HIGH COURT OF AUSTRALIA

NOTICE OF FILING

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Details of Filing

File Number:	S102/2022
File Title:	ENT19 v. Minister for Home Affairs & Anor
Registry:	Sydney
Document filed:	Form 27B - Appellant's chronology
Filing party:	Plaintiff
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Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN: **ENT19**
Plaintiff

MINISTER FOR HOME AFFAIRS
First Defendant
COMMONWEALTH OF AUSTRALIA
Second Defendant

PLAINTIFF'S CHRONOLOGY[1]

PART I: INTERNET PUBLICATION

1. This chronology is in a form suitable for publication on the Internet.

PART II: CHRONOLOGY

Date	Event	Reference
27 Mar 1989	The plaintiff is born in Iran.	**AB 29**
Mar-Jul 2012	The plaintiff, together with his father, mother and brother, leave Iran on 27 March 2012. They arrive in Jakarta and attempt to travel to Australia by boat without a visa. The attempt is unsuccessful.	**AB 92-93**
On or around 17 Aug 2012	The plaintiff's father, mother and brother arrive in Australia by boat without a visa.	**AB 93, 187, 218**

[1] **LEGEND**

AB: Application Book filed 28 Sep 2022 (Vols 1 and 2, pages 1-565).

Draft Bundle: Affidavit of Ziaullah Zarifi filed 7 Nov 2022 and exhibited documents (pages 1 to 386).

Pl FBA: Plaintiff's Further Book of Authorities filed 6 December 2022 (pages 1 to 262).

JBA: Joint Book of Authorities filed 22 November 2022 (Vols 1-7, pages 1 to 1901).

14 Dec 2013	The plaintiff arrives in Australia by boat without a visa. He is detained under the *Migration Act 1958* (Cth) (**Act**), at North West Point, Christmas Island.	**AB 30, 59**
18 Dec 2013	The plaintiff is transferred to Villawood Immigration Detention Centre in Sydney.	**AB 30**
21 Feb 2014	The plaintiff is charged with a people smuggling offence and is taken into criminal custody.	**AB 30**
15 Feb 2016	The plaintiff's father, mother and brother are granted protection visas. They reside in Sydney.	**AB 93**
1 Feb 2017, received 6 Feb 2017	The plaintiff makes a valid application (**2017 visa application**) for a Safe Haven Enterprise (Class XE) Subclass 790 (Safe Haven Enterprise) visa.	**AB 131-215**
13 Oct 2017	The plaintiff is convicted in the District Court of New South Wales of the offence of Aggravated Offence of People Smuggling (At Least 5 people), contrary to s 233C of the Act.	**AB 59**
19 Oct 2017	The plaintiff is sentenced to a term of imprisonment of eight years by Judge AC Scotting in the District Court of New South Wales, with a non-parole period to expire on 9 Dec 2017 (taking into account time already served in custody).	**AB 73-100**
19 Oct 2017	A joint media release regarding the plaintiff's conviction and sentence by the then Minister for Immigration and Border Protection and the then Minister for Justice, is sent by email by a ministerial advisor to a mailing list of journalists, including ones at *The Australian* newspaper and the Australian Broadcasting Corporation (**ABC**), at 3:40PM.	**AB 554** (Affidavit of T Eteuati, [5]); **AB 561** (Exhibit TE-3)
19 Oct 2017	The ABC publishes an article regarding the plaintiff's conviction and sentence at 4.09PM.	**AB 254**

19 Oct 2017	The joint media release is published on the website of the Minister for Immigration and Border Protection at 4:14PM. An amended version is published on the same website at 4.48PM, replacing the first version.	**AB 553** (Affidavit of T Eteuati, [3]); **AB 557** (Exhibit TE-1); **AB 559** (Exhibit TE-2)
20 Oct 2017	*The Australian* and *The Daily Telegraph* publish articles regarding the plaintiff's conviction and sentence.	**AB 252-253**
9 Dec 2017	The plaintiff is released from custody on parole, and immediately re-detained under the Act, at Villawood Immigration Detention Centre.	**AB 30**
28 May 2018	A delegate of the Minister for Immigration and Border Protection refuses the 2017 visa application, on the basis that the plaintiff did not meet the protection criteria under ss 36(2)(a) or (aa) of the Act.	**AB 216-246**
9 Jul 2018	The Immigration Assessment Authority remits the refusal decision of the delegate for reconsideration, with the direction that the plaintiff is a refugee within the meaning of s 5H(1) of the Act. That finding is accepted by the Minister.	**AB 101-113** **AB 59, [3]**
14 Oct 2019	The then Minister for Immigration and Border Protection, acting personally pursuant to s 501(1) of the Act, refuses the 2017 visa application on the basis that the plaintiff did not pass the character test.	**AB 30**
20 Feb 2020	The Federal Court (Perry J) sets aside, by consent, the Minister's decision to refuse the 2017 visa application, and remits the matter for reconsideration according to law. The orders note that the Minister accepted that the decision was affected by jurisdictional error, and conceded that "*a critical conclusion, being that the [plaintiff] posed an unacceptable risk of harm to the*	**AB 260**

