BACKGROUND
The Background Application

1 This is an application for the issue of the constitutional writs of certiorari and prohibition together with an injunction, pursuant to section 39B of the Judiciary Act 1903 (Cth) and section 475A of the Migration Act 1958 (Cth) ("the Act ") concerning a decision of the Refugee Review Tribunal ("R R T") made on 9 June 2004 affirming a decision of the delegate of the Respondent not to grant the Applicant a Protection (Class XA) Visa.
Consistent with the decision of the High Court in SAAP v Minister for Immigration and Multicultural and Indigenous Affairs [2005] HCA 24 ; (2005) 215 ALR 162, I propose to make an order joining the R R T as the Second Respondent in the proceedings although for the purposes of these Reasons I will describe the Minister for Immigration and Multicultural and Indigenous Affairs as the Respondent.
2 The essential contention in this application is that the R R T fell into jurisdictional error by failing to conduct a review of the Respondent's decision and therefore failed to exercise the statutory jurisdiction since the Tribunal failed to properly consider whether the Applicant is a person to whom Australia has protection obligations pursuant to section 36(2) of the Act as a refugee consistent with Article 1A(2) of the 1951 Geneva Convention Relating to the Status of Refugees , 189 UNTS 150 and the 1967 New York Protocol Relating to the Status of Refugees 606 UNTS 267 (and thus a person entitled to a protection visa pursuant to section 65 of the Act).
The failure to properly consider whether the Applicant is such a person is said to arise because the Tribunal failed to consider all elements of the Convention definition of "refugee" for the purposes of the Act , applied an adverse finding on credibility to a determination of all relevant factual questions, improperly relied upon apparent inconsistencies between the evidence of the Applicant and a Mr (Pastor) George Ddungu, failed to provide the Applicant with adequate particulars of the evidence of Mr Ddungu the Tribunal considered would form part of the reason for affirming the decision of the Delegate of the Respondent, failed to properly consider evidence establishing a well-founded fear of persecution for a Convention reason (assuming findings on the question of credibility properly excluded particular evidence) and failed to have regard to relevant evidence which would have been decisive in the determination of the application in the Applicant's favour.
3 The findings of the R R T on the question of the credibility of the Applicant and whether reliance could be placed upon any evidence of the Applicant, was a central matter to the claim that the R R T had failed to properly exercise the statutory jurisdiction of review.
The Background Facts

4 The background facts put to the R R T in a statutory declaration from the Applicant dated 1 July 2003 in support of the review, are these.
5 The Applicant is a Ugandan national from the Muganda tribe in central Uganda.
The Applicant was born on 25 December 1978.
Prior to departing Uganda for Australia in October 2002, the Applicant was the Assistant Pastor to the Christ Alive Church in Uganda and the full time coordinator of a project called Earthlife

Uganda and a further project called the Progressive Farmers Club (a project designed to assist the poor to become involved in various income generating activities).
6 The Applicant's father was killed when the Applicant was quite young.
The Applicant's father had become involved in the activities of the Democratic Party opposed to the Government of President Milton Obote's Uganda People's Congress Party.
The Applicant also became a member of the Democratic Party.
Some years ago (approximately early 2000) a referendum occurred in Uganda to determine whether Uganda should adopt a party system called the "Movement System" proposed by President Museveni or whether Uganda should retain a multi-party pluralist electoral system.
The Applicant opposed the adoption of the Movement System and campaigned both generally and through the Church against that system.
As a result, the Applicant contends that he was harassed and beaten by "military men" who supported President Museveni and particularly a group described as the Kalangala Action Group led by Major Kakooza Mutaale.
7 Prior to the presidential elections on 12 March 2001, the Applicant became very politically active and outspoken against President Museveni in support of a presidential candidate, Mr Kizza Besigye.
Besigye contended that the government had become corrupt and characterised by cronyism.
Besigye lost the presidential election and fled Uganda.
The Applicant says he was actively involved in many rallies and campaigns which criticised President Museveni, travelled to numerous villages campaigning for Besigye and criticised President Museveni to the congregation attending the Applicant's Church.
8 Immediately prior to the election (about five days) military men detained the Applicant at his workplace and questioned him about his opposition and two days before the election Major Kakooza Mutaale came to the Applicant's Earthlife workplace with soldiers, accused the Applicant of campaigning against the Government through the Church, arrested him, tortured and beat him and threatened to kill him unless he stopped criticising President Museveni.
The Applicant was released about 10 hours later.
9 The day before the election, military soldiers came to the Applicant's workplace and instructed him to convince children and other young men and women to support President Museveni.
The Applicant refused.
During one rally, children and young men and women were taken by military men, beaten and subjected to physical injury.
10 After the 2001 election and President Museveni's success, Besigye supporters were frequently harassed, detained and often killed.
On several occasions, the Applicant was threatened.
On one occasion, the Applicant was detained for a day, interrogated about aspects of the activities of a group called the Allied Defence Force ("ADF") rebels fighting the Government and questioned about the Applicant's support for same sex relationships through various Church projects.
The Applicant says he was further detained because of his support for Besigye, intimidated and went into hiding for three weeks.

11 In early June 2002, a man named Mugerwa Charles came to the Applicant's orphanage in difficult personal circumstances and stayed for approximately two weeks.
His three children, Ssewankambo, Judith and Oliver Charles were already living at the orphanage due to the circumstances confronting their father.
Mugerwa Charles then left the orphanage to re-join his wife who had acquired a house.
Later that month, Mugerwa Charles was arrested by military officials and brutally tortured and killed by the group led by Major Kakooza Mutaale because Mugerwa Charles was perceived to be a strong supporter of Besigye and had attended anti-government rallies with the Applicant.
Mugerwa Charles may also have been an ADF rebel.
12 The Applicant conducted the funeral service for Mugerwa Charles.
After the funeral a group of five men in civilian clothes with guns came to the Applicant's office and said they wanted to take the three children of Mugerwa Charles.
The Applicant refused to deliver up the children.
The men said they would give the Applicant time to deliver up the children and would return.
They said that if the Applicant failed to deliver up the children he would be killed like Mugerwa Charles.
13 During 2001, another incident occurred which the Applicant recounted to the R R T "for the sake of completeness" (Documents Book, p.94, para 25), in these terms:

"During 2001 I was involved in an outreach ministry in northern Uganda.
The LRA ("Lords Resistance Army") rebels captured me and my colleagues and told me that because I was a pastor they wanted me to give information to the President.
I thought that they would take us to the Sudan where their base is.
They released us, but they said that if we went back again they would get us.
Since my assistant was killed in December 2002 I have thought more about this and now I feel afraid that the LRA rebels might come to central Uganda and capture me.
"

14 In early July 2002, the Applicant travelled to Nairobi, Kenya to apply to the Australian High Commission for a visa to travel to Australia to talk to various people about sustainable development projects the Applicant was coordinating in Uganda.
The visa was granted on 5 July 2002.
On 28 May 2002, the Applicant had obtained a visa to travel to Germany to attend a development workshop related to particular project work.
However, the Applicant elected not to travel to Germany but travelled to Australia arriving on 4 October 2002.
15 In December 2002, the Applicant received a telephone call from Mr George Ddungu, the Administration Manager of the Earthlife Uganda Project.
Mr Ddungu told the Applicant that the men who had previously sought the three children of Mugerwa Charles had returned.

On learning that the Applicant was not in Uganda, the men abducted the Applicant's assistant Ssenyonga Robert.
Ssenyonga Robert has not been heard of since.
These men (soldiers) told people in the Earthlife Uganda Project office that the Applicant had assisted a rebel (Mugerwa Charles) and must also be a rebel.
George Ddungu told the Applicant not to return to Uganda.
The Applicant made arrangements for the three children of Mugerwa Charles to be taken to Kenya.
16 The Applicant says that he knows he will be killed if he returns to Uganda.
If he had been at his workplace in December 2002, the Applicant believes he would have been taken and killed instead of Ssenyonga Robert.
The Applicant says he would be killed because he helped Mugerwa Charles who the government soldiers believed to be a rebel and an "armed thief".
The second reason why the Applicant believes he would be killed is his refusal to hand over the three children of Mugerwa Charles.
The Applicant believes that he is perceived by these soldiers and particularly the group led by Major Kakooza Mutaale, the Kalangala Action Group, to be a threat.
The Applicant says he believes these soldiers act with the approval of the government.
The Applicant further says that these men who he describes as the "President's men" do not like him because he has persistently campaigned against President Museveni, he is a member of the Muganda tribe (President Museveni discriminates against Muganda people in favour of his own tribe, the Banyonkole tribe) and he counsels and assists homosexual men and lesbian women through the Church.
17 In the application form for the protection visa, the Applicant was asked to answer the question, "What do you fear may happen to you if you go back to that country?
" [Uganda].
The Applicant wrote an extensive response to the question which appears at pages 57 to 63 of the document bundle dated 26 October 2004.
In that response, the Applicant recites elements of the factual material reflected in the written statement put to the R R T in the statutory declaration dated 1 July 2003.
On the issue of the events that occurred in the northern part of Uganda around the town of Gulu, the Applicant said this (page 61):

"On top of that with my Church we have [been] doing outreach ministry not only to peaceful areas, but also to areas in the north ie --- Gulu as God has called us to proclaim Christ to all societies.
The Kony rebels abducted two of our youth evangelistic team and later returned the next day without any problems to them.
They were not hurt.
They said that when they come back they will need the leader of the team to be taken so that he can talk to the Government for them.
Failure to comply with what they say will mean death to the leader.
I am the leader of the crusades of our Church for the outreach ministries.

"

18 In a submission to the R R T dated 29 January 2004, the Applicant identifies his claims for protection based upon a Convention ground of persecution in these terms:

(a) by reason of the Applicant's political opinion which is actual or imputed, arising from his assistance to and protection of alleged rebel, Mugerwa Charles and his refusal to hand over the children of Mugerwa Charles to persons believed to be working for President Museveni; and
(b) by reason of the Applicant's membership of a particular group arising from his assistance to and protection of alleged rebel Mugerwa Charles and his refusal to hand over the children of Mugerwa Charles to persons believed to be working for President Museveni.

19 The Applicant is thus unwilling to avail himself of the protection of his country of nationality owing to a well-founded fear that he would be persecuted for each of the reasons identified in [18].

PROCEEDINGS BEFORE THE REFUGEE REVIEW TRIBUNAL

20 The Applicant arrived in Australia on 4 October 2002.

21 The Applicant initially applied for a tourism visa on 11 December 2001 for the purpose of visiting a sponsor in Australia and to undertake a study tour relevant to projects undertaken by the Applicant in Uganda.

The application was rejected on 20 December on the ground that the stated intention of only visiting Australia was not genuine.

