IN THE SUPREME COURT OF NAURU

AT YAREN

Appeal No. 1 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:

AA25

Appellant

AND:

REPUBLIC OF NAURU

Respondent

Before: Brady J

Dates of Hearing: 28 April, 5 June 2025

Date of Judgment: 04 July 2025

CITATION: *AA25 v Republic of Nauru*

CATCHWORDS:

APPEAL – *Refugees - Refugee Status Review Tribunal – Whether the Tribunal failed to engage with submissions and failed to afford the Appellant procedural fairness? – Requirements of procedural fairness met and submissions considered – Whether the Tribunal failed to take sufficient effort to consider the generic submission as required by law? – Generic submissions sufficiently considered – Whether the Tribunal's Decision is affected by illogicality, irrationality, or legal unreasonableness? – No legal error – Whether the Tribunal failed to comply with the requirement of s 34(4)(b) of the Refugees Convention Act – Tribunal did not fail to refer to evidence within its reasons – Decision of the Tribunal affirmed – APPEAL DISMISSED*

LEGISLATION AND OTHER MATERIAL:

Refugees Convention Act 2012 (Nr) ss 22, 34, 43, 44; *Odhikar Annual Human Rights Report 2023* "State Repression on Citizens and Impunity of Law Enforcement Agencies", 2 January 2024; United Nations, *Preliminary Analysis of Recent Protests and Unrest in Bangladesh*, 16 August 2024

CASES CITED:

Applicant WAEE v Minister for Immigration, Multicultural and Indigenous Affairs [2003] FCAFC 184 236 FCR 593 at [46]; *DWN 111 v Republic of Nauru* [2017] NRSC 56 at [33]-[34]; Plaintiff *M1/2021 v Minister for Home Affairs* (2022) 275 CLR 582 and 82 at [25]; *AXT 19 v Minister for Home Affairs* [2020] FCAFC 32 at [56]; *Navoto v Minister for Home Affairs* [2019] FCAFC 135 at [88],[100]; *Minister for Home Affairs v Buadromo* (2018) 267 FCR 320 at [48]; *Transcom Holding Pty Ltd v Aged Care Quality and Safety Commissioner* (2023) 297 FCR 39 at [103]; *AJ24 -v Republic [2025] NRSC 15*

APPEARANCES:

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

Counsel for Respondent: Mr N Wood SC (28 April 2025) and Mr R O'Shannessy (5 June 2025) (both instructed by Republic of Nauru)

JUDGMENT

INTRODUCTION

1. The Appellant is a national of Bangladesh. In May 2024, the Appellant arrived in Australia by boat. He was subsequently transferred to the Republic of Nauru in June 2024.

2. The Appellant claims to be a supporter of the Bangladesh Nationalist Party (**BNP**). He claims to fear harm from Awami League (**AL**) supporters should he be returned to Bangladesh.

3. 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 23 December 2024 (**Tribunal Decision**). The Tribunal affirmed a decision of the Secretary of the Department of Multicultural Affairs (**the Secretary**) dated 9 August 2024 (**Secretary's Decision**) not to recognise the Appellant as a refugee and to determine that the Appellant is not owed complementary protection under the Act.

4. By s 43 (1) of the Act, the Appellant may appeal to this Court on a point of law.

5. By s 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.

GROUNDS OF APPEAL

6. The Appellant filed an amended notice of appeal on -24 March 2025. The Appellant relied on three substantive grounds in this amended notice of appeal in the following terms:

   Ground 1:

   1 The Tribunal did not consider the Appellant's representative's submissions of 27 September 2024.

   Ground 2

   2 The Tribunal did not undertake sufficient effort with the three submissions mentioned at Reasons [18] to have "considered" those submissions as required by law.

   Ground 3

   3 The Tribunal Decision is affected by illogicality, irrationality or legal unreasonableness, as the Tribunal did not explain why the Appellant was not exposed to a risk of harm in the future by attendance at a political rally.

7. The appeal was initially heard on 28 April 2025. On 30 April 2025, counsel for the Appellant sought the Court's leave to re-open the appeal and to advance two further grounds:

Ground 4

4 The Tribunal failed to comply with s 34(4)(d) of the refugees Convention Act, in failing to give adequate reasons for why it rejected the claim that the Awami League was still in power in the Appellant's home area.

Ground 5

5 The Tribunal denied procedural fairness to the Appellant by relying on a country information document from "the Diplomat" dated 5 December 2024, without notifying the Appellant of the possibility that it might do so.

8. I heard the application to re-open the appeal and to add the additional two grounds on 30 April 2025. I permitted the re-opening of the appeal and the further amendment of the amended notice of appeal to include the new grounds 4 and 5.

9. The Appellant seeks an order that the matter be remitted to the Tribunal for reconsideration and that the decision of the Tribunal be quashed.

FACTUAL BACKGROUND

10. The Appellant makes the following contentions.

11. The Appellant is a married man who previously lived in the Mymensingh District of Bangladesh. His wife and children continue to reside in Bangladesh.

12. The Appellant stated that he worked in his father's shop. In March 2019, he arranged to travel to Malaysia for work purposes where he worked in the construction industry. The Appellant alleges that he returned to Bangladesh in 2020 for a three-month holiday. Due to travel restrictions arising from the COVID-19 pandemic, the Appellant remained in Bangladesh until 2022 when he returned to Malaysia to work in the construction sector.