	Australian community, relied on a finding that the [plaintiff] had an 'ongoing risk' of reoffending for which no probative basis is identified."	
27 April 2020	The plaintiff files an interlocutory application in the Federal Court, seeking an order which would compel the Minister to make a decision on the 2017 visa application on or before 11 May 2020.	**AB 503-506**
13 May 2020	The then Minister for Immigration and Border Protection, acting personally pursuant to ss 47 and 65 of the Act, refuses the 2017 visa application on the basis that he was not satisfied the grant of the visa was in the national interest, such that the plaintiff did not satisfy cl 790.227 of Sch 2 to the *Migration Regulations 1994* (Cth) (**Regulations**).	**AB 538-540** **Note the index to the AB wrongly identifies the date of this decision as 13.05.2022.*
13 May 2020	The Federal Court (Perry J) dismisses the plaintiff's interlocutory application of 27 April 2020, with orders that the Minister pay the plaintiff's costs. The orders note the application was dismissed "*in circumstances where at the commencement of the hearing … the Minister's counsel informed the Court and the [plaintiff] that a decision had been made to refuse the [plaintiff's 2017 visa application] earlier that day*."	**AB 503-506**
6 Nov 2020	The Federal Circuit Court of Australia (**FCCA**) (Judge Driver) dismisses the application for judicial review of the Minister's decision dated 13 May 2020: *ENT19 v Minister for Home Affairs* [2020] FCCA 2653.	**AB 30**
25 Feb 2021	The plaintiff is transferred from Villawood Immigration Detention Centre to Yongah Hill Immigration Detention Centre in Western Australia. The plaintiff's family continues to reside in Sydney.	**AB 30; Draft Bundle 232** (Affidavit of Z Zarifi dated 5 July 2022, [2])

25 Mar 2021	The Migration Amendment (Clarifying International Obligations for Removal) Bill 2021 (Cth) (**Bill**) is introduced and read a first time in the House of Representatives.	**PI FBA 216**
21 April 2021	The Senate Standing Committee for the Scrutiny of Bills scrutinises the Bill. The Committee raises concerns that proposed amendments to s 197C of the Act may unduly trespass on personal rights and liberties due to the risk of indefinite detention, and observes that the "*highly discretionary and non-compellable*" nature of the power in s 195A of the Act means that "*they cannot be relied upon to ensure that immigration detention is reasonable, necessary and proportionate in the cases contemplated by the Bill*". The Committee requests the Minister's detailed advice as to the effectiveness of safeguards and other measures contemplated by the Bill to ensure that the immigration detention of persons affected by the Bill will not trespass unduly on fundamental personal rights and liberties.	**PI FBA 216-221**
29 April 2021	The Parliamentary Joint Committee on Human Rights scrutinizes the Bill. The Committee observes at [1.39] that proposed amendments to s 197C "*may give rise to the prospect of prolonged or indefinite immigration detention*" and at [1.40] that "*to the extent that the measure would subject persons to whom protection obligations are owed but who are ineligible for a protection visa to ongoing mandatory immigration detention, without any time limit on the overall duration of detention, the measure limits the right to liberty*". The Committee further observed at [1.46] that "*it is not apparent that* [the Minister's discretionary	**PI FBA 229-253, especially at 242-243, 246-247, 251-252**