A further application was lodged on 3 July 2002 with supporting sponsor documentation.

At that time, the Applicant identified a number of reasons which strongly suggested an intention and need on the part of the Applicant to return to Uganda at the conclusion of the three month visiting program.

Those reasons included the observation that people served by the Applicant in the Progressive Farmers' Club project would need his continuing assistance, his mother was seriously handicapped and in need of support (and his sister and only sibling was living outside Uganda), he was committed to his project work associated with the Earthlife Uganda project, he had enduring obligations to take care of his family's farm and he was not tolerant of the cold winters in Australia.

22 In these applications, the Applicant did not foreshadow any apprehension about the matters of concern which were subsequently reflected in the protection visa application.

23 On 14 January 2003, the Applicant lodged an application for a protection visa with the Respondent.

On 4 February 2003, the Respondent's delegate refused the grant of a protection visa and on 6 March 2003 the Applicant applied for a review of that decision to the R R T.

24 On 11 August 2003, the Applicant lodged the statutory declaration sworn 1 July 2003 reciting the background facts described at paragraphs [4] to [16].
On 22 December 2003, the R R T invited the Applicant to attend a hearing before the Tribunal to give oral evidence in support of the claims.
The hearing occurred on 19 February 2004.
Prior to the hearing, the Applicant lodged a document apparently signed (and so certified by a solicitor) by Pastor George Ddungu on 7 January 2004 under the heading Christ Alive Church , in these terms:

"We requested Pastor [the Applicant] to remain in Australia for fear of his life at the beginning of last year.
He had travelled on our Church's responsibility to meet a few persons out there and on behalf of the Church's activities.
We assisted a poor person who was a member of this Church and later he was killed in a safe house by the government soldiers.
They later came to our Church office asking to take the orphans which [the Applicant] resisted saying he was a voice of the oppressed and they said they would come back to fulfil their mission.
As Pastor [the Applicant] was in Australia, the same men came back and they wanted to take him to the barracks but because he was not available they took our assistant Administrator Pastor James whom we do not know where he is up to now.
They claimed that the man we assisted was a rebel belonging to ADF rebel group who are based in southern Uganda.
They also claimed that he had guns and was linked to the above group.
Because of our association with him as a Church goer, they linked us to the above said group.
Secondly, because of Pastor [the Applicant] political history, it steered them up.
We pray that you will continue rendering the necessary assistance as we are convinced that his return may cost his life.
So our Church is now under organisations listed as supporting rebels and security organs claim that we are rebels.
Generally speaking all pastors from this Church are being harassed.
We also pray that the soldiers stop these acts of plunder and ... killing innocent people in this country.
"

25 On 29 January 2004 the Applicant's advisers made a submission to the R R T addressing the basis for the Applicant's claims, the evidence, the statutory tests and various United States State Department Reports on Human Rights Practices surveys.
In the course of the hearing on 19 February 2004, the Applicant recounted aspects of the factual background described previously and gave further evidence described by the R R T in this way:

"In November 2001 he [the Applicant] decided to go to the North with food and medicines for children.
While on the way, the convoy was intercepted by LRA rebels and the applicant claimed to have been captured.
He was asked where he was taking food.
He was asked to tell the Government to stop attacking the LRA.
He was ordered to speak to Government officials by phone to deliver this message.
Eventually, he and his driver were able to escape and eventually made their way back to Masaka.
Thereafter, he moved from place to place, at times pretending to be mad.
The applicant claimed, that as a result of this experience, he had been branded a rebel and a supporter of the LRA.
He decided to leave the country, which he did with the assistance of George Ddungu.
At the conclusion of the hearing, the applicant said that, now even the children in his projects wanted to kill him, because they say he was involved in rebel activities.
"

26 On 21 February 2004 (apparently received on 24 February), the Applicant wrote to the R R T advising that there were some points that he thought were important that he had forgotten to mention because he had a headache during the course of the hearing.
A six page typewritten commentary was sent with a handwritten covering letter to the Tribunal.
As to the capture by the LRA rebels and the forced telephone call to Government officials, the Applicant provided the following additional detail:

"The rebels seemed as if they wanted to free us soon after my forced telephone talk, because they said that if we came back to the north they would get us and that because I went for prayer, if anything happens to them they would kill me.
They said that they have their informers also in the central part where I come from.
They also said that they are also part of the Uganda People Defence Force (Army).
The Ugandan Army is spread all over and so that also increased my fear and also to see that their informers are everywhere.
After the telephone talk they wanted to take us to their base in southern Sudan to be trained and fight, but we managed to escape from them as they went to raid for food.
"

27 The second topic dealt with in the written submission dated 21 February 2004 concerned a letter dated 20 July 2003 written by LRA rebels and a further letter dated 27 January 2004 written by the rebels, delivered to either the Church or one of the project offices where the Applicant previously worked.

George Ddungu recounted the content of the letters to the Applicant.
The Applicant described them in this way: "The rebels dropped a letter saying that they need my head with the help of their informers in Kampala and Masaka where I live they will be able to get me; they dropped a similar letter on 27 January 2004 [saying] that they had not forgotten me that they will still pursue me and cut my head off.
They also wrote in this letter that I escaped from them and so they want to teach me how to obedient to them a little bit more by cutting my head off.
"

28 On the question of the dominating influence of the LRA rebels (and the capture of the Applicant by the rebels) in the Applicant's fear of persecution, the Applicant made these further observations:

"Kony rebels targeted religious leaders and charity organisations (aid workers) to which as a pastor of Christ Alive [I] fully belong.
I cannot get protection from the Government as they said [I] am a rebel because they failed to understand that [I] am not part of the LRA rebels regarding the forced telephone conversation, they have even continued to pursue me and even I do not know whether I will be settled again ...
I cannot relocate to anywhere because in the north the rebels need me, in the central the rebels have their informers and Government is also there ...
I thought of seeking asylum to Kenya, but I could not because it was very bad also, I could not even walk on the streets when I was there ... plus the Kenya Government sends back the asylum seekers to Uganda and they are killed.
I also wanted Mugerwa's children to be taken to a different country, but it did not happen, consequently their killing by the same Government soldiers that were pursing them and killed their Dad, this has been confirmed in the telephone talk by Pastor George.
"

29 The third matter dealt with in the submission concerned aspects of the Presidential election in 2001 and particularly the conduct of supporters of President Museveni and as an illustration of continuing arbitrary arrest and killing in safe houses the Applicant stated: "In addition to Mugerwa Charles, Pastor James and the three children, I can name many more people killed in safe houses, because of being part of the reform agenda.
When Pastor James was taken they were still pursuing me and also at the time of the death of the children even until now.
Many of my friends and associates have either been killed or arbitrarily arrested because of their open support for the opposition.
I was also tortured, arbitrarily arrested and put into detention into an army barracks a few times.
"

30 The Applicant returned to the issue of his capture by the LRA on page 5 of the submission and said, "The Government failed to understand when I went and got abducted by the LRA rebels in the north.
They have said that [I] am part of the rebels" .
31 On 26 February, the Tribunal made telephone contact with George Ddungu in Uganda to enquire about aspects of the circumstances confronting the Applicant in Uganda and the challenges confronting the Christ Alive Church.
The Tribunal member's note of that discussion with Mr Ddungu is contained at page 17 of the supplementary bundle of relevant documents dated 26 September 2005 and is in these terms:

"Note for file N03/47963

Conversation with Mr George Ddungu

The applicant had submitted two documents purporting to be faxes received from Mr. George Ddungu, his former supervisor in the Christ Alive church in Uganda.
He also had made several references --- both oral and in writing --- to telephone conversations with Mr Ddungu.
I therefore decided to telephone Mr Ddungu at the phone number on the documents submitted by the applicant.
The call was made in the evening of 26 February 2004.
The number I called was 256-75-690099.
I asked to speak to George Ddungu and the person who answered the phone identified himself as Mr. Ddungu.
I explained who I was and said that I wanted to talk with him about the applicant's situation in Uganda and the situation of his church.
I took notes of the conversation as it occurred.
The following is a summary of the main points of the conversation:

1.
The only problem the applicant has is because of his activities in the north of Uganda.
2.
In 2001, the applicant travelled to the north of Uganda twice a month, because he was in charge of the church's northern programs and made monthly reports on them.
3.
The children who died in Kenya died of a disease which was prevalent in the camp in which they were living.
4.
The church has contacted the Uganda Human Rights Commission about its situation.
5.
The church was tipped off by immigration authorities that the applicant should leave the country.

6.
The church's programs in the north continue and the church is in contact with other churches, including the Catholic Church, regarding its programs.
7.
The church's orphanages are in Masaka and in Kampala.
Most of the children are in Kampala.
8.
The security people want the applicant to make a statement about the programs in the north. But one cannot discriminate --- one cannot know if a child is the child of a rebel if it needs shelter or has HIV/aids.
9.
Security people came to the Kampala office, but Mr. Ddungu told them that the church had written to the Human Rights Commission and had contacted a lawyer, so they went away.
10.
He could not go to Kampala office and was in a temporary office the church had in Masaka.
11.
The applicant could not survive in Uganda --- it was even necessary to bribe people at the airport because he was on a wanted list.
27 February 2004"

32 On 27 February 2004, the Tribunal wrote to the Applicant in order to provide certain information arising out of the discussion with Mr Ddungu for the purposes of section 424A of the Act .
The letter is in these terms:
" Australian Government
Refugee Review Tribunal

[The Applicant]

27 February 2004

Dear [the Applicant]

Your Application for Review

The Tribunal has information that would, subject to any comments you make, be the reason, or part of the reason, for deciding that you are not entitled to a protection visa.
The information is as follows:

The Tribunal Member spoke to George Ddungu on 26 February.
Mr Ddungu made the following statements:

1.
The only problem the applicant has is because of his activities in the north of Uganda.
2.
In 2001, the applicant travelled to the north of Uganda twice a month.
3.
The children who died in Kenya died of a disease which was prevalent in the camp in which they were living.
4.
The church has contacted the Uganda Human Rights Commission about its situation.
5.
The church was tipped off by immigration authorities that the applicant should leave the country.
6.
The church's programs in the north continue and the church is in contact with other churches, including the Catholic Church, regarding its programs.
This information is relevant because it contradicts much of what the applicant told the Tribunal Member at hearing.
You are invited to comment on this information.
Your comments are to be in writing and in English.
They are to be received at the Tribunal by 23 March 2004.
IF YOU DO NOT GIVE COMMENTS BY 23 MARCH 2004 THE TRIBUNAL MAY MAKE A DECISION ON THE REVIEW OF YOUR CASE WITHOUT FURTHER NOTICE .
Yours sincerely

....."

