



**IN THE NAURU COURT OF APPEAL
CIVIL APPELLATE JURISDICTION
AT YAREN**

Civil Appeal Number 27 of 2025
Supreme Court Civil Case Number
21 of 2025

BETWEEN: AU25 Appellant

AND: Republic of Nauru Respondent

BEFORE: Khan P
Palmer JA
Coates JA

Date of Hearing: 07 May 2026
Date of Judgment: 22 May 2026

Case may be cited as: AU25 v The Republic

CATCHWORDS: Procedural fairness – Tribunal relied on information in a document which is adverse to the appellant – Whether it is obliged to disclose the entire document or whether it is required to provide information adverse to the appellant – Sections 22 and 49 of the Act considered.

APPEARANCES:

Counsel for the appellant: A Aleksov (instructed by International Crossover Pty Ltd)
Counsel for the respondent: J Lucas (instructed by the Republic of Nauru)

JUDGMENT

1. **BY THE COURT:** The appellant is 19 years old and is a citizen of Bangladesh. He left Bangladesh on 5 December 2023 and travelled with his elder brother via Malaysia and Indonesia. The elder brother will be referred to as [D].
2. He arrived in Australia in May 2024 and on 1 June 2024 he was transferred to Nauru pursuant to the memorandum of understanding between the governments of Nauru and Australia.
3. On 28 June 2024 the appellant made an application for Refugee Status Determination (RSD). He claimed inter alia that his family are Bangladesh National Party (BNP) supporters and particularly through his elder brother [D]; that Awami League (AL) members burnt down his family house and if he were to return to Bangladesh his life will be in danger.
4. On 27 September 2024 the Secretary of Multicultural made a determination that the appellant was not recognised as a refugee under the *Refugees Convention Act 2012* (the Act) and he was not owed complementary protection under the Act.
5. During the hearing the Tribunal relied on [D]'s statement and provided the appellant with information contained therein which was inconsistent with his evidence. At the hearing the appellant's legal representative asked for the entire statement to be disclosed and the Tribunal refused to do so relying on s.49 of the Act¹.
6. On 10 October 2024 the Tribunal delivered its determination affirming the determination of the Secretary.
7. On 23 April 2025 the appellant filed an appeal in the Supreme Court and at the appeal hearing the primary judge was provided with a copy of [D]'s statement which was part of the refugee determination process.

APPEAL IN SUPREME COURT

8. The appellant's ground one of the appeal stated that the Tribunal's decision was made in pursuit of unfair procedure because the Tribunal did not give the whole of the brother's [D] statement.
9. On 19 November 2025 the primary judge delivered his judgment and dismissed the appeal and found that the Tribunal was not required to provide the full statement of [D] and all it was required to do was to provide "information" which contained adverse information that was credible, relevant and significant, that the Appellant was provided with that information as part of the hearing process; and he was given the opportunity to comment on that information, and in fact did so. The Tribunal thus met its obligations under s 22(b) of the Act. It also met its obligation under s 49 of the Act.

¹ CBP22 line 18.

10. This appeal relates to ss22 and 49 of the Act and which we will set out the two sections:

s22 The Tribunal:

- a) is not bound by technicalities, legal forms or rules of evidence; and
- b) shall act according to the principles of natural justice and the substantial merits of the case.

s49 Disclosure of certain information

(1) This Section applies to information that:

- (a) is given to the Secretary or the Tribunal in confidence; or
- (b) is of a kind prescribed by the Regulations.

(2) Where the Secretary or the Tribunal receives information to which this Section applies, the Secretary or the Tribunal, as the case requires:

- (a) may, for the purpose of the exercise of powers under this Act, have regard to the information; and
- (b) shall, if intending to rely on the information for the purpose of the exercise of powers contrary to the interests of the applicant, disclose the information to the applicant.

(3) Where the Secretary or the Tribunal discloses information to the applicant under subsection (2)(b), the Secretary or the Tribunal, as the case requires, may give a direction to the applicant that the information shall not be disclosed except in a specified manner and to specified persons, or to persons of a specified class.

- 11. Mr Aleksov in very strong terms asked us to declare that the law in Nauru should be to provide the entire document rather than just the information under s49 of the Act. He submitted that the Tribunal in this case was focussed on what s49 required rather than what procedural fairness required.
- 12. Ms Lucas of counsel for the respondent conceded that there is an overriding requirement to afford procedural fairness and she submitted that the case authorities required that an applicant should only be given notice of information that is credible, relevant and significant to the case and the information has to be adverse.
- 13. Ms Lucas submitted that there is an interaction between s49 and the common law principles of procedural fairness and that they are consistent with each other – it requires information to be put that is credible, relevant, significant and adverse to the applicant.

