The Tribunal made errors of law in its decision.”
6. The details of the error of law are set out more fully in the amended notice of appeal filed in the Supreme Court of Nauru on 11th July 2025 and states:

“1. The finding at Reasons [33] was made following an unfair procedure.”
7. Accordingly, it is argued the whole process has been tainted by this error and the decision of the Supreme Court upholding the decision of the Tribunal be quashed, the matter be remitted back to the Tribunal for reconsideration with a different Tribunal to be reconstituted.

BACKGROUND

8. The appellant is a citizen of Bangladesh. He arrived in Australia and was subsequently transferred to Nauru on 18 February 2024, pursuant to the memorandum of understanding between the governments of Australia and Nauru.
9. On 4 March 2024, the appellant applied for refugee status determination.
10. The appellant claimed to fear persecution in Bangladesh on account of his support for the Bangladesh National Party (“BNP”). He alleged that he and members of his family

had been targeted by supporters of the Awami League (“AL”) because of his political activities and participation in BNP rallies and meetings.

11. The appellant claimed, among other things, that:

- (a) he attended BNP rallies and meetings;
- (b) he was assaulted by AL supporters in 2022 following participation in a BNP procession;
- (c) he was again attacked in December 2023 after attending a BNP rally; and
- (d) after his departure from Bangladesh, AL supporters continued to threaten his family.

THE SECRETARY’S DECISION

- 9. The Secretary accepted that the appellant was generally a supporter or follower of the BNP. However, the Secretary did not accept that the appellant held any significant role within the party or that his activities rose beyond low-level or social participation.
- 10. In particular, the Secretary observed that the appellant had variously described himself as a “supporter” or “follower” rather than a formal member of the BNP.
- 11. The Secretary also noted that the appellant had spoken of attending meetings at which matters such as senior appointments within the party were discussed, but that his explanations regarding those meetings lacked detail and clarity.
- 12. The Secretary concluded that the appellant’s claimed involvement at local party meetings was “*vague and more consistent with social rather than overt political activity*”.
- 13. Accordingly, the Secretary was not satisfied that the appellant faced a real chance of persecution for reasons recognised under the Act.

THE TRIBUNAL’S DECISION

- 14. The appellant sought review before the Tribunal.
- 15. Before the Tribunal, the appellant expanded aspects of his claim and suggested that he had attended approximately 18 protests and numerous BNP events at which he distributed leaflets and participated in discussions concerning party matters.
- 16. The Tribunal observed that, whereas the appellant had earlier stated in his refugee status determination interview that he was not a member of the BNP, he later claimed before the Tribunal that he was in fact a BNP member.
- 17. The Tribunal regarded this change in position as significant.
- 18. At [33] of its reasons, the Tribunal stated:

“The [appellant] was also unable to explain at RSD interview and hearing why, if he was a BNP supporter, he was at a BNP meeting where upcoming BNP senior appointments were being discussed ...”

19. The Tribunal further found at [34] that the appellant’s asserted BNP membership was “of recent invention”, having regard to his earlier statements and his inability to explain membership requirements. Paragraph [34] states:

“[34] While the Tribunal accepts the [Appellant] claimed at hearing he was a BNP member and therefore presumably eligible to attend meetings where BNP appointments were discussed, the Tribunal finds his alleged membership is of recent invention given his inability to discuss membership requirements and his previous evidence he was only a BNP supporter.”

20. The Tribunal ultimately rejected critical aspects of the appellant’s account and affirmed the Secretary’s decision.

THE SUPREME COURT’S DECISION

21. The appellant appealed to the Supreme Court pursuant to s 43 of the Act.
22. The sole ground advanced was that the Tribunal’s finding at [33] had been reached through an unfair procedure because the appellant had not been adequately alerted to the issue that his attendance at meetings concerning senior BNP appointments was considered implausible.
23. Before the Supreme Court, the appellant argued that it was insufficient for the Tribunal merely to remark that his attendance at such meetings “would seem strange”. It was submitted that procedural fairness required the Tribunal to squarely invite the appellant to explain why he attended those meetings.
24. Brady J rejected that contention.
25. His Honour concluded that the Tribunal’s questioning was sufficient to place the appellant on notice that the credibility of his account concerning attendance at BNP meetings was in issue.
26. His Honour also observed that the Secretary’s earlier findings had already identified concerns regarding the appellant’s claimed involvement in BNP political activity.
27. The appeal was therefore dismissed.