33 On 11 March 2004, the Applicant responded to the letter of 27 February 2004.
In response to the six matters, the Applicant said this.
On 6 January 2001, the Applicant became chairman of the "Evangelistic Committee" of the Church which compelled the Applicant to travel to northern Uganda and particularly the districts of Gulu (in the north), Lira (in central to northern Uganda), Apach (northern district), Moyo and Kitgum (in the north).
People had fled particularly from Gulu and Lira to the Apach district due to the activity of LRA rebels.
The Applicant visited Gulu reserve camps characterised by high death rates of children from hunger.
The Applicant felt a pastoral obligation to be with children sleeping on the streets apparently in fear of being captured by LRA rebels.
The Applicant conducted, with others, Church services to help raise finance to make travel to northern Uganda and particularly Gulu possible to address the problems in the north.

The Applicant repeated that during travel to the north he "was abducted by LRA rebels and forced to talk to the Government officials on the phone" .
34 On the issue of the abduction and escape of the Applicant, the further following remarks were put to the Tribunal:

"My main problem is as a result of my abduction by the LRA rebels and my forced telephone conversation to the Uganda government officials on the 21 st November 2001.
Which led to the government failure to understand that [I] am not an LRA rebel and thus their pursue of me as a rebel even until now.
At the same time our release by the main boy who was the main guard after he was overpowered by my colleague by saying 'Go' in his northern language (during which time the others had gone to raid for food) marked our release when the boys said 'go' and thus our escape from all the group.
Thus the LRA rebels need me because they said I prayed and cursed them and because I also escaped from them.
"

35 The Applicant further described the letters of 20 July 2003 and 27 January 2004, claimed that George Ddungu could not talk to the Applicant on the telephone nor send faxes because of Government spies, discussed the conduct of Kony rebels, the perception of the Government that the Applicant is a rebel arising out of the forced telephone conversation, the difficulty presented by central LRA rebels and their informers and the difficulty of seeking asylum in Kenya because of the conditions prevailing in Kenya and the practice of the Kenyan Government of sending asylum seekers back to Uganda where such returnees are killed.
As to the three children of Mugerwa Charles, the Applicant said, "I also wanted Mugerwa's children to be taken to a different country, but it did not happen, consequently their death of which [I] am far beyond sure that they were killed by the same security personnel who were pursuing them and killed their Dad" .
36 The Applicant sums up his response to the reference by George Ddungu to the Applicant's "only problem" being his activities in the north of Uganda, as a reference to the Applicant's trip to Gulu, his abduction by LRA rebels, his forced telephone discussion with Government officials, the resultant perception on the part of the Government that the Applicant is an LRA rebel and the lack of protection that will be afforded to him by the Government of Uganda for that reason.
37 The Tribunal reviewed the applications of 11 December 2001 and 3 July 2002 for a tourism visa by the Applicant and the notes of interview between the Applicant and a staff member of the High Commission of Australia in Nairobi in July 2002 concerning the Applicant's proposed trip to Germany on the night of that interview.
On 12 March 2004, the Tribunal wrote to the Applicant putting particular information to the Applicant for the purposes of section 424A of the Act .
The letter is in these terms:
" Australian Government

Refugee Review Tribunal

[The Applicant]

12 March 2004

Dear [the Applicant]

Your Application for Review

The Tribunal has information that would, subject to any comments you make, be the reason, or part of the reason, for deciding that you are not entitled to a protection visa.
The information is as follows:

In the course of your hearing on 19 February and subsequently in written communications from your adviser, you claimed that you were abducted by the LRA on or about 21 November 2001 and obliged to make a compromising phone call to Government officials.
You told the Tribunal that, on return to Masaka, you went into hiding for three weeks.
However, your visa application submitted by you in Nairobi on 11 December 2001 had attached to it supporting documents from the Bukoto Catholic Parish dated 26 November 2001, from the Butego Progressive Farmers Club dated 12 November 2001 and from the Progressive Institute of Business Studies Ltd dated 29 November 2001.
The last of these states that you were a student, pursuing a two-years course leading to a Diploma in Tourism and that you were 'hard working, co-operative and willing to learn'.
You collected your passport with your visa for Australia in Nairobi on 5 July 2001 [this date ought to have been 5 July 2002] .
In an interview with the Australian High Commission, at that time, you said that you had to return to Uganda because you had a sick mother and that her only other child, your sister, was living in the United States.
You stated that you were going to a workshop in Germany that night.
You stated that your Australian sponsors had taken over your education when your father died.
Papers attached to your visa application indicated that the sponsorship started when you were twelve.
This information is relevant because:

1.
The documents indicate that you may not have been where you claimed to be or doing what you claimed to have been doing in northern Uganda on the dates on which you claimed to be doing them.
2.

You left Uganda and returned at least twice between December 2001 and your departure for Australia.
3.
None of the documents submitted when you sought your visa for Australia nor your statements in interviews with the Australian High Commission made any reference to responsibility for church work in or visits to northern Uganda or involvement with an orphanage.
You appear to have been a full-time student of the Progressive Institute of Business Studies Ltd.

4.
Although you received your visa in July 2001 [this date ought to have been July 2002] , you returned to Uganda and did not leave for Australia until October, raising doubts about your claim to have at that time feared persecution.
You are invited to comment on this information.
Your comments are to be in writing and in English.
They are to be received at the Tribunal by 6 April 2004.
IF YOU DO NOT GIVE COMMENTS BY 6 APRIL 2004 THE TRIBUNAL MAY MAKE A DECISION ON THE REVIEW OF YOUR CASE WITHOUT FURTHER NOTICE.
Yours sincerely

.....
For District Registrar

....."

38 On 30 March 2004, the Applicant responded to the letter of 12 March.
On the question of whether the Applicant was genuinely in northern Uganda in November 2001 having regard to the apparent inconsistencies arising out of the documents described in the letter of 12 March 2004, the Applicant said this.
The Applicant was in northern Uganda in November 2001 and was abducted by LRA rebels on 21 November 2001.
The Applicant then went into hiding in a particular home.
The Applicant's assistant, Robert, collected the Australian visa forms from the Canadian Consular Office and the documents attached to the visa application including the support letters from the Progressive Farmers' Club project, the Butego project and the Bukoto Catholic Parish Church.
Robert also collected a support letter from the Progressive Institute of Business Studies.
All these documents were taken to the Applicant in hiding.
They were filled out by the Applicant.
Robert then sent them by registered mail to the Australian High Commission in Nairobi.
The Applicant denied that he had travelled away from his hiding place at all.

39 As to the failure to mention in the visa application any reference to responsibility on the part of the Applicant for Church work or Church visits to northern Uganda or involvement with an orphanage, the Applicant said this: "we decided that we do not mention much about my work and my employment commitments ie Earthlife, Christ Alive and my involvement in the north as this would lead into my mentioning my abduction by the LRA and my forced telephone conversation by the LRA to the Government officials that right now has put me in a state of conflicting loyalty about my continued living.
This alone would lead the Australian High Commission to know about my fear and thus learning that I was going to seek asylum in Australia hence their rejection of the visa" .
40 Unfortunately, the letter of 12 March 2004 from the R R T incorrectly makes a reference to the collection by the Applicant of a visa for Australia on 5 July 2001 rather than 5 July 2002. This caused the Applicant to extensively respond to the impossibility of collecting a visa in July 2001 which was applied for in December 2001.
41 The Applicant rebuts the notion that he left Uganda in periods between December 2001 and his date of departure for Australia.
The Applicant returns to the matter of electing not to disclose to the Australian High Commission aspects of his involvement in Church work as that would necessarily involve disclosure of the contended abduction by LRA rebels in northern Uganda.
For the same reason, the Applicant did not mention any aspects of his role at the orphanage or the problems concerning Mugerwa Charles.
The Applicant asserts that he remained in hiding, was fearful for his life and anxious that he may not be able to leave Uganda for Australia.
The Applicant described his arrangements with his Australian sponsors.
In relation to his German hosts or sponsors (the subject of the proposed visit to Germany based on a visa of 2 June 2002 disclosed to the Australian High Commission as background to the application for the 5 July 2002 Australian visa), the Applicant said this: "About the workshop, that I had to attend at that night in Germany, after informing my hosts in Germany that I wanted also to seek asylum there when I go, they informed me that they were to meet me in Uganda instead and thus my not travelling to Germany that particular night" .
42 On 12 May 2004, the Tribunal wrote to the Applicant in the following terms:
"Australian Government
Refugee Review Tribunal

[The Applicant]

12 May 2004

Dear [the Applicant]

Your Application for Review

The Member reviewing your case has asked me to advise you as follows:

I have carefully reviewed all the claims and evidence before me and find I have a number of difficulties with them.
In relation to the points put to the applicant post-hearing, I accept that the applicant did not travel to Nairobi in mid-December 2001.
However, the letter from the Progressive Institute of Business is dated in the middle of the period in which the applicant claims to have been in hiding and almost three weeks after his claimed trip to northern Uganda.
Irrespective of who collected the letters submitted with his visa application, it does not appear from the documents submitted that he was absent either from his studies or from his work in this period.
If one adds together the information supplied to the High Commission, which the applicant has not denied, the information supplied by the applicant in his primary and review applications and the information supplied by George Ddungu, which the applicant has also not denied, it would appear that, during 2001, the applicant travelled twice a month for his church to northern Uganda, started building a house, took care of a farm, took care of his blind and inform mother, was a valued employee of Earthlife Uganda and the Butego Progressive Farmers Association and was a conscientious student of tourism.
While I could accept that one person could do some of these things, I do not accept that one person could do them all.
However, my principal concern regarding the applicant's claims lies in the inconsistencies in his own evidence over time and the conflict with what I was told by George Ddungu, his former colleague in Christ Alive Church.
(a) In his primary application, the applicant claimed that the LRA had abducted two of his youth evangelistic team, but let them go later, saying that they would need the leader of the team, so he could talk to the Government for them.
Failure to comply would mean the death of the leader.
(b) In his primary application, the applicant stated that he was asked during the 2001 Presidential election campaign to preach on behalf of President Museveni.
He stated that his answer was that he was a pastor who did not involve himself in politics.
(c) In the statutory declaration of 1 July 2003 accompanying his review application, he claimed that he and colleagues were captured, but were released and told that they would be killed if they returned to the north.
There is no mention of colleagues being abducted.
(d) In the same statutory declaration, he referred in detail to his involvement in the 2001 Presidential election campaign on behalf of Col. Besigye, the opposition candidate, to being detained, to going into hiding and to being beaten on a number of occasions --- to none of which he had referred in his primary application.
(e) At hearing, he claimed that he escaped from the LRA, but only after being obliged to talk by telephone on the LRA's behalf to Government officials.
These claims are not consistent.
Moreover, George Ddungu made no reference to the applicant having been captured and stated that the Government interest in him was only because of the work of the Church in northern Uganda, for which the applicant was responsible.