14. Ms Lucas further submitted that this case did not require [D's] entire statement to be disclosed to the applicant at the Tribunal hearing as that would be contrary to the well established law and principles on provision of adverse information; and that the applicant had the statement at the hearing of the appeal in the Court below and has not said anything additional that would amount to practical injustice had he been provided with the statement at the Tribunal hearing – and his counsel's submissions that he might have said something about the statement is entirely speculative and should not be taken into account in the assessment of practical injustice.
15. Ms Lucas submitted that the primary judge at [14] of the judgement stated that on five occasions [D's] was mentioned in the Tribunal hearing and that His Honour referred to the first instance at [15] of the judgement as the incident relating to "*house fire and amount of food burned*" at [16] relating to "*procession and campaign*" and [17] relating to "*the applicant's presence when the house was burned down*".

CONSIDERATION

16. In the Court below both counsels made very comprehensive submissions on legal authorities surrounding the issues of procedural fairness.
17. Mr Aleksov relied on *BRF038 v The Republic*² in which the High Court referred to the *Minister for Immigration and Border Protection v SZSSJ*³ and [58] it referred to *SZBEL v Minister for Immigration, Multicultural and Indigenous Affairs*⁴ and at [60] to *Kioa v West*⁵.
18. Mr Aleksov submitted that "...a failure to give credible, relevant and significant information to a person deprives them of procedural fairness, regardless of whether it was adverse material"⁶.
19. The Republic's counsel in the Court below submitted that *BRF038* was referring to adverse information and it relied on *SZBEL* in which the High Court quoting from *Commissioner for ACT Revenue v Alphaone*⁷. His Honour referred to a passage in *Alphaone* to the following effect⁸:

Where the exercise of a statutory power attracts the requirement for procedural fairness, a person likely to be affected by the decision is entitled to put information and submissions to the decision-maker in support of an outcome that supports his or her interests. That entitlement extends to the right to rebut or qualify by further information, and comment by way of submission, upon adverse material from other sources which is put before the decision-maker. It also extends to require the decision-maker to identify to the person affected any issue critical to the decision which is not apparent from its nature or the terms of the statute under which it is

² [2017] HCA 44, (2017) 91ALJR 1197

³ (2016) 90 ALJR 901 at 915 [83]; 33 ALR 653 at 670; [2016] HCA 29

⁴ (2006) 228 CLR 152 at 161-162 [29]; [2006] HCA 63

⁵ (1985) 159 CLR 550 at 629; [1985] HCA 81

⁶ [27] of the judgement

⁷ (1994) 49 FCR 576 at 591-592.

⁸ [34] of the judgement

made. The decision-maker is required to advise of any adverse conclusion which has been arrived at which would not obviously be open on the known material. Subject to these qualifications however, a decision-maker is not obliged to expose his or her mental processes or provisional views to comment before making the decision in question.” [emphasis added]

20. The respondent’s counsel relied on *Saeed v Minister for Immigration and Citizenship*⁹ and *Kioa v West*¹⁰ where Brennan J stated as follows:

Nevertheless, in the ordinary case where no problem of confidentiality arises, opportunity should be given to deal with adverse information that is credible, relevant and significant to that decision to be made. [emphasis added]

21. Counsel for the Republic also relied on the case of *Applicant Veal of 2002 v Minister for Immigration, Multicultural and Indigenous Affairs*¹¹ and His Honour having summarised the cases at [54] of the judgement stated that:

“...first that ‘in ordinary cases where no problem of confidentiality arises, an opportunity should be given to deal with the adverse information that is credible, relevant and significant to the decision to be made...”

22. His Honour after analysing the case authorities rejected the appellant’s contention that *BRF038* says nothing about the information to be “adverse”. His Honour also noted that this Court relied with approval on relevant paragraphs of *Alphaone in HFM038 v Republic*¹².

PROCEDURAL FAIRNESS

23. His Honour made findings that under the common law principles of procedural fairness the obligation on the Tribunal was to provide the appellant with notice of information adverse to his case which was “credible, relevant and significant”.

TRIBUNAL’S OBLIGATIONS UNDER SS 22(b) AND 49 OF THE ACT

24. His Honour’s findings in relation to the Tribunal’s obligations under ss22(b) and 49 of the Act was that it was not obliged to provide [D’s] statement to the appellant. It’s obligation was to provide the information contained in that statement and not the document itself. The appellant was provided with adverse information that was credible, relevant and significant and he was given the opportunity to respond to that information and in fact he did so. Thus, the Tribunal complied with the obligations under ss22(b) and 49 of the Act.

25. We agree with His Honour’s findings.

26. The appeal is dismissed.

⁹ (2010) 24 CLR 252 at 256 [2] at [35] of the judgement

¹⁰ (1985) 159 CLR 550 at [36] of the judgement

¹¹ (2005) 225 CLR 88

¹² [2023] NRCA 14 at [14] at [57] of the judgement

ORDER

1. The appeal is 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