13. In 2024, the Appellant's Malaysian visa expired, and he made arrangements to depart to Australia. He arrived in Australia by boat in May 2024. He was transferred to the Republic of Nauru on 1 June 2024 pursuant to the memorandum of understanding between the governments of Australia and the Republic of Nauru. He then made an application to be recognised as a refugee, or a person owed complementary protection, on 25 June 2024 (**RSD Application**).

14. The Appellant's claims are detailed in the material before the Tribunal. In summary, the Appellant claims to be a supporter of the BNP. He contends that he participated in rallies and was close to a local politician. He claims that at a large pre-election rally in December 2018, AL supporters attacked him and caused him to suffer a serious head injury. They tried to target him at a second rally, and he was denied the opportunity to vote. The Appellant contends that this caused him to flee Bangladesh in March 2019 fearing further political violence. He claims that despite recent political developments in Bangladesh, the political situation in his home area remains

unchanged. He continues to fear persecution in his home area due to his political opinion (actual and imputed) and as a BNP supporter who participates in rallies.

PROCEDURAL HISTORY

15. On 25 June 2024, the Appellant made his RSD application in Nauru. On 9 August 2024, the Secretary made a determination that the Appellant is not a refugee and is not owed complementary protection.

16. On 15 August 2024, the Appellant applied to the Tribunal for review of the Secretary's Decision. On 30 September 2024, the Appellant appeared before the Tribunal to give evidence and to present arguments. The Appellant had a representative appearing for him on that occasion and the Tribunal was assisted by an interpreter in the Bengali and English languages.

17. The Tribunal Decision was delivered on 23 December 2024. The Tribunal affirmed the determination of the Secretary that the Appellant is not recognised as a refugee and is not owed complementary protection under the Act.

18. The Appellant filed a notice of appeal in this Court on 8 January 2025. An amended notice of appeal was filed on 24 March 2025, together with the Appellant's outline of submission. The Republic filed a response dated 22 April 2025 together with the Republic's outline of submissions on this appeal.

19. Argument in this appeal was then originally heard on 28 April 2025. I heard argument on the first three grounds of appeal.

20. On 30 April 2025, the Appellant sought leave to re-open the appeal and to add proposed grounds 4 and 5. The Republic did not oppose leave to reopen and to add Ground 4, although it did oppose leave being given to the Appellant to add Ground 5. After argument by the parties, I permitted the Appellant to reopen his appeal and to add the two additional grounds, for reasons that I gave on that occasion.

21. Argument on Grounds 4 and 5 was listed for hearing on 5 June 2025. On that occasion, counsel for the Appellant advised that the Appellant did not press Ground 5. I heard argument on Ground 4 on that occasion.

GROUND 1 – FAILURE TO CONSIDER SUBMISSIONS

Summary of the Ground

22. The Appellant's representative made a submission to the Tribunal dated 27 September 2024 (**September Submission**). That document is 12 pages in length, and it details the specific nature of the Appellant's claims to fear harm and need for complementary protection. The September Submission addressed the Secretary's decision and also made submissions about other matters relevant to the Appellant's claims. I set out in more detail below relevant aspects of the September Submissions.

23. The Appellant contended in writing that the Tribunal did not mention the September Submission in its reasons. In oral argument, counsel for the Appellant accepted that in fact the September Submission was referred to in the Tribunal Decision. However, his argument was developed by reference to two particular aspects of the generic

submissions provided to the Tribunal and picked up in the September Submission. The Appellant invites this Court to infer that the Tribunal did not consider the September Submission in the sense that it did not intellectually engage with the submission, which amounted to a failure to afford the Appellant procedural fairness as required by s 22(b) of the Act.

The September Submission

24. In the September Submission, the Appellant's representative set out the detail of the Appellant's claim. The submission attached a further Statement of Claim dated 20 September 2024 which supplemented the Statement of Claim which had previously been provided as part of the RSD process. The September Submission also stated that it was to be read in conjunction with all of the other evidence, information and submissions that had been provided in support of the Appellant's application to be recognised as a refugee: at [3].

25. Part A of the September Submission summarised the Appellant's claims. Part B of the submission set out the Appellant's reasons for persecution. Paragraph [11] of the September Submission was in the following terms:

> We submit the following are the essential and significant reasons for the [Appellant's] claim fear of persecution:
>
> i His actual and/or imputed political opinion, as a supporter of the Bangladesh Nationalist Party (BNP);
>
> ii His member [sic] of a particular social group, Bangladeshi BNP supporters who participate in rallies.

26. The Appellant submitted that these grounds were sufficient for the Appellant to meet the definition of refugee and to be afforded recognition as someone who is owed protection. The Appellant submitted that the authorities of Bangladesh would not afford him protection and that there was nowhere in Bangladesh where he could reside in safety.

27. Part C of the September Submission dealt with the relevant country of reference, being Bangladesh.

28. Section D of the September Submission addressed various concerns raised in the Secretary's Decision. Without descending into the detail of those submissions, the September Submission contended that there were various errors and improper approaches by the Secretary in the decision-making process, including as to matters such as:

(a a failure to properly locate the client in time and space;

(b an incorrect assessment of the increased risk of harm to the Appellant;

(c a mischaracterisation of relevant political violence;

(d a failure to properly address the prospects of future harm; and

(e a failure by the secretary to take into account the Appellant's social group status.

29. Part E of the September Submission contained submissions about the Appellant's credibility.

30. Part F dealt in some detail with the Appellant's well-founded fear of persecution. That part notes that detailed written submissions on political violence in Bangladesh had been provided on behalf of the Appellant and that it was not the intention of the submission to go over that information again. However, relevant material is said to be included as necessary.