This also contradicted the applicant's claims to have aroused the negative interest of security authorities because of his assistance to Mugerwa Charles and his children or because of his counselling of homosexuals.
Moreover, George Ddungu also stated that the Church's work in northern Uganda continued, in collaboration with other churches, which calls into question the claim that this work had caused Government authorities to harass the Church.
He also contradicted the applicant's claim that no complaint had been made to the Uganda Human Rights Commission.
Finally, he stated that the immigration authorities advice that the applicant should leave the country prompted his departure, contradicting the applicant's claim to have heard it at the airport on departure.
His own inconsistencies weigh heavily against the credibility of the applicant's evidence.
George Ddungu, in his written evidence and in conversation with me, clearly wanted to support the applicant, even though his evidence was not entirely consistent with what the applicant had claimed.
However, I have some reservations about his own reliability, since I called him to the number shown on his correspondence for his Kampala office, whereas he told me he had moved to Masaka.
Regarding the applicant's explanation as to why he did not go to Germany, the letter from the High Commission initially rejecting his visa application stated that the High Commission did not believe that his expressed intention only to visit Australia was genuine.
He then went to considerable lengths to satisfy the High Commission as to the genuineness of his intention to return to Uganda.
When he received his visa, he told the Australian High Commission that he was leaving for Germany that night.
His claim as to why he did not go to Germany means, therefore, that, later on that same day, he called Germany from Nairobi and told his hosts that he would apply in Germany for asylum.
In view of his experience with the Australian authorities, I find it inconceivable that he would do such a thing.
It is much more likely that the applicant obtained the German visa to bolster his claim for an Australian visa and that no trip to Germany was ever planned.
In view of all the above, I have great doubts about the credibility both of the applicant and of George Ddungu.
You are invited to comment on this information.
Your comments are to be in writing and in English.
They are to be received at the Tribunal by 4 June 2004 .
IF YOU DO NOT GIVE COMMENTS BY 4 JUNE 2004 THE TRIBUNAL MAY MAKE A DECISION ON THE REVIEW OF YOUR CASE WITHOUT FURTHER NOTICE .
Yours sincerely

.....
for District Registrar

..."

43 On 27 May 2004 (apparently received on 1 June 2004), the Applicant responded to this lengthy letter by making a submission set out at pages 48 to 55 of the Supplementary Bundle of Relevant Documents dated 26 September 2005.
The Tribunal extensively considered the submission, evaluated the responses contained within it and summarised its assessment of the response in this way (Bundle of Relevant Documents , 26 October 2004, page 345):

"1.
The explanations given to the Australian High Commission were necessary as, if [the Australian High Commission] had found out about his intention to seek asylum, he would have been denied a visa;

2.
His work in family commitments were made possible because he had employees assisting him to build his house, run his farm and look after his mother;

3.
The youth workers were abducted but died later of Ebola disease.
However, these are not the reasons he was seeking protection, which was his 'fear to die due to my abduction by the LRA and my forced telephone conversation to the government officials by the LRA on the 21 st November 2001 and consequently the unending pursuit of me by both parties for which reason I am seeking protection';

4.
Regarding the 2001 Presidential campaign, the Applicant repeated his claim to have campaigned for the opposition candidate, but did not address the fact that he had made no reference to this claim in his primary application; he repeated that the basis of his claim was as set out in para 3 immediately above;

5.
Regarding the inconsistency between his primary claim, involving the claimed capture of two colleagues by the LRA and the statutory declaration accompanying his review application, in which this is not mentioned, the Applicant misunderstood the question as referring to the owners of the vehicle in which he was travelling when captured and did not address the inconsistency; however, he stated that their capture was not the reason why he was seeking protection, but, rather it was the reasons referred to in para 3 above;

6.

Regarding his failure to mention earlier his involvement in the presidential campaign and the consequential beatings, detention and being forced into hiding, he stated that he was not aware of how much detail was required when he made his primary application;

7.
Regarding the question of whether he was released by or escaped from the LRA, he made a new claim --- that the owner of the vehicle overpowered a boy guarding them, who then said that they should go;

8.
Regarding my telephone conversation with George Ddungu, he said that the telephone system was being monitored and that George Ddungu could not tell me as much as I required and that he and George Ddungu used a code to talk about their activities; he claimed that George Ddungu was living in disguise and repeated the essential elements of his claims;

9.
The Applicant's reply did not address the inconsistency between the Applicant's claim to having been harassed because of his activities in the north of Uganda and the statements made to me by George Ddungu about the Church's ongoing work and contacts with other churches; he simply restated his claims as to certain events and restated his reason for seeking protection in terms similar to that set out in para 3 above;

10.
The Applicant accepted that the Church had approached the Uganda Human Rights Commission, but claimed that 'not much help' had been forthcoming; the reason for seeking protection was restated as above;

11.
The Applicant's reply addressed but did not explain the inconsistency between his evidence and that of George Ddungu regarding the timing of receipt of information regarding official intentions towards him;

12.
Regarding my doubts as to George Ddungu's credibility, because of his claim to have been in Masaka when I telephoned him in Kampala, the Applicant stated that 'George's location is his personal issue', claimed that he was in disguise for fear of being killed and that 'George's location is not the reason why I am seeking protection' which was as stated in para 3 above;

13.
Regarding the claimed intention to visit Germany, the Applicant re-asserted that this trip was planned and stated that he had had to tell his hosts of his plan to seek asylum because they were reading to him the program for his trip; he did not address my expressed scepticism that he would so such a thing on the day of his departure for Germany.

"

THE DECISION, FINDINGS AND REASONS FOR DECISION OF THE REFUGEE REVIEW TRIBUNAL

44 The Tribunal reviewed the facts reflected at paras [4] to [16], the articulated basis for the claim for a well-founded fear of persecution identified at para [18], the chronology of events, documents and correspondence described at paras [21] to [43] and made the following findings.
The evidence put before the Tribunal reflected a number of inconsistencies.
Those inconsistencies apparent to the R R T were put to the Applicant in the letters of 12 March 2004 and 12 May 2004.
The responses contained in the submissions made by the Applicant on 30 March 2004 and 1 June 2004 failed to resolve, for the R R T, the apparent inconsistencies.
45 Some of the "difficulties" confronting the R R T arising out of the failure by the Applicant to properly address apparent inconsistencies were described as "peripheral" to the Applicant's central claims and although the R R T was not satisfied that its concerns about those matters had been addressed, the R R T nevertheless disregarded those concerns.
The matters peripheral to the central claims included such factual assertions as the volume of tasks the Applicant claimed to perform while travelling regularly to the north of the country.
The R R T also had reservations about the Applicant's claims of involvement in the 2001 presidential election campaign.
46 The R R T observed that in the response of 1 June 2004, the Applicant made it plain that his application for protection is based principally on a well-founded fear arising out of his encounter with the LRA and the consequences of that encounter.
The R R T expressed its assessment of the evidence of the Applicant and the credibility of the Applicant in these terms:

"I do not accept his explanation for the fact that he made no mention of having been abducted by the LRA in his primary application [that is, the application for the protection visa].
Such a critical event in his life, with all the consequences which he later claimed flowed from it, does not fall into the category of 'detail' which he claimed he was originally not aware that was required.
Accordingly, I do not accept that the events surrounding his claimed abduction occurred.
I do not accept that he was abducted or that he was obliged to telephone Government officials.
It follows that I do not accept that, as a result, he was obliged to go into hiding on return to Kampala or Masaka or that he was harassed by Government officials as a result of his visit to the north and his contact with the LRA.
The Applicant's explanation as to why he did not go to Germany lacks all credibility and further undermines the credibility of his claims in general.
"

47 As to the relevance of the Applicant's engagement with the Australian High Commission, the R R T said this:

"He had gone, on his own admission, to considerable lengths to hide his true intentions from the Australian authorities.
The letter from the High Commission initially rejecting his visa application stated that the High Commission did not believe that his expressed intention only to visit Australia was genuine.
He then went to considerable lengths to satisfy the High Commission as to the genuineness of his intention to return to Uganda.
He told the Australian High Commission that he was leaving for Germany that night.
His response to the Tribunal's letter asks the Tribunal to accept, therefore, that, on that same day, he called Germany from Nairobi and told his hosts that he would apply in Germany for asylum.
In view of his experience with the Australian authorities, I find it inconceivable that he would do such a thing --- inevitably prompting the reaction that he claims he received.
I find that the Applicant obtained the German visa to bolster his previously rejected claims for an Australian visa and that no trip to Germany was ever planned.
"

48 Having made an assessment of the truthfulness of the Applicant's evidence, the R R T made the following findings:

"Because of my general problems with the Applicant's credibility, I am unable to accept his claim to have supported Mugerwa Charles and to have refused to hand over his children, a claim further undermined by his attempt to implicate his alleged persecutors in the deaths of the children, which George Ddungu ascribed to disease.
Similarly, I do not accept that he was being harassed by the authorities because he counselled gay and lesbian people.
In short, I find the Applicant's evidence as to his own circumstances completely unreliable.
I do not accept that the Applicant was captured by the LRA.
I do not accept that he is sought by official or unofficial agents of the Ugandan Government or of the LRA or is in any other way under threat from them for any reason.
I do not accept that he is under any threat from the people who were dependent on the projects he used to run.
I do not accept that his mother has been attacked by people looking for him.
I do not accept that he had to bribe his way out of Uganda or to obtain a passport or that he was advised at the airport (or at any other time) not to return.
"

49 Thus, the R R T concluded that the Applicant had not demonstrated a well-founded fear of persecution for a Convention reason and that, on the evidence, the R R T was not satisfied that the Applicant is a person to whom Australia has protection obligations for the purposes of the Convention Relating to the Status of Refugees as amended by the Protocol Relating to the Status of Refugees .

THE GROUNDS OF THE APPLICATION

50 The grounds of the application are:

"1.
The applicant was denied procedural fairness in that:

(a) on 26 February 2004, in the absence of the Applicant, the Tribunal heard evidence by telephone from one George Ddungu ("Mr Ddungu");

(b) the Tribunal failed to address questions to Mr Ddungu on matters likely to be within his knowledge and relevant to the review;

(c) the Tribunal failed to give to the applicant any or any adequate record or transcript of the evidence of Mr Ddungu;

(d) the Tribunal failed to give to the Applicant any or any adequate particulars of the evidence of Mr Ddungu that the Tribunal considered would be the reason, or part of the reason, for affirming the Decision of the Delegate;

(e) the Tribunal failed to ensure, as far as reasonably practicable or at all, that the Applicant understood why the evidence of Mr Ddungu, or a part of the evidence, was relevant to the review.
"

2.
The Tribunal purported to make the Decision of the Tribunal without jurisdiction because:

(a) it made an adverse finding against the applicant founded on what it said was his explanation for the fact that he made no mention of having been abducted by the Lord's Resistance Army ("LRA") in his application for the Visa whereas the applicant did mention having been abducted by the LRA in the application;

(b) it made adverse findings against the applicant founded on the erroneous adverse finding referred to in subparagraph (a);

(c) in the premises, the Tribunal failed to review the Decision of the Delegate in accordance with section 414 of the Migration Act or at all.

