



**IN THE SUPREME COURT OF NAURU**

**AT YAREN**

Appeal No.8 of 2025

**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:**

**AH25**

Appellant

**AND:**

**REPUBLIC OF NAURU**

Respondent

**Before:**

Brady J

**Dates of Hearing:**

30 April 2025

**Date of Judgment:**

04 July 2025

**CITATION:**

*AH25 v Republic of Nauru*

**CATCHWORDS:**

APPEAL – Refugees – Refugee Status Review Tribunal – Whether the Tribunal denied procedural fairness to the Appellant by failing to consider submissions pursuant to s 43(1) *Refugees Convention Act 2012* (Nr) – Where it was found that Appellant’s representative did not disclaim reliance on Generic Submissions – The Tribunal did not fail to consider the Generic Submissions –The Appellant did not in any event clearly advance submissions based on the Generic Submissions – APPEAL DISMISSED.

**LEGISLATION AND OTHER MATERIAL:**

*Refugees Convention Act 2012* (Nr) ss 43, 44.

**CASES CITED:**

*Navoto v The Minister for Home Affairs* [2019] FCAFC 135 at [85]-[89];  
*Minister for Home Affairs v Buadromo* (2018) 267 FCR320 at [48];  
*Plaintiff M21/201 v Minister for Home Affairs* (2022) 275 CLR 582 at [25]-[27].

**APPEARANCES:**

Counsel for Appellant: Mr A Aleksov (instructed by Craddock Murray Neumann)

Counsel for Respondent: Mr N Wood SC (instructed by Republic of Nauru)

# JUDGMENT

## INTRODUCTION

1. The Appellant is a Bangladeshi national. On 22 June 2024, he made an application to be recognised as a refugee, or a person owed complementary protection. He claims to fear persecution in Bangladesh for the reason of his imputed political opinion as a supporter of the Bangladesh National Party (BNP).
2. Pursuant to s 43 of the *Refugees Convention Act 2012* (Nr) (**the Act**), the Appellant appeals from a decision of the Refugee Status Review Tribunal (**Tribunal**) made on 9 February 2025 (**Tribunal Decision**). The Tribunal affirmed a decision of the Acting Secretary of Multicultural Affairs (**Secretary**) dated 6 September 2024 (**Secretary's Decision**) not to recognise the Appellant as a refugee. The Secretary further found that the Appellant is not owed complementary protection under the Act.
3. By s 43(1) of the Act, the Appellant may appeal to this Court on a point of law.
4. 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 consideration in accordance with any directions of this Court.
5. Under s 44(2), this Court may also make an order declaring the rights of a party or an order quashing or staying the Tribunal Decision.

## GROUND OF APPEAL

6. In his Amended Notice of Appeal dated - 9 April 2025, the Appellant advances a single ground of appeal in these terms:

"The Tribunal denied procedural fairness to the Appellant by not considering the submissions dated:

  - i. 24 June 2024;
  - ii. August 2024; and
  - iii. 26 September 2024."
7. The Appellant contends that his appeal on a point of law under s 43(1) should be allowed and the Court should make orders under s 44(2)(b) of the Act that the decision of the Tribunal be quashed and pursuant to s 44(1)(b) of the Act that the matter be remitted to the Tribunal for reconsideration.

## FACTUAL BACKGROUND

8. The following matters are advanced by the Appellant as the basis of his claim for protection.

9. The Appellant became involved in the Chhatra Dal (student wing) of the BNP during his secondary schooling, at the encouragement of his uncle. He would actively attend the party programs, meetings and rallies. During this time, he was beaten up by members of the ruling Awami League (AL) student wing.
10. The Appellant was raised in a family that supported the BNP and other supporters of the BNP would congregate at a tea shop owned by the Appellant's father where the Appellant would also spend time and work.
11. AL supporters attacked the tea shop on seven to eight occasions and the Appellant's family home on two or three occasions.
12. In 2022, the Appellant relocated to Dhaka where he lived and worked with his cousin, but AL supporters traced him to where he was living, causing him to move residence. AL supporters also found his place of employment and told his employer not to employ him any longer.
13. The Appellant decided to flee Bangladesh and his parents sold some land to enable him to do so.
14. The Appellant says that he did not hold a position of influence or power in the BNP, but he was an adamant supporter of that party which raised his profile with the AL.
15. The Appellant fears persecution in Bangladesh due to his political opinion as a BNP supporter and because of his uncle's involvement in the BNP.