31. Starting at paragraph [38] of the September Submissions, the Appellant dealt with the risk of persecution due to his actual and/or imputed political opinion as a supporter of the BNP. These submissions outlined the Appellant's active participation in politics in Bangladesh as a supporter of, and activist with, the BNP and the serious harm that he had suffered because of that. Relevant country information detailing instances of persecutory acts against BNP supporters was then referenced in some detail in the submission.

32. Starting at paragraph [46], the September Submission dealt with the risk of harm to the Appellant as a member of a particular social group, being Bangladeshi BNP supporters who participate in rallies. It was submitted on behalf of the Appellant that he was someone who supports the BNP by attending rallies and thus shares a common characteristic with other members of the particular social group, as well as being perceived as such by society. Accordingly, this aspect of his protection claim needed to be considered as a member of a particular social group.

33. Paragraph [48] deals with submissions about the term "reasonably possible" and how that is to be properly understood.

34. Starting at paragraph [49] of the submissions, the Appellant's representative made submissions about how previous harm can inform the risk of future harm.

35. Starting at paragraph [52], the September Submission dealt with why it is unreasonable to expect the Appellant to modify his behaviour in order to avoid the feared harm.

36. Part G of the September Submission dealt with the contention that the Bangladeshi authorities, including the police, are unable to prevent the feared harm.

37. Section H of the September Submission dealt with why relocation within Bangladesh was not a reasonable option for the Appellant. Instead, it was submitted that he would need to return to his home village upon return to Bangladesh.

38. Section I of the September Submission dealt with the issue of complementary protection. In the event that the Appellant was not found to be a refugee, he submitted that he may be recognised under the complementary protection provisions available under Nauruan law. It was submitted that were the Appellant to be forced to return to Bangladesh, he faces the prospect of breaches of his fundamental rights either now or in the reasonably foreseeable future and the possibility of those

breaches being sufficient to engage the complementary protection provisions of Nauruan law.

The Tribunal Decision

39. The Tribunal Decision mentions the September Submission. It is referenced in paragraph 14 of the Tribunal Decision in these terms:

> [14] The [Appellant's] claims were outlined in RSD application and supporting materials, his RSD interview, his statement provided on review, written submissions upon review, and oral evidence at the hearing.

40. The reference to "written submissions upon review" is clearly a reference to the September Submission. So much is now accepted by the Appellant, despite his earlier written submission.

41. The Tribunal also noted that generic submissions had been filed on behalf of the Appellant at paragraph [18]:

> [18] Prior to the hearing, the [Appellant's] representative also submitted three generic undated submissions entitled:
>
> Bangladesh Country Information
>
> ...
>
> Bangladesh...
>
> Submission on the availability of state protection in Bangladesh in light of recent changes in Bangladesh... **(Recent Changes Submission)**

42. In respect of each of the second two of those generic submissions, the Tribunal also set out an extract from the submissions that it considered to be of particular relevance to the determination of the Appellant's matter.

Appellant's Arguments

43. The Appellant contended in its written submission that the Tribunal did not mention the 27 September 2024 submissions in its reasons. Nor is there any apparent attention to the submission in the Tribunal reasons, according to the Appellant. In his oral arguments, counsel for the Appellant however accepted that paragraph [14] of the Tribunal Decision did refer to the September Submission, or as Mr Aleksov put it "bare mention of the existence of" the September Submission: T14 lines 6 - 17.

44. However, the Appellant nevertheless contended that the Tribunal did not engage in "the intellectual work and the mental effort" required to consider the September Submission. The Appellant developed his oral argument by reference to two aspects of the generic submissions (considered below) and their adoption in the September Submission which, he contends, were not engaged with by the Tribunal. Despite that, counsel for the Appellant did not resile from the terms of the notice of appeal that the Tribunal failed to consider the September Submission in its entirety, albeit that they were mentioned in the Tribunal Decision.

45. There were in essence two particular aspects of those generic submissions that the Appellant argues were not sufficiently grappled with by the Tribunal.

46. First, the Appellant relies on a submission based on the contents of the Odhikar Report from 2023: Odhikar Annual Human Rights Report 2023 "State Repression on Citizens and Impunity of Law Enforcement Agencies", 2 January 2024 (**Odhikar Report**) as contained in the generic submission headed "Bangladesh" and undated, to be found at Tab 8 of the appeal book of documents before me. The Appellant submits that this was picked up by paragraph [43] of the September Submission.

47. Second, the Appellant submits that the conclusion in the Recent Changes Submission about recent developments in Bangladesh (including the fall of the national government headed by Hasina) (Tab 10 of the appeal book of documents) was not addressed by the Tribunal in a way that demonstrated that it considered this critical document in the Appellant's case. Nor did it give "sufficient effort" and intellectual engagement to this issue. The Appellant submits that the Tribunal's consideration of this relevant country information was "subpar" and was not engaged with to any substantial degree.

48. The Appellant submits that what occurs at the hearing before the Tribunal is not evidence of what the Tribunal has considered in its decision. The Appellant submits that one ought to look at the reasons alone to determine what was considered by the Tribunal and not the transcript of the hearing before it. Counsel for the Appellant did not cite any authority for that proposition, but did refer the Court to the relevant terms of the Act, in particular s 34.

49. It can thus be seen that there is considerable overlap between appeal grounds 1 and 2.

50. I am invited to infer that the Tribunal did not consider these submissions, which amounts to a failure to afford procedural fairness.