3.

There was no evidence, or any sufficient evidence, before the Tribunal to support findings that:

(a) the events surrounding the applicant's claim that he was abducted by the LRA did not occur;

(b) the applicant was not abducted by the LRA;

(c) the applicant was not obliged by the LRA to telephone Government officials;

(d) the applicant was not obliged to go into hiding on returning to Kampala or Masaka;

(e) the applicant was not harassed by Government officials as a result of his visit to the north of Uganda and his contact with the LRA;

(f) the applicant's explanation as to why he did not go to Germany lacks all credibility;

(g) the applicant obtained the German visa to "bolster" his previously rejected application for an Australian visa;

(h) the trip to Germany was never planned;

(i) the applicant did not support one Mugerwa Charles and did not refuse to hand over his children;

(j) the applicant was not harassed by the authorities because he counselled gay and lesbian people;

(k) the applicant's evidence as to his own circumstances is completely unreliable;

(l) the applicant is not sought by official or unofficial agents of the Uganda Government or the LRA and is not under threat from them for any reason;

(m) the applicant is not under threat from the people who were dependent on the projects he used to run;

(n) the applicant's mother has not been attacked by people looking for the applicant;

(o) the applicant did not have to bribe his way out of Uganda or to obtain a passport;

(p) the applicant was not advised at the airport (or at any other time) not to return to Uganda.
4.
In the circumstances, the Decision of the Tribunal was illogical and unreasonable.
"

THE ADDITIONAL EVIDENCE

51 On the hearing of the application, the Applicant sought leave to read two affidavits sworn by the Applicant on 13 May 2005 and 29 June 2005.
As to the affidavit of 29 June 2005, the Applicant exhibits 11 documents.
The first six exhibited documents already form part of the record being the letter from the R R T to the Applicant dated 27 February 2004, the Applicant's submission to the R R T dated 11 March 2004, the R R T's letter to the Applicant dated 12 March 2004, the Applicant's response dated 30 March 2004, the R R T's letter to the Applicant dated 12 May 2004 and the Applicant's reply dated 27 May 2004.

The remaining exhibits (7 to 11) supported by paras 8 to 21 of the affidavit address the recollections of and circumstances surrounding the discussion between the Tribunal member and George Ddungu.
Exhibit 8, for example, is an affidavit by George Ddungu deposing to George Ddungu's recollection of the telephone conversation on 26 February 2004.
Exhibit 10 is an unsworn typewritten affidavit by George Ddungu.
Exhibit 11 is a facsimile of a sworn version of exhibit 10.
Exhibit 9 is the handwritten notes of George Ddungu.
52 The Respondent objects to the admission of the affidavit on two grounds.
First, to the extent that the affidavit seeks to put before the Court the documents marked as exhibits 1 to 6, the documents are already before the Court and the affidavit adds nothing.
As to paras 8 to 21 and exhibits 7 to 11, the Respondent says the affidavit ought not to be admitted because the evidence is irrelevant.
The facts deposed to and documents exhibited do not go to any ground forming part of the application.
The application does not involve any allegation of bias, bad faith or improper purpose on the part of the Tribunal member in conducting the conversation, noting the conversation or relying upon the conversation.
The Applicant simply seeks to adduce evidence which demonstrates that minds might legitimately differ about the recollections of the content of the conversation notwithstanding that the Tribunal member's typewritten note of the discussion on 26 February 2004 was made contemporaneously on 27 February 2004.
53 In Waco v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCAFC 171 ; 131 FCR 511; Lee, Hill and Carr JJ found the Tribunal had failed to afford procedural fairness to the applicant for a Protection Visa by finding letters central to the applicant's claim (submitted after the conclusion of the hearing) were not genuine, without giving the applicant an opportunity to be heard on that issue.
On the question of the evidential burden, their Honours at [58] said:

"It will not be necessary for the party alleging unfairness to put before the court the evidence which he would have presented had there not been a miscarriage of justice.
It is sufficient in such a case that the party has not been afforded an opportunity to put his or her case.
Only where the case is one where it can be shown that the Appellant could not, even if given the opportunity to do so, affect the outcome would it be held that there was no denial of procedural fairness.
If the possibility exists that the Appellant, if given the opportunity might be able to make submissions or call evidence which could affect the outcome, the Appellant will not fail merely because the Appellant has not proved that the submissions or evidence would affect the outcome.
"

54 Although it is not necessary for a party to put on evidence of the content of a possible response, evidence of that response or the possibility of a response that might have revealed evidence affecting the outcome may be admissible.
It is not admissible for the purpose of establishing a controversy of fact or merits as to whether the Tribunal member said something or failed to properly record or appreciate something said by George Ddungu.
In this case, the Tribunal put its concerns about a conversation with George Ddungu to the Applicant on 27 February 2004 and made reference to apparent inconsistencies arising out of the discussion with George Ddungu in the R R T's letter to the Applicant on 12 May 2004.
The Applicant had an opportunity to put information concerning a possible contradictory version of the conversation to the R R T from 27 February 2004.
Moreover, the affidavit is not relevant to a ground of challenge.
The particular ground of challenge going to the conversation with George Ddungu asserts a denial of procedural fairness arising out of a failure by the R R T to put all aspects of the conversation recorded by the Tribunal member to the Applicant.
55 The proposition is that had all elements of the conversation been put to the Applicant, the Applicant might have said something further in response.
The question is whether there was a failure to afford procedural fairness in not putting all the elements of the conversation as noted by the Tribunal, to the Applicant.
If the purpose of the affidavit is to contradict the Tribunal member's version of the conversation reflected in the typewritten note of 27 February 2004, no doubt the Respondent would seek to address the contention with evidence from the Tribunal member.
However, paragraphs 8 to 21 and exhibits 7 to 11 of the affidavit of the Applicant sworn 29 June 2005 will be admitted into evidence solely on the basis that the facts deposed to and the documents exhibited reflect things which might have been said or put to the R R T had points 7 to 11 of the conversation [31] in the note dated 27 February been put to the Applicant.
56 The affidavit of 13 May 2005, deals with attempts by the Applicant to obtain the Tribunal member's handwritten notes of the conversation with George Ddungu.
Perhaps it is thought the handwritten notes will be inconsistent with the typewritten note of 27 February 2004 [31] or that propositions put to the Applicant in the letter of 27 February 2004 [32] were not a fair representation of what was actually said by George Ddungu.
Evidence directed to attempts to secure a handwritten note of the conversation which took place on 26 February 2004 are not relevant to the question of whether the Applicant was denied procedural fairness by reason of:

- points 7 to 11 in the note of the conversation not being put to the Applicant;
- the Applicant not being present when the conversation took place;
- the Tribunal member failing to ask the correct questions; or
- the Tribunal member failing to ensure the Applicant understood the evidence of George Ddungu.

57 The question of whether procedural fairness was denied the Applicant is to be determined by considering what was put to the Applicant arising out of the conversation as the material matters

influencing the decision of the Tribunal in the context of the assessment of the evidence of the Applicant overall.
Accordingly, leave is refused to read the affidavit sworn by the Applicant on 13 May 2005.
THE RESOLUTION OF THE ISSUES
The Process of Reasoning

58 Although ground 1 of the application relied upon a denial of procedural fairness, the primary emphasis of the Applicant in oral and written submissions was directed to contended flaws in the process of reasoning adopted by the R R T. Accordingly, the first question is whether the R R T fell into jurisdictional error by failing to conduct a review of the Respondent's decision and by failing to exercise the statutory jurisdiction, by asking the wrong question or applying an unsound process of reasoning to the determination of whether the Applicant was a person to whom Australia had protection obligations under the Convention.
The Applicant says the R R T properly considered the first element of whether the Applicant is a Ugandan citizen but failed to consider three other elements of the Convention definition of a refugee, namely, that the Applicant:

(a) must fear persecution involving serious harm having an official quality in the sense of being official, or officially tolerated or officially uncontrollable by reason of a Convention attribute of the persecuted person
(b) must fear persecution for a Convention reason of race, religion, nationality, membership of a particular social group or for reasons of political opinion; and
(c) such fear of persecution must be well-founded upon a "real chance" which is not remote or insubstantial or far-fetched even though the possibility of persecution occurring is well below 50%,
and determine whether those elements were satisfied or not.
59 The Applicant says the R R T adopted an unsound process of reasoning by conducting an assessment of the truth of the statements and evidence put by the Applicant to the R R T, then making adverse findings on credibility and then applying those findings to reject the Applicant's evidence and thus find a lack of satisfaction of a well-founded fear of persecution for a Convention reason.
Rather, the R R T ought to have addressed each element of the Convention (and therefore the statutory) criteria and made findings on all facts relevant to each element of the criteria.
60 In other words, the contention is that an examination of the reasoning of the R R T demonstrates that the Tribunal simply applied a reductive process of reasoning reducing all relevant questions to simply one of whether the Applicant could be believed.
Thus, the R R T failed to exercise the statutory jurisdiction of review by failing to properly consider each element about which it was required to be satisfied.
61 The argument is not borne out by a proper assessment of the reasoning of the R R T.