#### **PROCEDURAL HISTORY**

16. The Appellant arrived in Australia on 3 May 2024. On 1 June 2024 he was transferred to Nauru pursuant to the memorandum of understanding between the governments of Nauru and Australia.
17. On 22 June 2024, the Appellant made an application for Refugee Status Determination.
18. On 6 September 2024, the Secretary decided that the Appellant was not recognised as a refugee under the Act. The Secretary also determined that the Appellant was not owed complementary protection under the Act because he was not a person to whom Nauru owed protection obligations under the Refugee Convention.
19. The Appellant lodged an application for review to the Tribunal on 12 September 2024.
20. The Appellant signed a further statement dated 6 December 2024. On 10 December 2024, the Appellant's representative provided detailed submissions to the Tribunal in relation to the Appellant's claim (**10 December Submission**).
21. On 14 December 2024, the Appellant appeared before the Tribunal to give evidence and present arguments. He was assisted by an interpreter and his representative also attended the hearing and made submissions.
22. The Tribunal Decision was delivered on 9 February 2025 affirming the determination of the Secretary.

23. This appeal was filed on 13 February 2025. An Amended Notice of Appeal was filed on- 9 April 2025. I heard argument on the appeal on 30 April 2025.

## GROUND OF APPEAL

### *Appellant's Arguments*

24. I have noted above the Appellant's representative provided the 10 December Submission in support of the Appellant's claims.
25. In addition to the 10 December Submission, the Appellant argues that his representatives had filed submissions containing country information on 24 June 2024, in August 2024 and on 26 September 2024 (collectively, the **Generic Submissions**<sup>1</sup>). There is some lack of clarity about the precise circumstances in which, and the dates on which, those Generic Submissions were filed. I address that lack of clarity further below. Nevertheless, for the purposes of this appeal, I am invited to assume that the three Generic Submissions contained in the Appeal Book of Documents were before the Tribunal at the time it made its decision.
26. The Tribunal referred to the Generic Submissions in the following terms at [44] of the Tribunal Decision:
- [44] After the break, the representative said his preliminary view was that any previous generic claims made in previous general submissions [footnote omitted] were not relevant to this case, however he would look at them in more detail. He also referred to his recent submission dated 8 December 2024. (sic)
27. The reference to a "recent submission" dated 8 December is apparently a reference to the 10 December Submission. There is no dispute by the parties as to that.
28. There is also reference in the above extract to a footnote being omitted. It is footnote 7 which is in the following terms:
- The Claims Assistance Providers (CAPs) made detailed submissions with country information on 24 June 2024, in August 2024 and 26 September 2024, to support ongoing applications from Bangladesh applicants. They covered a range of issues that were of potential relevance to individual applicants.
29. The Appellant says that in general terms, his submissions are to be understood as having advanced a position based on country information that was "less optimistic" than that which the Tribunal identified, especially in relation to the impact of the fall of the AL national government.
30. The Appellant argues that the Tribunal did not consider these three submissions. The Appellant submits that the Tribunal's statement at [44] extracted above did not accurately represent what was said by the Appellant's representative at the Tribunal hearing.

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<sup>1</sup> By referring to the submissions as "generic", I do not seek thereby to use that term in any pejorative sense. I use the term only to distinguish these submissions from the "specific" submission filed in respect of, and addressing the particular circumstances of, the Appellant.

31. The transcript of the hearing before the Tribunal is set out in the Appeal Book. However, both parties agreed that the relevant passage is not accurately recorded in the transcript contained in the appeal book. The parties agree for the purposes of this appeal that the exchange was relevantly in these terms as set out in the Republic's submissions on this appeal at paragraph [12]:

Ms Boddison: And just before that, we just want to raise something with you, Franc. The three generic submissions that raised a number of claims, are those claims relevant to this matter? The fear of people smuggling the failed asylum seeker claims?

Mr Del Monaco: There's three of them?

Ms Boddison: Or I think there's also trafficking, someone who's a victim of trafficking.

Mr Del Monaco: I would say not at this stage.