	powers] *would necessarily serve as an effective safeguard in practice*". The Committee at [1.57] sought the Minister's advice as to how many people in the past five years to whom protection obligations were owed but who were ineligible for a grant of visa on character or other grounds had been granted a visa by the Minister under s 195A or released into community detention under s 197AB.	
13 May 2021	The then Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs provides a response to the Senate Standing Committee. The response includes statistics relating to the exercise of the power in s 195A of the Act to grant a visa to persons who have been found to be owed protection obligations but are ineligible for a grant of a visa on character or other grounds. The number of persons in immigration detention found to engage protection obligations but ineligible for grant of a visa on character or other grounds, who were granted a visa under s 195A was "*<5*" for financial years 2016-17, 2017-18, 2018-19, 2019-20, and 2020-21 as at 30 April 2021, and 0 for financial year 2015-2016.	**Pl FBA 222-228, especially 227**
25 May 2021	The then Minister provides a response to the Parliamentary Joint Committee on Human Rights. The response provides the same statistics regarding grants of visas under s 195A of the Act. The response states that "*[i]n the last 5 years no person found to engage protection obligations has subsequently been returned to the country in relation to which they were found to engage protection obligations, or any third country*".	**Pl FBA 254-262, especially 257**

25 May 2021	*Migration Amendment (Clarifying International Obligations for Removal) Act 2021* (Cth) amends the Act, inserting, relevantly, ss 36A, 197C(3) and 197D. The EM states that s 36A is intended to ensure that "*in considering a protection visa application, the Minister or the Minister's delegate assesses protection obligations, including in circumstances where the applicant is ineligible for a visa*", and s 197C as amended is intended to ensure it "*does not require or authorise the removal of an unlawful non-citizen (UNC) who has been found to engage protection obligations unless:* • *the decision finding that the non-citizen engages protection obligations has been set aside;* • *the Minister is satisfied that the non-citizen no longer engages protection obligations; or* • *the non-citizen requests voluntary removal*".	**Pl FBA 192-193**
23 June 2021	The Court hands down its decision in *Commonwealth v AJL20* (2021) 95 ALJR 567.	**AB 30; JBA Tab 25**
26 Nov 2021	The Full Court of the Federal Court allows the plaintiff's appeal and orders that a writ of certiorari issue, to quash the decision of the Minister of 13 May 2020, and a writ of mandamus issue, requiring the Minister to determine the 2017 visa application according to law: *ENT19 v Minister for Home Affairs* (2021) 289 FCR 100.	**AB 30; JBA Tab 27**
21 Dec 2021	The Minister files an application for special leave to appeal from the decision of the Full Court.	**AB 466-484**

11 Feb 2022	The plaintiff is notified that his case had been referred to the Ministerial Intervention Section of the Department for assessment against the powers under ss 195A or 197AB and that the Department had found that his case does not meet the guidelines for referral to the Minister for consideration. (Correctness of the above step may depend on this Court's decision in the matters of *Davis v Minister* and *DCM20 v Secretary*).	**Draft Bundle 235** (Affidavit of Z Zarifi dated 5 July 2022, [19]) **Note the document has not been reproduced but it can be handed up.*
10 April 2022	The plaintiff files an interlocutory application seeking an order that the Minister comply with the Full Court's writ of mandamus on or before a date not more than 21 days after the date of the Court's order on that interlocutory application.	**Draft Bundle 235** (Affidavit of Z Zarifi dated 5 July 2022, [20])
5 May 2022	The Minister's application for special leave to appeal is dismissed, in part on the basis that, in light of the amendments to s 197C, the application raised no question of general principle sufficient to warrant the grant of special leave, and the application had insufficient prospects of success: *Minister for Home Affairs v ENT19* [2022] HCASL 94.	**AB 30; Draft Bundle 234** (Affidavit of Z Zarifi dated 5 July 2022, [21])
1 June 2022	Minister Clare O'Neil is sworn in as Minister for Home Affairs.	**Draft Bundle 156** (Transcript of hearing before Raper J, T32.7-8)
2 June 2022	The plaintiff files an amended version of the application which he had filed on 10 April 2022, seeking final relief in the form of a writ of peremptory mandamus, alternatively an order that the writ of mandamus issued by the Full Court on 26 November 2021 be complied with by a specific date.	**Draft Bundle 234-235** (Affidavit of Z Zarifi dated 5 July 2022, [22])