Republic's Arguments

51. The Republic submits that on 27 September 2024, the Appellant's representative emailed the Tribunal two documents: firstly, the September Submission; and second a further statement from the Appellant dated 20 September 2024. The Republic submits that the Tribunal plainly considered the further statement from the Appellant and that the Appellant does not now contend otherwise.

52. Mr Wood SC for the Republic started his oral submissions noting that as he understood the case now advanced by the Appellant, it remains as originally articulated that the whole September Submission was not considered, albeit that the Appellant now accepts that it was referenced by the Tribunal.

53. The Republic submits that this Court ought not infer that the Tribunal did not consider the September Submission.

54. The Republic first submits that the Tribunal *did* expressly refer to the September Submission in its reasons. As I have noted above, that is no longer disputed by the Appellant.

55. It is then submitted that the articulation of the social group referenced in the September Submission (at [11], being "Bangladeshi BNP supporters who participate in rallies") was picked up word for word in the Tribunal Decision at [17] and [57] - including a typographic error in the submission replicated by the Tribunal at [17]. That is overwhelming evidence that the Tribunal read and considered the September Submission.

56. As another example, the Republic points to the complementary protection grounds advanced at [62] of the September Submission, including a quote from a report, United Nations, *Preliminary Analysis of Recent Protests and Unrest in Bangladesh*, 16 August 2024 concerning persons being subject to cruel and inhuman treatments whilst in police custody. The Republic submits that this submission was dealt with at [66] of the Tribunal Decision even though that argument had not been advanced elsewhere than the September Submission.

57. The Republic submits that having regard to the express reference to the September Submission at [14] and the two examples where the Tribunal in its reasons clearly considered arguments advanced only in that submission, it is most improbable that the Tribunal did not consider the September Submission.

58. The Republic submits that it is not necessary for the Tribunal to recite and respond to every submission that is made by an Appellant: *Applicant* ***WAEE*** *v Minister for Immigration, Multicultural and Indigenous Affairs* ([2003] FCAFC 184 236 FCR 593 at [46]. Accordingly, the fact that the Tribunal has not recited and responded to every submission in its reasons does not support an inference that the submission was not considered.

59. The Republic further submits that it is appropriate to have regard to the content of the September Submission in evaluating the Appellant's contention that the relevant submissions contained with it were not considered. The Republic sets out in some detail the terms of the September Submission and explains why the contents of the various parts of the September Submission did not need to be expressly referenced in the Tribunal Decision.

60. Part F of the September Submission is the part of the submission upon which the Appellant focussed its arguments. It refers to various country information concerning human rights violations of supporters of political parties in Bangladesh. The Republic submits that any failure by the Tribunal to discuss in detail any particular item of country information neither supports an inference that the submissions were not considered nor otherwise justifies a conclusion that the Tribunal erred. The choice and weight of country information is a matter for the Tribunal: ***DWN 111*** *v Republic of Nauru* [2017] NRSC 56 at [33]-[34]. The Republic submits that the Tribunal identified the recent country information on which it relied in making its decision and refers specifically to [33], [49] and [60] of the Tribunal reason.

61. Finally, the Republic submits that to the extent that the transcript of the hearing before the Tribunal reveals that the Tribunal did consider a relevant document, it defies common sense to say that the transcript cannot be used as evidence to support a conclusion that the Tribunal did in fact consider that document.

62. All of those considerations reinforce the conclusion that the September Submission was considered, as the Republic contends.

Consideration of Ground 1

63. The Tribunal clearly referred to the September Submission at [14] of the Tribunal Decision, albeit it was not referred to by date. It was referred to as "written submissions upon review". As I have noted above, counsel for the Applicant ultimately accepted that to be the case during the course of argument.

64. Paragraph [18] specifically refers to the Appellant's representative having "*also* submitted three generic undated submissions". It is apparent from the Tribunal Decision, read as a whole, that the Tribunal understood that the Appellant had filed the September Submission and that he relied upon it, in addition to the material otherwise listed in the Tribunal Decision, including the three generic submissions.

65. Accordingly, I do not accept the Appellant's written submission that the Tribunal did not refer to the September Submission in its reasons.

66. It is also apparent that the Tribunal referred to, and appropriately engaged with, pertinent aspects of the substance of the September Submission in its reasons.

67. It is notable that paragraph [17] of the Tribunal Decision uses precisely the same language as set out in paragraph [11] of the September Submission to describe the Appellant's claims. I have set out that passage above. Indeed, the same grammatical errors are even picked up in paragraph [17] of the Tribunal reasons as set out in paragraph [11] of the September Submission. In this regard, I note the second bullet point ("his member [sic] of a particular social group") is used both by the Tribunal and by the Appellant's representative. I also note that the complementary protection claim contained in the September Submission is addressed at [57] of the Tribunal Decision.

68. This is strong evidence to support a conclusion that the Tribunal did in fact take account of the September Submission.

69. The Appellant relies on two particular aspects of the September Submission which are said to demonstrate a lack of proper engagement with the submission by the Tribunal.

70. The first aspect advanced by the Appellant is a contended failure by the Tribunal to refer to, or engage with, the Odhikar Report. However, that report was from January 2024, months before the fall of the Hasina Government in August 2024. The report was referred to in the September Submission an in reference to there being over 23,000 leaders and activists of the BNP who had been arrested in recent times, with a number of them being sentenced to terms of imprisonment. It was also referenced in the "compendium" document at Tab 8 of the appeal book, titled "Bangladesh", at page 8 of that document. That passage noted that *in 2023*, members of law enforcement agencies enjoyed impunity at the behest of the government.