Ms Boddison: (Indistinct) sorry. Can I have it - could you ....

Mr Del Monaco: Well, I will look at them in more detail, I'm sure I've looked at them before, with regards to this particular appellant. [sic] And I can confirm that the previous submission just in the last few days ago has been received, and the updated statement as well?

Ms Boddison: Yes.

32. The Appellant argues that, "although enigmatic", the transcript extract above does not demonstrate the representative disclaiming reliance on the three submissions as to country information. The Appellant draws attention to paragraphs [4] and [5] of the 10 December Submission which relevantly were in the following terms:

[4] These submissions are to be read in conjunction with all of the other evidence, information and submissions that have been provided in support of [the Appellant's] application to be recognised as a refugee.

[5] We continue to rely on all evidence and submissions previously provided by, or on behalf of, [the Appellant]"

33. The Appellant argues that whilst the Generic Submissions were general submissions as to country information, in the context of the relationship between the Appellant's representative and the Tribunal, each were plainly submissions "provided in support of [the Appellant's] application to be recognised as a refugee" as stated in paragraph [4] of the 10 December 2024 Submission.

34. The Appellant argued that Ms Boddison's questions extracted above were not an effort by her to seek clarity as to what to make of the three Generic Submissions. Instead, she was referring to "claims", not "information". She identified three

particular claims: fear of people smuggling, failed asylum seekers and people trafficking. None of those three “claims” was relevant to the Appellant’s case.

35. The Appellant argues that he is entitled to start the review process in the Tribunal with an assumption that there has been compliance with s 32(3) of the Act, which requires the Secretary to give to the Registrar of the Tribunal each document that is in his or her possession and is considered by the Secretary to be relevant to the determination or decision. The Appellant further submits that the Secretary willingly participated in the practice of the provision of generic submissions and, it is apparent, provided those submissions to RSD officers “for consideration when preparing for your interviews”.<sup>2</sup>
36. Mr Aleksov submitted that it is not appropriate to criticise CAPs for the practice of the provision of generic submissions as, in truth, there was no uncertainty facing the - RSD officers in respect of what material was before them. There was an established practice that was being followed, without dissent by the Secretary or the RSD officers. Whilst accepting the process adopted was “sub-optimal”, Mr Aleksov for the Appellant denied the criticisms of the Republic about the conduct of CAPs in providing myriad generic submissions.
37. On 24 September 2024, Ms Boddison of the Tribunal wrote to Ms Prasad of CAPs in the following terms:

In relation to the current Bangladesh caseload some general submissions that do not relate to a particular applicant have been provided to the Tribunal. One is headed “Bangladesh” and it appears to have been prepared in June 2024. The second is headed “recent changes in Bangladesh” and appears to have been prepared in August 2024.

Could you please clarify:

- If there are any other general submissions that you wish the Tribunal to consider.
  - Whether these two submissions are to be considered in all review applications by people from Bangladesh or whether aspects confined are confined to a particular boat. For example, the June submissions in the people trafficking section refers to a fisherman who returned to Indonesia and was interviewed by the press, we assume that this related one boat only and if so which boat.
38. Ms Robson of CAPs responded on behalf of Ms Prasad on 25 September 2024. Her response was relevantly in these terms:

The reasons the general submissions were provided was due to the large RSD caseload CAPs had, as well as the fact the interviews were occurring back-to-back over a period of three weeks and in front of, from memory, at least 12 different decisionmakers. It was simply not practical to respond to every applicant with individual submissions unless there were very specific issues

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<sup>2</sup> Ex 1, p.35, email from Adriana Mercado to RSD officers dated 30 June 2024.

raised at interview. Nonetheless we felt it was important that CAPs provided country information that may otherwise have been overlooked or disregarded by decision makers. The information provided therefore is available to be considered by the Tribunal with respect for all applicants under review under whichever subheading is relevant.

If it was found following an interview it was important CAPs provided a specific submission for an individual applicant, the intention was their claim could be summarised in a briefer submission, and the relevant supporting information could be referred to under one of the subheadings contained in the submission/s.