9-10 June 2022	The plaintiff's application filed on 2 June 2022 is heard before Raper J.	**Draft Bundle 268-386** (Transcript of hearing before Raper J)
10 June 2022	A "Detainee Brief" is prepared for the new Minister for Home Affairs by Mr Morrish, Assistant Secretary of the Character and Cancellation Branch in the Department of Home Affairs. The brief advises the Minister of two options in the event that Raper J should grant the relief sought by the plaintiff: (1) the Minister could "*take no further action*" and the application would be referred to a protection visa delegate for decision; or (2) the Minister could "*consider personally refusing [the plaintiff's] SHEV application under s 65 of the Act, relying on the criterion set out in clause 790.227 of Schedule 2 to the Regulations*". The Brief further advised that "*while it is legally open to a delegate to consider refusing [the plaintiff's] SHEV application under section 65 of the Act, relying on the national interest criterion, the Department is not aware of this having occurred in the past and notes that a delegate cannot be compelled to make a decision in a particular manner*". The brief does not advise the Minister that the power under s 65 could be exercised personally to grant the plaintiff a protection visa. Before Raper J, Mr Morrish gave evidence that substantially the same matters would be covered in respect of the national interest criterion in s 501(3), to those covered in the brief he eventually signed (and before Raper J in draft form), in respect of exercise of ss 47 and 65 by reference to the criterion in cl 790.227.	**Draft Bundle 263-267, especially 266-267** (Brief for the Minister dated 10 June 2022) **Draft Bundle 336-337** (Transcript of hearing before Raper J, T69.18-70.8)

14 June 2022	Raper J pronounces orders to the effect that the writ of mandamus issued by the Full Court on 26 November 2021 be complied with by no later than 27 June 2022.	**Draft Bundle 240** (Orders of Raper J)
15 June 2022	Raper J publishes reasons for judgment: *ENT19 v Minister for Home Affairs [2022] FCA 694*. Her Honour observes at [86] that the evidence of Mr Morrish was that save for the cl 790.227 criterion, "*there was no other evidence that any other criteria remained to be considered as part of the [plaintiff's] application process*" and at [90] that by 18 May 2022, the Visa Applicant Character Consideration Unit had determined that it would not be taking further action in this case because of its view that "*s 501 is not available to us for consideration*" as the Minister had "*previously considered [the application] under s 501 of the Act and there is no new information in the client's circumstances regarding their character*".	**Draft Bundle 238; JBA Tab 28** (Reasons for judgment of Raper J)
17 June 2022	The plaintiff is invited by the Department to comment on the Minister taking into account *non-refoulement* obligations and the potential of his indefinite or prolonged detention, should the 2017 visa application be refused. The plaintiff's solicitors respond on 17 June and 21 June 2022.	**AB 261-265, 267-270**
22 June 2022	The Minister is presented with a "Submission" from the Department regarding the 2017 visa application. The Submission recommends the Minister indicate one of three options on or before 27 June 2022, in order to comply with the orders of Raper J: (1) take no further action and refer the 2017 visa application to a delegate for decision; (2) make a personal decision to refuse the 2017 visa application relying on the national interest criterion in cl 790.227 (the Department attached a Statement of Reasons for signing, if the Minister relied	**AB 529-537**

	on the national interest criterion); (3) make a personal decision to refuse the 2017 visa application pursuant to s 501(1) or (3) of the Act (the Department does not attach a Statement of Reasons which could be adopted if the Minister were to refuse pursuant to s 501(1) or (3), and at [30], the legal advice (redacted) for the this option is designated as "*not viable*"). The Submission advises that if the Minister should not agree to the second or third option, the Department would proceed toward grant of the visa. The Submission does not advise the Minister that the power under s 65 could be exercised personally to grant the plaintiff a protection visa.	
27 June 2022	The Minister refuses the 2017 visa application, acting personally pursuant to ss 47 and 65 of the Act, on the basis that she was not satisfied it is in the national interest to do so.	**AB 59-67**
27 June 2022	The plaintiff is invited to comment on whether the Minister should issue a conclusive certificate under s 473BD of the Act in relation to the refusal decision. The plaintiff's solicitors respond on 30 June 2022.	**AB 547**
6 July 2022	The plaintiff files an application for a constitutional or other writ in the High Court of Australia.	**AB 21-26**
12 July 2022	The Minister issues a conclusive certificate in relation to the Decision and published a statement of reasons for that decision.	**AB 547-551**

Dated: 7 December 2022

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