62 The Tribunal in undertaking its analytical exercise, first framed the analysis by considering Australia's protection obligations to individuals within the scope of Article 1A(2) of the Convention.
The Tribunal considered the precise elements of the definition and a number of important guiding opinions of the High Court of Australia in the construction and interpretation (and the Tribunal's obligations generally) of Article 1A(2) and important provisions of the Act .
The Tribunal then identified four elements it described as key elements of the Convention definition.
Those four key elements were identified as whether the Applicant was outside his country of nationality, whether the Applicant feared persecution involving serious harm, systematic and discriminatory conduct, a threat to life or liberty, significant physical harassment or ill treatment, significant economic hardship and other matters involving a consideration of section 91R(1)(b) and section 91R(2) of the Act .
The R R T noted that the High Court has explained that persecution may be directed against a person as an individual or as a member of a group and that persecution must have an official quality in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality.
The Tribunal further noted that the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the Applicant from persecution.
The R R T further noted that persecution implies an element of motivation on the part of those effecting the persecution and that individuals are persecuted for something perceived about them or attributed to them by their persecutors.
63 The R R T noted that the persecution which the Applicant fears must be for a Convention reason of race, religion, nationality, membership of a particular social group or political opinion.
The Tribunal noted that persecution feared by the Applicant need not be solely attributable to a Convention reason but a multiplicity of reasons will not satisfy the statutory test unless a Convention reason constitutes an essential and significant motivation for the persecution feared.
The R R T further noted that the Applicant's fear of persecution for a Convention reason must be a well-founded fear and explained that notion as one where the Applicant has a genuine fear founded upon a real chance of persecution where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation .
The R R T observed that a 'real chance' is one that is not remote or insubstantial or a far-fetched possibility and a person can hold a well-founded fear of persecution even though the possibility of the persecution occurring is "well below 50%".
64 The Tribunal further noted that, additionally, the Applicant must be unable or unwilling because of his fear to avail himself of the protection of his country of nationality or be unwilling to return to his country of former habitual residence.
65 Whilst it is true that decisions of the R R T often recite a preliminary analysis of these elements in common or similar form, the reasons do not suggest a formulaic application of the elements to the evidence or a failure to appreciate the scope or burden of the elements about which it had to be satisfied.

Rather, the Tribunal appreciated that section 36(2) recites as a criterion for a protection visa that the applicant for the visa must be a non-citizen in Australia to whom Australia had protection obligations under the Refugees Convention as amended by the Refugees Protocol .
The Tribunal recognised that it was required by section 414 of the Act to "review" the delegate's decision and section 415 conferred upon the R R T the power to exercise all the powers and discretions conferred by the Act upon the decision-maker and that the R R T stood in the shoes of the Minister for the purposes of section 65.
That section requires the grant of a visa upon satisfaction of the relevant matters and notably the criteria prescribed by the Act and Regulations (section 65(1)(a)(ii)) and the refusal of a visa if not so satisfied.
In Minister for Immigration and Multicultural and Indigenous Affairs v SGLB [2004] HCA 32 at [37] Gummow and Hayne JJ observed:

"The satisfaction of the criterion that the applicant is a non-citizen to whom Australia has the relevant protection obligations may include consideration of factual matters but the critical question is whether the determination was irrational, illogical and not based on findings or inferences of fact supported by logical grounds [Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S20/2002 (2003) 77 ALJR 1165 at paras [37], [52], [173]; cf at [9] If the decision did display these defects, it will be no answer that the determination was reached in good faith.
However, inadequacy of the material before the decision-maker concerning the attainment of that satisfaction is insufficient in itself to establish jurisdictional error.
"

66 The question of whether the adequacy of material before a decision-maker is sufficient to make out the necessary satisfaction on the facts is something about which minds might legitimately differ and as His Honour the Chief Justice observed in Re Minister for Immigration and Multicultural Affairs; ex parte Applicant S20/2002 (2003) 77 ALJR 1165 at [5]:

"To describe reasoning as illogical or unreasonable, or irrational, may merely be an emphatic way of expressing disagreement with it".
and at para [9]:

"[T]o describe as irrational a conclusion that a decision-maker is not satisfied of a matter of fact, or a state of affairs, because the decision-maker does not believe the person seeking to create the state of satisfaction, or to describe the process of reasoning leading to such a conclusion as illogical, on judicial review of an administrative decision, might mean no more than that, on the material before the decision-maker, the court would have reached the required state of satisfaction".

67 Because the source of the challenge to the decision lies in the constitutional jurisprudence attending section 75(v) of the Constitution and section 39B of the Judiciary Act 1903 (Cth), the Applicant must establish an error of law on the part of the Tribunal.
Such error may embrace a number of notions.
In Minister for Immigration and Multicultural Affairs v Yusuf [2001] HCA 30 ; (2001) 206 CLR 323 at page 351 [82], McHugh, Gummow and Hayne JJ observed:

"'Jurisdictional error' can thus be seen to embrace a number of different kinds of error, the list of which, in the passage cited from Craig [Craig v South Australia [1995] HCA 58 ; (1995) 184 CLR 163 at 179] is not exhaustive.
Those different kinds of error may well overlap .
The circumstances of a particular case may permit more than one characterisation of the error identified, for example, as the decision-maker both asking the wrong question and ignoring relevant material.
What is important, however, is that identifying a wrong issue, asking a wrong question, ignoring relevant material or relying on irrelevant material in a way that affects the exercise of the power is to make an error of law.
Further, doing so results in the decision-maker exceeding the authority or powers given by the relevant statute.
In other words, if an error of those types is made, the decision-maker did not have authority to make the decision that was made; he or she did not have jurisdiction to make it.
Nothing in the Act suggests that the Tribunal has given authority to authoritively determine questions of law or to make a decision otherwise that in accordance with the law".
68 In this case, the Applicant contends that the R R T failed to ask itself any of the relevant questions other than whether the Applicant was a non-citizen, failed to afford procedural fairness in providing the Applicant with aspects of the conversation with George Ddungu, failed to reach the necessary level of satisfaction by making unsupported findings and reached a decision which was illogical and unreasonable.
69 The R R T correctly framed, expressly, the issues which it had to consider in undertaking its review.
The Tribunal elected to consider whether each of those elements were satisfied by embarking upon a detailed forensic assessment of each of the Applicant's claims and his evidence to determine whether it could be satisfied that the Applicant was, at the date of its decision, a person to whom Australia owed protection obligations.
In undertaking that forensic exercise, the R R T considered all of the background facts recited at [4] to [16].
It considered the material before the Respondent's delegate and the answers given by the Applicant to the questions in the protection visa application.
It considered the Applicant's submission of 29 January 2004 and the way in which the Applicant framed his claims for protection based upon a Convention ground [18].
The R R T considered the Applicant's statutory declaration sworn 1 July 2003 [24] and a document signed by George Ddungu on 7 January 2004 [24] speaking to aspects of the claims made by the Applicant.

Because the Applicant had placed great emphasis upon the notion of his capture by LRA rebels and demands made by those rebels, the Tribunal had regard to the question of whether there was consistency between answers given in the protection visa application and oral evidence and statements made about those matters in the course of the proceedings before the R R T.
The Tribunal considered the oral evidence of the Applicant [25], the Applicant's clarifying document of 21 February 2004 [26], the observations about capture by the LRA rebels and the forced telephone call to government officials [26], letters written by the LRA rebels on 20 July 2003 and 27 January 2004 [27] and the Applicant's fear of persecution arising out of his capture by the LRA rebels and his forced engagement with government authorities [28], [30], [33], [34], [36] and [39].
70 It is clear from the process of reasoning that these matters were considered expressly in the context of an evaluation of the framework elements identified by the R R T [62] to [64].
71 The R R T considered the Applicant's claims about the conduct of supporters of President Museveni concerning indiscriminate killing of individuals perceived to be hostile to the government and particularly illustrative of that conduct, the killing of Mugerwa Charles and his three children.
The Tribunal then further considered the consequential fear on the part of the Applicant arising out of the government's failure to appreciate that the Applicant was not truly a member of the LRA rebel group.
72 The Tribunal then sought to elucidate aspects of the claims by speaking directly with [Pastor] George Ddungu [31].
That conversation [31] revealed 11 points going to aspects of the allegations or background facts concerning the Applicant's claims.
The discussion with George Ddungu revealed, in the mind of the Tribunal member, a number of inconsistencies and on 27 February 2004 [32] the Tribunal put those matters it considered material to its determination to the Applicant.
The function of that letter was to provide the Applicant with an opportunity to comment on six relevant matters which were perceived to be relevant to a decision on the application.
The Tribunal [33] considered the Applicant's response, his claim of abduction by LRA rebels and forced engagement with government officials [33] and [34].
The R R T considered the Applicant's comments concerning the LRA letters of 20 July 2003 and 27 January 2004 and the reassertion of the killing of the three children of Mugerwa Charles [35].
73 The conversation by the Tribunal member with George Ddungu [31], the letter to the Applicant [32] and the assessment of the response [33], [34], [35] and [36] was directed to both resolving, in the mind of the Tribunal, apparent inconsistencies and whether the evidence satisfied the framework questions [62] to [64].
74 Further matters of inconsistency, in the mind of the Tribunal arose out of the R R T's consideration of aspects of the material put by the Applicant to the High Commission of Australia in applications made on 11 December 2001 and 3 July 2002 [37].
Those matters went to apparent inconsistencies between the movements of the Applicant in the latter months of 2001.
These concerns were the subject of a further letter to the Applicant [37] providing the Applicant with an opportunity to clarify those matters.

75 The Tribunal considered the Applicant's response [38] and in the face of that response a lengthy letter was written to the Applicant [42] putting a series of concerns going to questions such as whether the Applicant was genuinely in hiding as he contended, whether the Applicant was engaged in the field of activities contended for, whether the Applicant was abducted by LRA rebels, whether the Applicant had such a level of engagement in the 2001 presidential elections that he would be perceived to be politically hostile to the government (particularly in conjunction with the forced engagement with government representatives by reason of his capture by LRA rebels) and other matters.
76 The reasoning of the R R T suggests that these propositions were put to the Applicant to test the strength of the various contentions of the Applicant as he sought to plot the points on the continuum in establishing each of the framework elements formulated by the R R T. The reasoning suggests strongly that the R R T was not simply reducing its statutory task to one of whether the Applicant could be believed.
The question addressed by the R R T was whether the statutory elements were satisfied by reason of the evidence.
77 The Tribunal considered the Applicant's response of 27 May 2004 [43].
An assessment of that response reveals that the Tribunal's extensive consideration of the submission [43] is a fair and proper reflection of the response.
78 Having considered all of this evidence, the Tribunal noted that the Respondent principally based his application for protection upon a well-founded fear of persecution arising out of his encounter with the LRA rebels and the consequences of that encounter in terms of the perception the government (and the army) would hold of his political opinions either actual or imputed and its perception of his association with a group hostile to the government.
The forensic analysis of the evidence was designed to lead to a judgment about whether the R R T would be satisfied of such a claim.
The conclusions [46], [47] and [48] were clearly open to the Tribunal.
Those conclusions reflect a thorough rejection of the evidence of the Applicant and his systemic claims.
79 A part of that assessment involved a core claim by the Applicant concerning his abduction by the LRA rebels and an assessment of the inferences and conclusions to be drawn from a consideration of all of the Applicant's material and statements made in response to questions in the protection visa application form as compared with the Applicant's statutory declaration sworn 1 July 2003 [24], the Applicant's submission dated 29 January 2004 [25], the Applicant's oral evidence, the Applicant's letter to the R R T dated 21 February 2004 [26], [27], [28], [29] and [30], the Applicant's letter of 11 March 2004 [33], [34] and [35] and the Applicant's submission of 27 May 2004 [43].
The conclusions on those matters were open to the Tribunal.
80 In reaching those conclusions, the Tribunal provided the Applicant with an opportunity to make written submissions, provide oral evidence and respond to a specific and focused expression of concern about particular matters.
In dealing with the evidence of the Applicant and reaching the conclusions reflected at [46], [47] and [48], the R R T was expressly dealing with the issues identified at [62], [63] and [64].