39. Mr Aleksov submits that this exchange demonstrates that whilst the Tribunal was given a sub-optimal explanation of what was occurring, the Tribunal left it at that without themselves taking any further steps to clarify the import of the general submissions made.
40. The Appellant argues that there are essentially two aspects of his arguments on this appeal. First, this Court must determine whether the Appellant's representative disclaimed the Generic Submissions. The Appellant says that despite some ambiguity about the passage from the transcript extracted above, and the somewhat "sub-optimal" manner in which the submissions were provided and relied upon by the Appellant (and other applicants too), it is clear enough that the Appellant's representative did not disclaim reliance on the Generic Submissions.
41. Second, the Appellant contends that this Court is required to determine whether the Generic Submissions were considered and evaluated by the Tribunal. He submits that the impression one gains from paragraph [44] and footnote 7 of the Tribunal Decision is that the Tribunal took the view that the Generic Submissions in whole were no longer valid. One does not see any discussion in the Tribunal Decision of the contents of the Generic Submissions on the availability of state protection in Bangladesh in light of then-recent political changes in that country.
42. Accordingly, the Appellant contends that the Tribunal did not afford procedural fairness to the Appellant by failing to consider submissions he advanced to the Tribunal.

#### *Republic's Arguments*

43. In addition to paragraph [44] of the Tribunal Decision extracted above, the Republic draws attention to paragraph [85] which is in the following terms:

[85] The [Appellant's] representative has not withdrawn his statement at hearing that it was his preliminary view that any previous generic claims made in previous general submissions were not relevant to this case and has not provided any further material. Given the [Appellant] did not put forward any other reasons why he could not return to Bangladesh, the Tribunal has proceeded on the basis that the [Appellant's] claims are as presented in his two statements, and his evidence at hearing as well as contained in the representative's written

submissions dated 8 December 2024 [sic] and oral submissions. These set out the totality of the [Appellant's] claims.

44. In light of the terms of the transcript of the hearing before the Tribunal as extracted above, the Republic contends that the Tribunal's statement at [44] of the Tribunal Decision is accurate.
45. In any event, the Republic submits that the better view is that the Tribunal was seeking to confirm with the Appellant's representative that, insofar as the Generic Submissions contain information that might be relevant to claims that were not actually advanced by this Appellant, those claims were not made. To put it another way, the Tribunal was not suggesting that none of the information in the submissions which might have been relevant to claims that were made was relied on.
46. The Republic also points to authority that the Tribunal was not required to refer in its reasons for decision to every piece of evidence before it: *Navoto v The Minister for Home Affairs* [2019] FCAFC 135 at [88]. Further, the Tribunal was not required to give a "line by line" reputation of the evidence of the Appellant either generally or in those respects where there is evidence that is contrary to findings of material fact that made by the Tribunal: *Minister for Home Affairs v Buadromo* (2018) 267 FCR320 at [48]. The Tribunal must give the reasons for its decision, and not the subset of reasons why it accepted or rejected individual pieces of evidence. Here, the Tribunal identified the country information on which it relied.
47. Counsel for the Republic took me through a detailed consideration of Exhibit 1 which is a bundle of documents headed "Respondent's Tender Bundle". Having taken the Court through the various circumstances in which the Generic Submissions came to be provided to the Tribunal (and other submissions as well), Mr Wood SC for the Republic submitted that none of the communications from CAPs made the Tribunal's life easy and that the relevance of each submission to a particular case was murky at best.
48. The Republic noted that in addition to the Generic Submissions, there were also other general submissions. There was one headed "Submission on Human Trafficking" dated 19 June 2024. There was an undated submission headed "Bangladesh". The multitude of general submissions provided during the course of 2024 pointed to an "extremely confusing picture that was created by CAPs."
49. The Republic submits that there are essentially two reasons why the appeal ought to fail. First, the absence of reference to an item of information in reasons does not necessarily justify an inference that the item of information was not considered. The absence of reference to an item of information here is explained by the Tribunal having expressly rejected the Appellant's claims as to his activities, the finding that his support for the BNP was minimal and the fact that nothing in the Generic Submissions demanded attention in the circumstances of those findings.
50. Second, the Republic submits that submissions based on the Generic Submissions were not made clearly. The relevance of the submissions was not identified. The way that the case was run before the Tribunal did not demand consideration of the totality of the Generic Submissions. The Republic draws attention to the transcript of the

hearing as extracted above. It also relies on what was said in the 10 December Submission, in particular at paragraphs [37] to [44] where the Republic submits that an “extremely high-level submission” was made as to the country information regarding human rights violations. Paragraph [38] referred to “relevant material” being included as necessary which the Republic submitted could reasonably be understood by the Tribunal as a signal that the Appellant would tell the Tribunal what mattered. However, the submission then did not go on to refer to relevant material from the Generic Submissions beyond what was there set out.