71. In my view, the absence of reference to that material in the Tribunal Decision does not demonstrate that this aspect of the submission was not engaged with. It was not necessary for the Tribunal to set out and respond to every single submission made,

regardless of its relevance to the outcome of the matter: *WAEE* at [46]. In particular, the premise of the extract from the Odhikar Report contained in the September Submission referred to *leaders and activists* of the BNP. The Appellant was found to answer neither of those descriptors: at [42].

72. In my view, it was not incumbent on the Tribunal to refer to a report dated more than six months prior to the substantive political changes that occurred later in 2024 and in circumstances where at least one particular passage relied on could not have been relevant to the circumstances of the Appellant. The Appellant has not demonstrated that by not referring to this matter, it was overlooked by the Tribunal, nor that the Tribunal did not intellectually engage with it.

73. The second aspect advanced by the Appellant is that the Tribunal failed to engage with the Recent Changes Submission. This was a 5 ½ page submission that concluded that whilst recent developments in Bangladesh were encouraging, they were not sufficient to justify the cessation of refugee status for asylum seekers. The country's future was noted to remain uncertain and that to ensure safe return, the changes in Bangladesh must be substantial, effective and durable.

74. Paragraph [49] of the Tribunal Decision was in these terms:

> "49. As discussed in the hearing, political events in Bangladesh following the removal of former Prime Minister Sheikh Hasina and the installation of an interim government are significant. Some of these changes are favourable to the BNP, including the release of some key BNP political prisoners and the announcement of elections. The Tribunal is mindful that there remains uncertainty about these developments and that broader national trends may not have swept away local and municipal level rivalries and animosities between the AL and BNP supporters as was submitted by his representative. (Footnotes omitted)

75. The Tribunal expressed that it was mindful that there remained uncertainty about recent political developments in Bangladesh. The Tribunal went on at [51] to express the view that the developments however were "generally positive for low-level or ordinary BNP supporters".

76. In light of those conclusions, I am not persuaded that the Tribunal failed to consider, and intellectually engage with, the thrust of the Recent Changes Submission. The Tribunal was clearly well aware of the recent political changes, and that there remained uncertainty about future developments given the recency of those changes.

77. The Appellant has not made out Ground 1 of the appeal.

GROUND 2

Nature of Ground 2

78. The Appellant contends that the Tribunal did not "undertake sufficient effort" in respect of the three generic submissions in order for them to have been "considered" as required by a law.

Relevant Evidence

79. The three generic submissions are each undated. The first, headed "Bangladesh", is a 26-page document on the letterhead of Craddock Murray Neumann, the solicitors for the Appellant. It deals in some detail with the history of the national government of Bangladesh. It then deals with evidence concerning action at the local government level. The submission details matters concerning the wide-scale reports of corruption and a lack of effective state protection for Bangladeshi citizens. These submissions then deal with more particular matters including victims of loan sharks and the culture of "mastaan" or "goondas" (being effectively organised crime) The submissions then deal with the possibility of relocation within Bangladesh, as well as problems with human trafficking. Finally, these submissions address in general terms the issue of complementary protection.

80. The second generic submission is some 20 pages in length and also on the letterhead of Craddock Murray Neumann. It is headed "Bangladesh Country Information". This second set of generic submissions also deals with the history of national governance of Bangladesh. It does however deal with developments in 2023 and early 2024 as well as the events concerning the election (but not the later fall) of the Sheik Hasina government. The submission also deals with issues relating to low-level governance, as well as corruption and the lack of effective state protection. It too deals with the issue of victims of loan sharks, as well as mastaans. The submissions then turn to the issue of relocation.

81. The third generic submission is the Recent Change Submission. It outlines the recent changes in Bangladesh in the weeks after the fall of the Hasina government. As noted above, it made submissions to the effect that temporary changes do not guarantee long term stability. The submissions dealt with the impact on the lives of average citizens and local governments of the fall of the Hasina government at a national level. The Recent Change Submission ultimately advanced the argument that the foreseeable future remains uncertain and that there was a continuing need for fundamental change.

Appellant's Submissions

82. The Appellant acknowledges that the Tribunal mentioned the existence of the three generic submissions. However, he submits that the Tribunal did not otherwise address the substance of the submissions which he describes as essentially "compendium documents", putting forward country information relevant to Bangladesh. The Appellant submits that whilst the country information submissions addressed matters that were not specifically relevant to the Appellant's case, they also plainly included substantial reference to, and analysis of, country information relevant to the Appellant's case.

83. The Appellant contends that the submissions were not voluminous or overwhelming and that all three submissions were specifically adopted by the Appellant's representative in the September Submission.

84. The Appellant contends that the Tribunal "did not attend to these submissions with sufficient 'effort' to undertake the required task of considering the submissions". This failure is said to be inferred from the failure to mention any of the substantial

points other than in passing at [49] of the Tribunal Decision, which I have set out above.

85. The Appellant submits that the "level of effort required by the Tribunal was more than to know of the existence of the documents, but to read them, understand them (as relevant) and explain why the Appellant's position should not be accepted". The Appellant contends that none of that occurred. The Appellant thus invites this Court to conclude that the Tribunal did not "consider" these documents in the way, or to the extent, that was required.

86. As noted above in relation to Ground 1, the Appellant drew particular attention to the Odhikar Report (referenced in the first generic submission) and the terms of the Recent Changes Submission.