The process of reasoning was not simply a reductive assessment of the credibility of the Applicant but an assessment of whether the evidence established the statutory criteria in the way framed by the R R T which, in turn, necessarily involved an assessment of the truthfulness of the Applicant.
In the assessment of the evidence generally, the R R T's view of the credibility of the Applicant was, however, decisive.
The findings demonstrate that the R R T evaluated each of the claims and tested the version given by the Applicant in relation to his alleged abduction by LRA rebels, the consequences of the abduction, the events surrounding the abduction, the obligation to conduct a telephone discussion with government officials, his claim to go into hiding on return to Kampala or Masaka, the claimed harassment by government officials and the explanation as to why the Applicant ultimately did not go to Germany.
The R R T expressed "general problems" with the Applicant's credibility, described the Applicant's evidence as "completely unreliable" and rejected the Applicant on the matters identified at [48].
81 Therefore, on the whole of the evidence, the R R T, for reasons given at length, found the Applicant's version of events completely unreliable.
It may be that the Applicant's credibility had been so weakened that no weight redemptive of the poisoned well of credibility could be attributable to his evidence: Re Minister for Immigration and Multicultural Affairs; ex parte Applicant S20/2002 (2003) 77 ALJR 1165 at [49]; McHugh and Gummow JJ.
However, the R R T undertook a systemic examination of each of the elements about which it had to be satisfied for the purposes of sections 36(2) , 65 , 414 and 415 of the Act .
It was open to the R R T to make the findings reflected in the reasons.
The process of reasoning was sound and not affected by illogicality, unreasonableness or irrationality.
Based upon its assessment of the evidence, it was open to make the findings under challenge by grounds 2 and 3 of the application [50].
On the question of the process of reasoning leading to credibility findings, His Honour, Justice McHugh observed in Re The Minister for Immigration and Multicultural Affairs; ex parte Durairajasingham [2000] HCA 1 ; (2000) 168 ALR 407 at [67] :

"In addition, the prosecutor alleges that the Tribunal breached s.430(1) by failing to set out reasons for its finding that the prosecutors claim that members of PLOTE tried to recruit him were 'utterly implausible'.
However, this was essentially a finding as to whether the prosecutor should be believed in his claim --- a finding on credibility which is the function of the primary decision-maker par excellence.
If the primary decision-maker has stated that he or she does not believe a particular witness, no detailed reasons need be given as to why that particular witness was not believed.
The Tribunal must give the reasons for its decisions, not the subset of reasons why it accepted or rejected individual pieces of evidence.

In any event, the reason for the disbelief is apparent in this case from the use of the word 'implausible'.
The disbelief arose from the Tribunal's view that it was inherently unlikely that the events had occurred as alleged.
"

82 The Applicant contends that the R R T fell into the error warned against by the High Court in the Court's reasons in Minister for Immigration and Multicultural and Indigenous Affairs v SGLB [2004] HCA 32 and Abebe v Commonwealth of Australia [1999] HCA 14 ; (1999) 197 CLR 510.
As to SGLB , the applicant says that the process of reasoning is one designed for arriving at the best possible understanding of the facts in an inherently imperfect environment and that the process is not one directed to punishing or disadvantaging vulnerable people because they have made false or inconsistent statements or are believed to have done so.
As to Abebe , the applicant relies upon the observations of their Honours Gummow and Hayne JJ in observing that inquiring whether a person has a well-founded fear of persecution is attended by very great difficulties and that there is no warrant for the Tribunal adopting some unthinking application of rules of law to a person from a wholly different society coming to a new country in which that person seeks asylum.
83 As to the application of the principles reflected in SGLB , there is no basis for concluding from the reasons of the Tribunal that it sought to punish or disadvantage the Applicant as a vulnerable person.
The Tribunal gave no weight to the matter at [22].
The R R T sought to establish to its satisfaction on all the evidence whether the Applicant was a person to whom Australia owed protection obligations within the framework of the case put by the Applicant.
As to Abebe , there is no warrant for construing the reasons of the Tribunal as the formulaic unthinking application of procedural or legal rules derivative of an orthodox and stable democracy to a person from a wholly different society who would be likely to be conditioned by behavioural norms appropriate to an entirely different polity.
The R R T sought to forensically determine a basis upon which it either might or might not be satisfied as to the framework issues identified at [62] to [64].
84 The Applicant further contended that even if the forensic analysis of the evidence resulting in adverse credibility findings was properly undertaken, there were many other grounds for determining the application in favour of the Applicant which the Tribunal failed to address and upon which no findings were made.
The Applicant exhibited a schedule identifying 42 factual contentions.
No finding was made by the Tribunal on 14 of those contentions.
As to 24 of these contentions, the Tribunal rejected the contention by disbelieving the Applicant.
Some examples of factual contentions about which the Tribunal made no finding are these: supporters of President Museveni lobby youth and beat them; government not interested in

Bawaga people; Applicant's father killed opposing President Milton Obote when the Applicant was a young boy; children beaten and legs broken.
85 In discharging the duty cast upon the Tribunal in undertaking a review of the decision, it is not necessary for the Tribunal to make a finding on each and every factual contention put to the R R T. The R R T must take the case put to it by the Applicant either articulated by the Applicant or identified upon a proper assessment of the material put to the R R T but not necessarily fully articulated or developed, inquire into the elements of the factual contentions to determine whether the Tribunal might reach the required state of satisfaction, address its statutory mind to the correct inquiry, correctly apply the rules of law including rules of procedural fairness and determine whether the Applicant is a person to whom Australia has protection obligations under the Convention.
In discharging that role, it is not necessary to decide each and every factual contention.
The Applicant has not demonstrated any error of law on the part of the Tribunal in the treatment of the evidence and the contentions.
86 The Applicant further contends that the R R T failed to have regard to other important evidence, namely, the evidence of George Ddungu confirming that the Applicant was a church worker in Uganda and had experienced problems with the LRA rebels in the north of the country because of his activities with the church, evidence that should the Applicant return to Uganda he would be killed because of these activities and independent country information (200 pages) evidencing problems faced by church and charity workers in Uganda.
87 As to these matters, the Tribunal expressly had regard to the historical work of the Applicant for the Christ Alive Church in Uganda and forensically examined the claims, work, movement and activity of the Applicant on behalf of the Church.
The R R T had regard to the letter signed by George Ddungu on 7 January 2004 [24] and information concerning the activities of the Applicant in the north of Uganda on behalf of the Church [31] and the information provided by the Applicant [38].
The Tribunal tested all of these matters to determine whether it could reach the required level of satisfaction on the questions before it recognising that the emphasis in the claim made by the Applicant for a well-founded fear of persecution was persecution from government authorities by reason of a perception of political opinions he might hold hostile to the government and a perception of membership of the LRA rebel group by reason of his engagement with government as a function of his capture by the rebels.
His claim of a well-founded fear of persecution is not based upon his membership of the Christ Alive Church.
The claim made in the submission dated 29 January 2004 [18] was based upon actual or imputed political opinion or, alternatively, a perception that the Applicant was a member of a particular group hostile to the government arising out of his association with Mugerwa Charles.
In any event, the R R T considered the totality of the evidence including the implications of the Applicant's role in the Church and reached a decision open on the evidence.
88 As to the independent country information, the R R T did not make findings about or comment upon the independent country information going to the scope of the problems faced by church and charity workers in Uganda.

This is no doubt because an examination of the independent country information does not demonstrate material going to the Applicant's participation within a particular group or the activities of members of a group described as that group comprising those who gave "assistance to and protection of alleged rebel Mugerwa Charles" and those who were involved in a refusal to hand over to the military or government authorities the children of Mugerwa Charles.
Further, although the independent country information describes the scope of the difficulties faced by charity organisations and church groups in Uganda, the information does not go to the issues put before the R R T as the basis for this Applicant's claim of a well held fear of persecution which relies upon a particular perception on the part of the government arising out of the contentious telephone discussion based upon the contentious capture allegation.
89 The Applicant further contends that the R R T misdirected itself by treating the information and evidence of George Ddungu with caution and that it was unreasonable for the Tribunal to question George Ddungu's credibility.
The R R T, in fact, relied upon information put to it by George Ddungu as the basis for testing some of the claims of the Applicant and although the R R T member felt George Ddungu was, in some senses quite naturally, supporting and extending himself in support for the Applicant, the Tribunal simply adopted a cautious approach based upon an apparent inconsistency in George Ddungu's statement concerning his move from Kampala to Masaka.
90 The Applicant further contends that the R R T misdirected itself as to aspects of the original application by describing aspects of the oral evidence as raising new claims when those claims had been raised in the original application for a protection visa.
Those claims went to the question of the alleged capture of the Applicant by LRA rebels.
This event and aspects of it were seen by the Tribunal as new in the sense that they were not consistent with the matters raised by the Applicant in the visa application.
The point seems to be that in the application form the Applicant said that Kony rebels (LRA rebels) abducted two of the Church's youth evangelistic team and released them the next day unhurt.
The rebels apparently said that on the next occasion they would need the leader of the team so that the leader could speak to government officials for them, presumably because the rebels lacked the necessary education.
Subsequently, the Applicant said that he had been captured by rebels with his colleagues, thought he would be taken to Sudan and was subsequently released.
He later said that he had been captured and was forced into engaging in telephone discussions with government authorities which gave rise to the perception that the Applicant was a participatory member of the LRA rebel group.
As indicated in these reasons [4] to [43] the R R T tested these matters in considerable detail.
91 There is no demonstrated error on the part of the Tribunal.
Denial of Procedural Fairness

92 The second question is whether the Applicant was denied procedural fairness arising out of the matters related to the discussion between the Tribunal member and George Ddungu on 26 February 2004 [50].