51. The Republic submits that it does not behove the Appellant to come to this Court, having given the Tribunal no assistance to understand what is relevant amongst the mass of information in the Generic Submissions, to complain that the Tribunal made a legal error by not considering information which was not identified as being in some way relevant to the matter.

#### *Consideration of Ground 1*

52. There are three fundamental questions that this case raises for consideration. First, did the Appellant’s representative disclaim reliance on the Generic Submissions? Second, if he did not, am I satisfied that the Tribunal did not consider the relevant parts of the Generic Submissions in reaching its decision? Third, did the Appellant clearly advance submissions based on the Generic Submissions?

#### Did the Appellant’s Representative Disclaim Reliance on the Generic Submissions?

53. Neither of the parties framed their argument on the basis that the Appellant’s representative had disclaimed reliance on the Generic Submissions. Notwithstanding that, the natural starting point is a consideration of the exchange between the Tribunal and the Appellant’s representative to understand the approach of the Tribunal and to confirm that in saying what he did, the Appellant’s representative was not stating that the Generic Submissions were entirely irrelevant to this claim.
54. The Appellant’s representative (Mr Del Monaco) was asked at the Tribunal hearing whether the three Generic Submissions that “raised a number of claims” raised claims that were “relevant to this matter?”. The Tribunal Chair then specified three “claims”: fear of people smuggling, failed asylum seekers and also people trafficking. None of those “claims” related to the Appellant’s matter.
55. Mr Del Monaco was not asked whether any *information* (as opposed to *claims*) in the three Generic Submissions was relevant to the Appellant’s case. He was not asked to specify which parts of the Generic Submissions might be relevant to the claims actually made by the Appellant before the Tribunal.
56. At [44] of the Tribunal Decision, the Tribunal stated that Mr Del Monaco said that his preliminary view was that any previous generic *claims* made in previous general submissions were not relevant to this case. Footnote 7 to that paragraph records the three Generic Submissions and says that “they covered a range of *issues* that were of potential relevance to individual applicants”. I agree with the Republic’s submission that, despite some ambiguity, the Tribunal was seeking to confirm that, insofar as the Generic Submissions contained information that might be relevant to *claims* that were not actually advanced by the Appellant, those claims were not made. The Tribunal

was not making some general plea for assistance as to what, if anything, was relevant in the Generic Submissions.

57. Thus, it can be seen that Mr Del Monaco was not, by his statement to the Tribunal, disclaiming reliance on all potentially relevant aspects of the Generic Submissions. He was asked about “claims”, and three particular claims, none of which was relevant to the Applicant’s case. Simply he was responding to say that the three “claims” identified by the Tribunal were not relevant to the Appellant’s case.
58. Given the distinct lack of clarity in the Tribunal’s questions, and the specific reference to three particular *claims* (none of which was relevant to the Appellant), it cannot be concluded that Mr Del Monaco disclaimed reliance on the Generic Submissions beyond a submission that they did not set out any relevant *claims*.

#### Did the Tribunal Consider the Generic Submissions?

59. The useful starting point in answering the question whether the Tribunal in fact considered the Generic Submissions is the examination of the Full Federal Court of Australia in *Navoto*. Commencing at [85], the Full Court said the following:

[85] ...[I]f a decision-maker ... overlooks a substantial, clearly articulated argument advanced as demonstrating a reason why a cancellation decision should be revoked, which if accepted would or could be dispositive of the decision, the decision-maker may, depending on the seriousness of the error, commit a jurisdictional error: *Viane v Minister for Immigration and Border Protection* [2018] FCAFC 116; 162 ALD 13 at [30] per Rangiah J, cited in *Hay v Minister for Home Affairs* [2018] FCAFC 149 at [10] per Colvin J, with White and Moshinsky JJ agreeing and *DRP17* at [47] per Jagot, Rangiah and Banks-Smith JJ; see also *Maioha* at [49] per Rares and Robertson JJ.