Respondent's Submissions

87. The Respondent relies upon the decision of the High Court of Australia in *Plaintiff M1/2021 v Minister for Home Affairs* (2022) 275 CLR 500 and 82 at [25]. The High Court there held that "[w]hat is necessary to comply with the statutory requirement for a valid exercise of power will necessarily depend on the nature, form and content of the representations and that '[t]he requisite level of engagement – the degree of effort needed by the decision maker – will vary, among other things, according to the length, clarity and degree of relevance of the representations".

88. The Republic also relies upon the decision of the Full Court of the Federal Court of Australia in ***AXT 19*** *v Minister for Home Affairs* [2020] FCAFC 32 at [56], where the Court held that "[t]he greater the degree of clarity in which a claim has been made and advanced for consideration, the greater may be the need for the Tribunal to consider the claim in clear terms. Inversely, the more obscure and less certain claim is set to have been made, the less may be the need for the Tribunal to consider the claim".

89. The Republic submits that in assessing whether the Tribunal has made a legal error in failing to engage in sufficient effort in considering the three generic submissions, a critical matter is the absence of any meaningful assistance by the Appellant in identifying precisely what, within the generic submissions, was relevant or critical to his case. This is said by the Republic to be significant to assessing whether the Tribunal made a legal error.

90. The Republic submits that the Tribunal plainly considered the generic submissions. It sought to glean from them information that it considered potentially relevant: (see [18] of Tribunal Decision). It does not bespeak legal error by the Tribunal that it failed to address, specifically and directly, some unidentified fragment of country information contained within a generic document that was not specifically identified or addressed by the Appellant or by his representative.

91. The Tribunal was not required to refer to every piece of evidence before it: *Navoto v Minister for Home Affairs* [2019] FCAFC 135 at [100] and [88]. The Tribunal was further not required to give a "line by line refutation of the evidence of the [Appellant], either generally or in those respects where there is evidence that is contrary to findings of material fact made by the [Tribunal]": *Minister for Home*

Affairs v Buadromo (2018) 267 FCR 320 at [48]. The Republic submits that the Tribunal identified relevant country information on which it relied.

Consideration of Ground 2

92. It is clear enough that the Tribunal considered the generic submissions. At paragraph [18] of the Tribunal Decision, the Tribunal not only recited the three generic submissions having been received, but also, in respect of two of them, extracted information that the Tribunal considered to be relevant from those submissions.

93. Significant portions of each of the generic submissions (especially the first two) were irrelevant to the circumstances of the Appellant's case. It is not surprising that the Tribunal did not recite passages in particular explaining historical aspects of the national affairs of Bangladesh, for example.

94. The Appellant's complaint is, however, not that the Tribunal did not consider the generic submissions at all, but rather that it did not sufficiently engage with them so as to have "considered" those submissions in an appropriate way.

95. In my view, the "degree of effort" needed by the Tribunal in relation to these three generic solutions is not such as would have led to Tribunal to deal in detail with the contents, or substantially most of the contents, of the generic submissions. The failure of the Appellant to point to particular passages of the generic submissions which are said to have been relevantly overlooked beyond the limited passages in the September Submission is telling.

96. As the Republic has submitted, the "more obscure and less certain a claim is said to have been made" the less that the Tribunal may need to explicitly deal with particular claims: *AXT* 19 at [56]. Here, the Appellant has not pointed to any particular claims found in the generic submissions which can reasonably be said to have been overlooked in some relevant way by the Tribunal.

97. For the reasons that I have explained above in relation to Ground 1, the reference in the Generic Submission to the Odhikar Report was not such as to require the Tribunal to expressly deal with it in the circumstances. And likewise, in relation to the Recent Changes Submission. As I have already found, the evidence does not suggest that the Tribunal failed to grapple with this submission, in particular given the Tribunal's findings at [49] and [51] and the Tribunal's express reference to passages from those documents at [18].

98. Nor was the Tribunal required to refer to every piece of evidence or to give a line-by-line reputation of the evidence: *Navoto* at [100].

99. The Appellant has therefore failed to make out Ground 2 of the appeal.

GROUND 3

Summary of the Ground

100. The Appellant contends by Ground 3 that the Tribunal Decision is affected by illogicality, irrationality or legal unreasonableness as the Tribunal did not explain why

the Appellant was not exposed to a risk of harm in the future by attendance at a political rally.

The Appellant's Submission

101. As the Appellant notes, the Tribunal accepted that the Appellant had in the past been injured during a political rally. The Tribunal seems to have accepted that the Appellant would continue his political involvement at around the same level in the future: see [52] of Tribunal Decisions, and also [45].

102. At [52], The Tribunal reached the following conclusions:

> "[52] Due to the fact the [Appellant] is a low-level support [sic] of the BNP who has not been involved in political activities since 2018, and has no intention to increase his political activities, and in light of the changed political situation, the Tribunal finds that there is no reasonable possibility the [Appellant] will face persecutory harm for reasons of his political opinion as a low-level BNP supporter in the reasonably foreseeable future. His far [sic] is not well-founded."

103. The Appellant submits that it is unclear what this means in the context where the Tribunal acknowledged that there remained uncertainty about the changed political situation and that local level rivalries and animosities might persist: [49] of the Tribunal Decision. The Appellant submits that the Tribunal did not explain precisely what about the changed political situation meant that the Appellant, upon participating in a political rally in the future in his local area, was not at any real risk of harm. Absent this point being addressed and explained, the Appellant submits that the Court should infer that the decision of the Tribunal is affected by illogicality, irrationality or legal unreasonableness or that some other legal error occurred that is apparent but cannot be articulated.