THE APPEAL TO THIS COURT

28. The appellant advances substantially the same arguments before this Court.
29. Counsel for the appellant submits that the Tribunal failed to afford procedural fairness because:

- (a) the Tribunal regarded the appellant's attendance at meetings concerning senior BNP appointments as implausible;
 - (b) the Tribunal ultimately relied on the appellant's alleged failure to explain that matter; but
 - (c) the Tribunal never squarely asked the appellant to provide such an explanation.
30. The appellant submits that merely stating that his attendance "*would seem strange*" was insufficient to alert him to the significance of the issue.
31. The respondent on the other hand, submits that the issue was adequately identified and that the appellant was plainly on notice that the Tribunal doubted aspects of his account.
32. The respondent further submits that the Tribunal was not required to expose all aspects of its reasoning process¹ or provide a running commentary on concerns arising from the evidence.

CONSIDERATION

33. The applicable principles concerning procedural fairness in refugee review proceedings are well established.
34. In *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs*², the High Court observed that an applicant is ordinarily entitled to assume that the issues arising on review are those identified by the original decision-maker unless some different issue later emerges.
35. At the same time, the Tribunal is not required to expressly accuse an applicant of dishonesty or articulate every step in its reasoning process.
36. As the High Court stated in *SZBEL*, it is not necessary, and may often be inappropriate, for a tribunal to state in terms that an applicant is lying or embellishing his account.
37. Similarly, in *SZHKA v Minister for Immigration and Citizenship*³, Gray J explained that while an applicant must be informed of issues arising on review, the Tribunal is not obliged to expose all of its thought processes.
38. In the present case, we are satisfied that the appellant was given adequate notice that the credibility of his claimed attendance at BNP meetings was in issue.
39. First, the Secretary's decision had already identified concerns regarding the appellant's level of political involvement and the vagueness of his explanations concerning party meetings.

¹ *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs*, [2006] 228 CLR 152 at [24], [38]-[39]; see also *SZHKA v Minister for Immigration and Citizenship*, [2008] 172 FCR 1 at [7]

² [2006] 228 CLR 152 at [38]-[39].

³ [2008] 172 FCR 1.

40. The appellant was therefore already aware that the nature and extent of his participation in BNP activities were disputed matters.
41. Secondly, during the Tribunal hearing itself, the Tribunal directly raised the apparent inconsistency between the appellant's claim to be merely a supporter and his attendance at meetings involving discussion of senior BNP appointments.
42. The Tribunal expressly stated to the appellant:

“if you are not a member, a BNP member, *it would seem strange* that you were at a meeting where possible senior positions were being discussed.”
43. In our view, that observation was sufficiently clear to alert the appellant that the Tribunal regarded his account as potentially implausible.
44. Importantly, the appellant immediately responded by attempting to explain the matter, stating in substance that although senior members may have had more detailed discussions among themselves, he attended meetings whenever he was invited.
45. That exchange demonstrates that the appellant understood the concern being raised and appreciated its significance.
46. We do not accept the submission that procedural fairness required the Tribunal to go further and expressly request an additional explanation in more detailed or formulaic terms.
47. The Tribunal was conducting an inquisitorial review process, not adversarial litigation. The principles in *Browne v Dunn*⁴ did not require the Tribunal to progressively disclose every adverse inference under consideration.
48. Nor was the Tribunal required to provide the appellant with what was, in substance, a further opportunity to improve or reconstruct his evidence after its concerns had already been identified.
49. The appellant's argument, properly analysed, seeks to impose an obligation upon the Tribunal to expose its evaluative reasoning in a level of detail not required by the authorities.
50. We agree with Brady J that the Tribunal's questioning, viewed in context and together with the Secretary's earlier findings, adequately identified the issue arising for consideration.
51. We are satisfied no procedural unfairness has been demonstrated.

⁴ (1893) 6 R 67

52. We are satisfied the appellant has failed to establish any error on the part of the Supreme Court and accordingly, the appeal should be dismissed.

ORDER:

1. Appeal dismissed.

DATED this 22 day of May 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