[86] A number of these authorities were considered by the primary judge at first instance. Having surveyed the authorities, his Honour expressed at [47] the following summary of the key principles, which we respectfully adopt:

“ ... it can be taken that a failure to consider or take into account matters of sufficient importance in the representations may amount to jurisdictional error either because it cannot be said that the required state of satisfaction has been reached in accordance with the section in all the circumstances, or because not to take such an important matter into account reflects a failure to take into account all the representations. One should be cautious about over reliance on textual taxonomical precision in this area. There will be jurisdictional error if material important in the representations has not been taken into account so as to make the purported exercise of the power not one that can be seen or characterised as being based on, or having taken into account, the representations as a whole. An evaluation of this will be context and circumstance specific. Textual formulae are of little assistance.”

[87] Moreover, in addressing a clearly articulated argument advanced by the person making representations, a decision-maker ... is required to give active

intellectual consideration to those representations: *Carrascalao v Minister for Immigration and Border Protection* [2017] FCAFC 107; 252 FCR 352 (Carrascalao) at [43]-[46] per Griffiths, White and Bromwich JJ and *Buadromo* at [42] per Besanko, Barker and Bromwich JJ. The person making the representations and submissions should not be left to guess what role material considerations have played in the decision: *Lafu v Minister for Immigration and Citizenship* [2009] FCAFC 140; 112 ALD 1 (Lafu) at [49] per Lindgren, Rares and Foster JJ. This is particularly important where the consequences of these considerations have serious human consequences, such as deportation and exclusion from Australia: *Hands* at [3] per Allsop CJ, with Markovic and Steward JJ agreeing.

[88] This, however, “does not require the decision-maker to refer in the reasons for decision to every piece of evidence and every contention made by an applicant”: *Carrascalao* at [45]. And, importantly, decision-makers ... are not required to consider a reason in favour of revocation not advanced by the person making representations to the decision-maker: *Sowa v Minister for Home Affairs* [2019] FCAFC 111 at [43] per Jagot, Bromwich and Thawley JJ, citing *Minister for Immigration and Border Protection v BHA17* [2018] FCAFC 68; 362 ALR 9 at [79(3)] and [80] per Robertson, Moshinsky and Bromwich JJ.

[89] Excluding obvious cases, the determination of whether the decision-maker has given active intellectual consideration to a representation will frequently be a matter of impression reached in light of all of the circumstances of the case. In this context, whether or not the reasons of the decision-maker fall “on the wrong side of the line”, to quote *Lafu* at [49], will be a matter of inference to be drawn in particular from the manner in which the representation was advanced, and the structure, tone and content of the decision-maker's reasons. What is required by a court upon judicial review is a qualitative assessment as to whether the decision-maker has, as a matter of substance, had regard to the representations made: *Maioha* at [45] per Rares and Robertson JJ

60. In *Plaintiff M21/201 v Minister for Home Affairs* (2022) 275 CLR 582, the High Court said this at [26]-[27] (footnotes omitted):

[26] Labels like “active intellectual process” and “proper, genuine and realistic consideration” must be understood in their proper context. These formulas have the danger of creating “a kind of general warrant, invoking language of indefinite and subjective application, in which the procedural and substantive merits of any [decision-maker's] decision can be scrutinised”. That is not the correct approach. As Mason J stated in *Minister for Aboriginal Affairs v Peko-Wallsend Ltd*, “[t]he limited role of a court reviewing the exercise of an administrative discretion must constantly be borne in mind”. The court does not substitute its decision for that of an administrative decision-maker.

[27] None of the preceding analysis detracts from, or is inconsistent with, established principle that, for example, if review of a decision-maker's reasons discloses that the decision-maker ignored, overlooked or misunderstood relevant facts or materials or a substantial and clearly articulated argument;

misunderstood the applicable law; or misunderstood the case being made by the former visa holder, that may give rise to jurisdictional error.