In determining questions of fact on issues before it, the Tribunal was entitled to make an inquiry directly of George Ddungu and seek to put to George Ddungu questions which, in the view of the Tribunal, would be likely to inform its decision.
The content of the obligation of procedural fairness in the discharge of the statutory function does not require an applicant to be present when the R R T seeks information about a contention or seeks to inform itself about facts.
The Act requires the R R T to put to the Applicant in the way that the R R T considers appropriate in all the circumstances, particulars of any information that the R R T considers would be the reason or a part of the reason for affirming the decision under review.
The Act also requires the R R T to ensure, as far as is reasonably practicable, that the Applicant understands why that information is relevant to the review undertaken and invite the Applicant to comment on the information (section 424A).
93 On 27 February 2004, the Tribunal wrote to the Applicant [32] and put six matters arising out of the conversation with George Ddungu [31] to him and invited him to comment on the information.
The Tribunal expressly said that the six matters, subject to any comments by the Applicant, would be the reason or part of the reason for deciding that the Applicant was not entitled to a protection visa.
The R R T did not put every aspect of information gathered by the Tribunal as a result of the discussion with George Ddungu to the Applicant.
The information reflected at points 7 to 11 [31] may have been contextual.
The Tribunal may have considered the information relevant or irrelevant.
If relevant, the Tribunal had a statutory obligation to have regard to the information although ultimately it may not have formed the reason or a part of the reason, for affirming the decision under review.
A consideration of the reasons and the conclusions demonstrate that the information noted at points 7 to 11 [31] did not form the reason or a part of the reason [46], [47] and [48] for affirming the decision under review.
94 Importantly, the Tribunal's duty and power to conduct the review is conditioned upon the Tribunal's observance of the requirements of procedural fairness as a matter of common law not just a question of construction of provisions of the Act : Kioa v West [1985] HCA 81 ; (1985) 159 CLR 550 at 615 per Brennan J; Attorney-General (NSW) v Quin [1990] HCA 21 ; (1990) 170 CLR 1 at 40 per Brennan J; Annetts v McCann [1990] HCA 57 ; (1990) 170 CLR 596 at 598 --- 600 per Mason CJ, Deane and McHugh JJ, 604-605 per Brennan J; Ainsworth v Criminal Justice Commission [1992] HCA 10 ; (1992) 175 CLR 564 at 591 per Brennan J; Re Refugee Review Tribunal; ex parte Aala [2000] HCA 57 ; (2000) 204 CLR 82 at 99-100 [38] --- [39] per Gaudron and Gummow JJ; Gleeson CJ at 89 [5], Kirby J at 131 [132] and Hayne J 142-143 at 168.
A failure to provide procedural fairness is an error of law.
Two aspects of procedural fairness require consideration.
The first is that in the ordinary case where no issue of confidentiality arises, an opportunity should be given to an applicant to deal with adverse information given to the Tribunal that is "credible, relevant and significant" (Kioa v West ; Brennan J) to the decision to be made.

The second aspect involves a recognition that information of that kind is likely to create a risk of prejudice, perhaps subconscious, and it is unfair to deny a person whose interests are likely to be affected by the decision, an opportunity to deal with the information.
95 A question then is whether the information noted at points 7 to 11 [31] of the Tribunal member's conversation with George Ddungu constituted adverse information that is credible, relevant and significant to the decision to be made.
In Applicant Veal of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs & Anor [2005] HCA 72 (6 December 2005), [' Applicant Veal'], Gleeson CJ, Gummow, Kirby, Hayne and Heydon JJ at [16] observed expressly as matters of general principle:

"As is always the case, what is said in reasons for judgment must be understood in the context of the whole of the reasons.
Examining sentences, or parts of sentences, in isolation from the context is apt to lead to error. In particular, what Brennan J said about 'information that is credible, relevant and significant' takes its meaning from the point his Honour had made only a few sentences earlier [in his Honour's judgment in Kioa v West] that: '[a]dministrative decision-making is not to be clogged by inquiries into allegations to which the repository of the power would not give credence, or which are not relevant to his decision or which are of little significance to the decision which is to be made' .
Moreover, what is meant by 'credible, relevant and significant' must be understood having regard also to the emphasis that his Honour had given earlier in his reasons to the fundamental point that principles of natural justice, or procedural fairness, 'are not concerned with the merits of a particular exercise of power but with the procedure involved that must be observed on its exercise'.
Because principles of procedural fairness focus upon procedures rather than outcomes , it is evident that they are principles that govern what a decision-maker must do in the course of deciding how the particular power given to the decision-maker is to be exercised.
"

and at [17]:

"It follows that what is 'credible, relevant and significant' information must be determined by a decision-maker before the final decision is reached.
That determination will affect whether the decision-maker must give an opportunity to the person affected to deal with the information.
And that is why Brennan J prefaced his statement about a person being given an opportunity to deal with adverse information that is credible, relevant and significant, by pointing out that there may be information, apparently adverse to the interests of a person, which can and should be put aside from consideration by the decision-maker as not credible, not relevant, or of little or no significance to the decision to be made.

'Credible, relevant and significant' must therefore be understood as referring to information that cannot be dismissed from further consideration by the decision-maker before making the decision.
And the decision-maker cannot dismiss information from further consideration unless the information is evidentially not credible, not relevant or of little or no significance to the decision that is to be made.
References to information that is 'credible, relevant and significant' are not to be understood as depending upon whatever characterisation of the information the decision-maker may later have chosen to apply to the information when expressing reasons for the decision that has been reached.
",

and as to subconscious effect and the potential for prejudice at [19]:

"As has rightly been said, 'the necessity to disclose such material in order to accord procedural fairness is not based on answering a causal question as to whether the material did in fact play a part in influencing the decision.
[NIB Health Funds Ltd v Private Health Insurance Administration Council [2002] FCA 40 ; (2002) 115 FCR 561 at 583 [84] per Allsop J].
It follows that asking whether ... the Tribunal may have been subconsciously affected by the information distracts attention from the relevant inquiry.
The relevant inquiry is: what procedures should have been followed?
The relevant inquiry is neither what decision should the decision-maker have made, nor what reasons did the decision-maker give for the conclusions reached.
"

96 In Applicant Veal , the applicant and his partner applied for protection visas.
The Minister's delegate refused the applications and each sought review by the R R T of that refusal.
After the applications had been made but before the R R T had completed its review, the Department of Immigration and Multicultural and Indigenous Affairs received an unsolicited but not anonymous letter making allegations against the male applicant.
The letter alleged the applicant admitted he had been accused of killing a person prominent in the political affairs of the applicant's country of origin (Eritrea) and that the applicant was a supporter of, and working for, the government of Eritera.
The letter was communicated to the Department on a secret or confidential basis but then provided to the R R T. The R R T affirmed the decisions not to grant protection visas to the applicants and in giving its reasons said that it gave no weight to the letter sent to the Department and forwarded to the Tribunal.

The question was whether nevertheless, the applicant was denied procedural fairness by not being given an opportunity to respond to the letter and whether the letter had a subconscious effect upon the Tribunal's decision.
97 Their Honours concluded that the alleged admission by the applicant and whether the applicant was working for the government of his country of origin were matters that "bore upon whether he had a well-founded fear of persecution for a Convention reason": ("Applicant Veal") [20] and that procedural fairness required the Tribunal to draw the appellant's attention to the information.
Their Honours then dealt with important questions of analogical principle concerning "public interest immunity" not relevant in the present case.
98 The Tribunal, in the discharge of its duty is bound to make its own inquiries and form its own views upon the claim made by the Applicant.
Information obtained by the Tribunal which is relevant to that inquiry cannot be ignored by the Tribunal nor can the information be put to one side before reaching a conclusion that the application should be refused, in circumstances where the information demonstrates facts and circumstances which would lead the R R T to the conclusion that it could not be satisfied that an applicant had a well-founded fear of persecution for a Convention reason.
99 In this case, the Tribunal made inquiries and obtained information from George Ddungu.
The information was not communicated anonymously nor was it given in any confidential circumstances.
The reasons demonstrate that the first six points of the note of the discussion contained adverse information affecting the Applicant which was credible, relevant and significant.
It was communicated to the Applicant so that he might be provided with an opportunity to deal with the information.
Points 7 to 11 in the note [31] were not matters relevant to the decision of the Tribunal or were matters of little significance to the decision to be made.
The procedure adopted by the Tribunal was to put to the Applicant that body of information which the Tribunal regarded as credible, reliable, reflective of inconsistencies in other evidence of the Applicant (and therefore significant) so as to enable the Applicant to respond.
100 The Tribunal was not required to put points 7 to 11 of the information [31] obtained from George Ddungu to the Applicant.
The Applicant's affidavit of 29 June 2005 (paras.
8 to 21 and exhibits 7 to 11) has been admitted into evidence simply on the ground that the documents reflect those further things that might have been said or put to the R R T had points 7 to 11 been put to the Applicant.
Since there was no obligation to put those points to the Applicant there was no denial of procedural fairness.
In any event, the Applicant knew from approximately 27 February 2004 [32] that the Tribunal member's discussion with George Ddungu resulted in important information (points 1 to 6) being provided to the Tribunal, the information was regarded as important and significant and likely to form part of the reason for deciding the application.
Whatever contention the Applicant may wish to have put to the R R T, he was able to put it from approximately 27 February 2004.

101 The R R T did not fail to afford procedural fairness to the Applicant by failing to address questions to George Ddungu on matters which may or may not have been within his knowledge or upon matters likely to be within his knowledge.
The R R T was entitled to obtain any information from George Ddungu that it considered potentially relevant.
Nor did the R R T fail to afford procedural fairness by failing to provide the Applicant with a record or transcript of the information provided by George Ddungu.
The Tribunal may gather information as it considers relevant.
Some of that information will be relevant and will be considered and evaluated.
Arising out of that consideration, information may form a part of the reason for affirming a decision in which event the R R T has a duty to put that information to the Applicant and invite comment upon it.
The content of the obligation to provide procedural fairness does not require an applicant be provided with "a transcript of the evidence" [50] gathered by the Tribunal.
In this case, there was no obligation upon the R R T to provide the Applicant with a transcript of the information provided to the R R T by George Ddungu.
A consideration of the letter dated 27 February 2004 [32] demonstrates that the R R T conveyed the information the Tribunal then considered would be the reason or a part of the reason for affirming the decision under review, to the Applicant in clear and precise terms.
Plainly enough, the Applicant understood the content of the letter and responded comprehensively [33].
102 Accordingly, the application must be dismissed.
The Applicant is ordered to pay the Respondent's costs of the application.
I certify that the preceding one hundred and
two (102) numbered paragraphs are
a true copy of the Reasons for Judgment herein
of the Honourable Justice Greenwood.
Associate:

Dated: 10 January 2006

Counsel for the Applicant: Mr Mark Plunkett

Solicitor for the Applicant: Mr Bruce Henry; Terry Fisher & Associates

Counsel for the Respondent: Mr Peter Bickford

Solicitor for the Respondent: Ms Carla Polson, Clayton Utz

Date of Hearing: 28 September 2005

Date of Judgment: 10 January 2006