Republic's Argument

104. The Republic argues that the Appellant faced no real chance of harm on the basis of his political opinion in the future. The Republic submits that the Appellant's submissions suggest that it was only the country information as to the "changed political situation" that supported the Tribunal's conclusion. The Republic submits that is not so.

105. The Republic draws attention to the following matters:

   a. the Tribunal did not accept that the injury that the Appellant suffered when attending a rally in 2018 was because he was "specifically or intentionally targeted as a person of interest to the AL supporters" ([26], see also [46] and [48] of the Tribunal Decision);

   b. the Tribunal found that the Appellant "has shown little political engagement since 2018" ([42] of the Tribunal Decision);

   c. the Tribunal found that the Appellant "has not been involved in political activities since 2018" ([52] and [57] of the Tribunal Decision); and

d. the Tribunal did not accept that the Appellant intended to "increase his involvement in the BNP in any way on his return to Bangladesh" ([43] of Tribunal Decision).

106. The Republic also draws attention to paragraph [55] of the Tribunal Decision wherein the Tribunal accept that there is a "remote possibility of some harm in the foreseeable future for low level BNP supporters", but the Tribunal did not accept that this possibility amounted to a reasonable one.

107. The Republic submits that it was for these reasons, *together with* the changed political situation, that led the Tribunal to find there is no reasonable possibility that the Appellant will face persecutory harm for reasons of his political opinion as a low-level BNP supporter in the reasonably foreseeable future. Accordingly, the Republic submits that the Tribunal's reasoning is both clear and rational.

Consideration of Ground 3

108. The Tribunal accepted that the Appellant has been, and continues to be, a supporter of the BNP. He holds political opinions antipathetic towards the AL that had been dominant in Bangladeshi governance until August 2024. The Tribunal did not accept that he would increase his involvement in the reasonably foreseeable future.

109. The Tribunal, however, noted that the Appellant is not a formal member of the BNP or an office bearer. His involvement was characterised as "low-level". The Tribunal accepted that the Appellant was seriously injured by AL supporters at a December 2018 public demonstration in support of the BNP but did not accept that he was specifically targeted. Rather, it was an opportunistic, albeit politically motivated, attack during a highly charged election event. The Tribunal did not accept that the Appellant attended a second demonstration or that he had to leave his village because of a fear of AL supporters.

110. The Tribunal did not accept that the Appellant received indirect threats as he claimed, or that he was or remains a person of ongoing interest to local AL supporters after his December 2018 departure from his home district.

111. The Tribunal expressly noted that there remained uncertainty about the recent developments in Bangladesh following the fall of the Hasina government: [49] of the Tribunal Decision. In particular, the Tribunal noted the uncertainty as to whether the broader national trends may have swept away local and municipal level rivalries and animosities between the AL and BNP supporters.

112. The Tribunal assessed that the recent developments are generally positive for low-level or ordinary BNP supporters throughout Bangladesh. AL supporters cannot act with the same level of impunity, reducing the likelihood of low-level BNP supporters encountering violent reprisals and being unable to access police protection.

113. Due to the fact that the Appellant is a low-level supporter of the BNP who has not been involved in political activities since 2018 and has no intention to increase his political activities, and in light of the changed political situation described by the Tribunal, the Tribunal found that there was no reasonable possibility that the Appellant would face persecutory harm for reasons of his political opinion as a low-

level BNP supporter in the reasonably foreseeable future: [52] of the Tribunal Decision.

114. It is plain enough that the Tribunal, whilst recognising that the changes at a national level may not have "swept away" local rivalries, nevertheless formed the view that given the Appellant's low-level engagement with BNP – and no engagement at all since 2018 – there was no reasonable possibility that the Appellant would face persecutory harm. The recent changes did not need to be considered in more detail, principally because the approach of the Tribunal was to find that the Appellant's low-level support, and complete lack of support since 2018, did not persuade the Tribunal that he would face harm such as to give rise to persecution for reasons of political opinion. In my view, the Tribunal's reasoning is clear. There was nothing irrational, perverse or illogical about the approach of the Tribunal to this question. Nor was there any legal unreasonableness.

115. No legal error is made out and Ground 3 fails.

GROUND 4

Summary of the Ground

116. Ground 4 was argued after the other grounds and only after leave was given to further amend the notice of appeal. This ground is that the Tribunal failed to comply with the requirement of s 34(4)(d) of the Act to give adequate reasons for why it rejected the claim that the AL was still in power in the Appellant's home area.

The Appellant's Submissions

117. The Appellant submits that "looming large" over this case was the Tribunal's view that changes at the national level in Bangladesh have ameliorated risks for BNP supporters and members. The Recent Changes Submission addressed the issue of the impact of changes at the national level. The Appellant said that he did not have any specific recent information about his home areas during the course of the Tribunal hearing: see T160-163.

118. The Appellant draws attention to paragraphs [49] and [52] of the Tribunal Decision, which I have set out above. In particular, the Appellant points to the Tribunal's conclusion that there was no reasonable possibility that the Appellant would face persecutory harm for reasons of his political opinion "in light of the changed political situation". The Appellant submits that even if one looks at [49] and the three items of country information mentioned in the footnote to that paragraph, that conclusion was not supported by reference to any country information. It is left unsaid what is the evidence on which the Tribunal based that conclusion.