61. Consistent with paragraph [89] of *Navoto*, in determining whether the Tribunal gave actual active intellectual consideration to the Generic Submissions, I consider that the following matters are relevant:
  - (a) The manner in which the matters contained in the Generic Submissions were advanced, a matter I consider further below; and
  - (b) The structure, tone and content of the reasons.
62. I have set out above the terms of paragraphs [44] and [85] of the Tribunal Decision. Neither of those paragraphs demonstrates that the Tribunal did not consider the Generic Submissions. Each of them speaks of the Appellant's *claims*. Paragraph [44], as I have explained above, referred to the "previous generic claims" made, which were not relevant to this case.
63. Paragraph [85] continues in this vein, referring to the Tribunal proceeding on the Appellant's *claims* as presented in his two statements, his evidence at hearing and his written submission dated 8 December 2024 (*scil*, 10 December) and oral submissions. These were said by the Tribunal to set out the totality of the Appellant's *claims*. Notably, the Tribunal did not say that this represented *all* of the relevant material considered by it.
64. Neither the statements at [44] nor those at [85] of the Tribunal Decision were a statement, express or implied, that the Tribunal did not consider relevant parts of the Generic Submissions. They went no further than to observe that the totality of the Appellant's *claims* were contained in the material set out.
65. The structure of the Tribunal Reasons also explains why there was no express reference to the Generic Submissions beyond footnote 7. Starting at [53] the Tribunal addressed what it termed "the substantive issue" of whether the Appellant had a well-founded fear of being persecuted for a Convention reason. The Tribunal considered in detail the Appellant's claims and in particular the contentions by him that he had previously suffered harm at the hands of AL supporters.
66. The Tribunal did not accept that the Appellant was a BNP member: at [63]. It did not accept that he was physically attacked at his father's shop: at [63]. It found that the Appellant was primarily at his father's shop to assist his father and his presence would have been only incidental to informal gathering and at most he would have been on the periphery: at [64]. The Tribunal did not accept that he was physically attacked in Dhaka: at [65]. Nor did it accept that he had to avoid people from his local area or that the AL was able to track his movements in Dhaka: at [65].
67. The Tribunal accepted that the Appellant and his family supported the BNP and that he was a member of the BNP student wing and was targeted by the AL student wing when the Appellant was a student: at [66]. It accepted that the Appellant's uncle was a senior officer of the BNP student wing: at [65]. However, it did not accept that his immediate family (other than his uncle) showed a further level of political commitment by becoming BNP members: at [67].

68. The Tribunal rejected the Appellant's contention that his father's tea shop had been attacked by the AL over the course of 10 years: at [68]. Nor did it accept that the Appellant fled his village to Dhaka as a result of the attacks on his father's shop: at [68].
69. In summary, the Tribunal did not accept that the Appellant was targeted after he was a student either because of any involvement with the Chatra Dal, his BNP support or because of his uncle's political profile: at [70]. That, in conjunction with the recent changes including the banning of the student wing of the AL meant that the Tribunal did not consider there was a reasonable possibility the Appellant would be seriously harmed in the reasonably foreseeable future by anyone because of his BNP support: at [71].
70. In assessing his refugee status, the Tribunal accepted that the Appellant was a BNP supporter but did not accept that after school he was targeted or suffered harm: at [73]. The Appellant submitted that his safety could not be guaranteed and that recent political changes have mainly impacted higher profile political activists: at [74]. The Tribunal found that the recent political changes in Bangladesh were substantial and that the AL no longer forms 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. The Tribunal relied on recent country information and did not accept that the AL were current powerbrokers, nor that the machinery of government meant that they can continue to act with impunity as in the past. Nor did it accept that those at the local level are still subject to local AL administrations and security authorities who can continue to act with impunity: at [77].
71. At [81] the Tribunal concluded in these terms:
- [81] Due to its view that his political interests and activities were minimal after his student years, and that he has not experienced harm since being a student, the Tribunal finds there is no reasonable possibility that the [Appellant] will be persecuted or targeted by the Awami League supporters and/or member or anyone else for any reason including his actual or imputed political opinion in support of the BNP or because of his membership of a particular social group based on his uncle [K's] political profile in the reasonably foreseeable future and his fear is not well-founded.
- [82] Neither does the Tribunal accept there is a reasonable possibility that the [Appellant], who has not been in Bangladesh since early 2024 would somehow be blamed for attacks on Hindu religious places simply because he is a BNP supporter and his fear is not well-founded.
72. Having regard to the structure, tone and content of the Tribunal's reasons, I am not prepared to infer that the Tribunal did not engage with the Generic Submissions. Given the findings that the Appellant had not been harmed since he was at school; that he was not a member of the BNP; and that he had not fled his village because of political persecution, there was no need for the Tribunal Reasons to deal with the detail of the contents of the Generic Submissions. The matters set out in those documents were simply not of sufficient relevance to the Tribunal's conclusions to require them to be addressed in the reasons.

73. The June 2024 submissions relate to national and local governance issues before the fall of the Hasina Government. There is no obvious relevance in this submission to the matters dealt with in the Tribunal Decision which occurred nearly six months after the fall of the AL-backed national government.
74. The August submission was made at a time only a matter of a week or two after the fall of the Hasina Government, when events were moving rapidly. Again, it is not possible to see anything in this submission that, in light of the fact that the Tribunal Decision was made 6 months later and much had changed in Bangladesh in that time, one might have expected the Tribunal to address.
75. The September submission made the fundamental point that the then-recent changes in Bangladesh, whilst encouraging, did not detract from the reality that the country's future remains uncertain. So much was accepted by the Tribunal, at [78].
76. In light of the findings made by the Tribunal, nothing in the Generic Submissions demanded attention by way of express consideration in the Tribunal Decision. Having regard to the Tribunal Decision as a whole, the contents and timing of the of the Generic Submissions and the Tribunal's rejection of much of the Appellant's case as to the harm allegedly caused to him previously, I am not persuaded that the Tribunal did not consider the Generic Submissions. I am further fortified in that view by my consideration of the manner in which the matters contained in the Generic Submissions were advanced by the Appellant.



#### Did the Appellant Clearly Advance Submissions Based on the Generic Submissions?

77. Even if I am wrong in my conclusion in the preceding paragraph, I would not in any event be satisfied that the Appellant had clearly advanced substantial submissions based on the Generic Submissions.
78. The requisite level of engagement by the Tribunal with the Appellant's case will vary, among other things, on the length, clarity and degree of relevance of the submissions made: *Plaintiff M1/2021* at [25]. The language used in the Australian cases is to ask whether a "substantial, clearly articulated argument" which may be dispositive has been overlooked: *Navoto* at [85]. The Tribunal is not required to consider claims that are not clearly articulated or which do not clearly arise on the materials before them: *Plaintiff M1/2021* at [26].
79. There is nothing in the oral submissions made by the Appellant's representative at hearing to suggest that the Appellant was advancing some substantial submission based on the Generic Submissions, much less that this could have been a dispositive issue.
80. The Appellant points to his 10 December Submission as part of the basis for a contention that those submissions "picked up" relevant parts of the Generic Submissions. However, in my view the 10 December Submission does little to assist the Appellant's case. Paragraphs [4] and [5] of the 10 December Submission (set out above) are very general in their terms. They do not even expressly refer to the Generic Submissions. Their reference to "all of the other evidence, information and submissions" previously provides no clarity in terms of precisely what matters are relied upon and for which purpose.

81. Paragraph [38] of the 10 December Submission notes that detailed written submissions on political violence have been provided (albeit on behalf of another applicant), and that it was not the intention to go over that information again but that “relevant material is included as necessary”. The submission then goes on to extract relevant material for the purposes of the submissions made, including relevant country information. There is no suggestion by the Appellant that any of that material set out in the 10 December Submission was then overlooked.
82. I am therefore not satisfied that the Appellant (either himself or through his representative) made any clearly articulated, and possibly dispositive, arguments based on the contents of the Generic Submissions.

### **CONCLUSION AND DISPOSITION OF THE APPEAL**

83. For the reasons set out in this judgment, in respect of the single ground of appeal I have found that:
- (a) the Appellant’s representative did not disclaim reliance on the Generic Submissions;
  - (b) I am however not persuaded that the Tribunal did not consider the relevant parts of the Generic Submissions; and
  - (c) in any event, the Appellant did not clearly articulate and advance dispositive arguments based on the contents of the Generic Submissions.
84. The Appeal is therefore dismissed.
85. Pursuant to s 44(1) of the Act, I make an order affirming the decision of the Tribunal.
86. I make no order as to the costs of this appeal.

**JUSTICE MATTHEW BRADY**

04 July 2025