119. The Appellant submits that it is the Tribunal's obligation under s 34(4) of the Act to point to relevant aspects of the country information as supporting its conclusion. In any event, the Appellant submits that the country information is "too abstract" to meet the Appellant's submission that there was insufficient information about his specific area to justify the firm conclusions reached by the Tribunal.

120. In effect, the Appellant submits that there is no evidence identified by the Tribunal to indicate what it relied on to resolve the ongoing uncertainty expressly identified in [49]. There is no evidence referenced in the Tribunal Decision which would permit the changed political situation at a national level to resolve uncertainty at the local level for the Appellant.

Republic's Submissions

121. The Republic submits that the Tribunal's reasoning was to the following effect:

(a The injury suffered by the Appellant at the rally in 2018 was not because he was specifically or intentionally targeted as a person of interest;

(b The Appellant had shown little political engagement since 2018 and had not been involved in political activities since then; and

(c The Appellant was not intending to increase his involvement in the BNP on return to Bangladesh.

122. It was those reasons, as well as the changed political situation, that led the Tribunal to conclude that there was no reasonable possibility that the Appellant would face persecutory harm for Convention reasons.

123. Quite clearly, the "changed political situation" that the Tribunal was referring to at [52] were the changes identified at [49], for which specific country information was cited. There was therefore, manifestly, evidence cited for the "finding" that the political situation in the country had changed.

124. The Tribunal did not purport to form firm conclusions to the effect that there was no AL influence in the Appellant's local area. All that the Tribunal did was to conclude that the developments were "generally positive for low level or ordinary BNP supporters throughout Bangladesh": at [51]. The Tribunal did identify the evidence in support of that conclusion.

125. The Republic submitted that the Appellant's argument was one of singling out particular paragraphs of the reasoning for criticism and to isolate those paragraphs from their context. It relies upon the decision of the Full Court of the Federal Court of Australia in ***Transcom** Holding Pty Ltd v Aged Care Quality and Safety Commissioner* (2023) 297 FCR 39, in particular at [103].

126. The Republic went on to make detailed submissions as to what I should do in the event that I found that the Tribunal had not complied with its obligation in s 34(4). Given that I have found that the Tribunal did comply with its statutory obligation, there is no need in this judgment to set out the detail of the Republic's submissions in that regard.

Consideration of Ground 4

127. Section 34(4)(d) of the Act required the Tribunal to refer to the evidence or other material on which the findings of fact were based.

128. The Appellant attacks the finding at [52] of the Tribunal Decision. He frames the relevant "finding" as a rejection of the claim that the AL was still in power in the Appellant's home area: see ground 4 of appeal.

129. That, however, is not an accurate description of the approach of the Tribunal in [52]. Having found the Appellant to be no more than a low-level supporter of the BNP, the Tribunal proceeded in light of that finding, and "in light of the changed political situation" as explained at [49], to conclude that there was no reasonable possibility that the Appellant would face persecutory harm.

130. The conclusion at [51] that the developments were "generally positive for low level or ordinary BNP supporters *throughout Bangladesh*." (emphasis added). No specific finding was made about the Appellant's home area. The Tribunal's finding that AL supporters cannot act with the same degree of impunity, reducing the likelihood of low-level BNP supporters encountering violence, is also a relevant step on the way to the ultimate conclusions described in [52].

131. The reference to the "changed political situation" in [52], and the assessment of the "generally positive" developments in [51], is clearly a reference to the situation as described in [49]. The evidence supporting that statement of the recent changes is set out in footnote 3.

132. This is not a case where the process of the Tribunal's reasoning is unclear, or where it is not apparent whether the Tribunal simply engaged in speculation or conjecture. The process of the Tribunal's reasoning, and the reasons and evidence for it, is set out in the Tribunal Decision. It is necessary to read the reasons in context (see Transcom at [103]), and, when it is properly understood, the Tribunal did set out the evidentiary basis for its conclusions.

133. I am thus not persuaded that the Tribunal failed to comply with its obligation under s 34(4)(d) of the Act to refer to the evidence on which its findings of fact were based.

134. It is not necessary for me to address the alternative argument advanced by the Republic as to the correctness of the decision in *AJ24 -v Republic* [2025] NRSC 15.

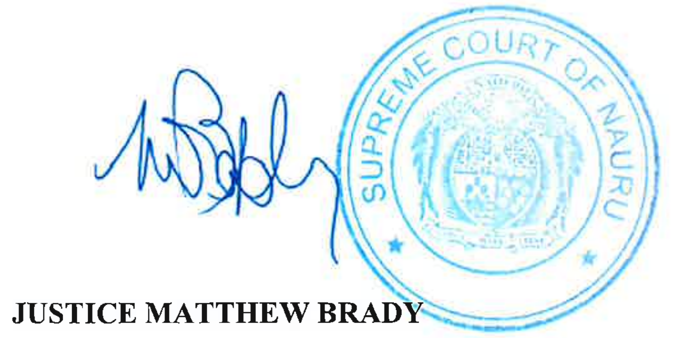
CONCLUSION

135. For the reasons I have set out in this judgement, the Appellant has failed in respect of each of grounds 1, 2, 3 and 4 of the further amended notes of the appeal. The Appellant did not ultimately pursue ground 5.

136. The appeal is dismissed.

137. Pursuant to s.44 (1) of the Act, I make an order affirming the decision of the Tribunal.

138. I make no order as to the costs of the appeal.



JUSTICE MATTHEW BRADY

04 July 2025