



## HIGH COURT OF AUSTRALIA

### NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 23 Jan 2023 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

#### Details of Filing

File Number: S102/2022  
File Title: ENT19 v. Minister for Home Affairs & Anor  
Registry: Sydney  
Document filed: Plaintiff's revised chronology  
Filing party: Plaintiff  
Date filed: 23 Jan 2023

#### Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA  
 SYDNEY REGISTRY

BETWEEN:

**ENT19**  
 Plaintiff

**MINISTER FOR HOME AFFAIRS**  
 First Defendant  
**COMMONWEALTH OF AUSTRALIA**  
 Second Defendant

**PLAINTIFF'S REVISED CHRONOLOGY**

10 **PART I: INTERNET PUBLICATION**

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

**PART II: CHRONOLOGY**

<b>Date</b>	<b>Event</b>	<b>Reference</b>
27 Mar 1989	The plaintiff is born in Iran.	<b>AB Vol 3 925<sup>1</sup></b>
27 Mar 2012	The plaintiff leaves Iran together with his father, mother and brother.	<b>AB Vol 2 119</b>
Before or around Jul 2012	The plaintiff and his family, having arrived in Jakarta, attempt to travel to Australia by boat without a visa. The attempt is unsuccessful.	<b>AB Vol 2 119</b>
On or around 17 Aug 2012	The plaintiff's father, mother and brother arrive in Australia by boat without a visa.	<b>AB Vol 3 892</b>
14 Dec 2013	The plaintiff arrives in Australia by boat without a visa. He is detained under the <i>Migration Act 1958 (Cth) (Act)</i> at North West Point, Christmas Island.	<b>AB Vol 3 926</b>
18 Dec 2013	The plaintiff is transferred to Villawood Immigration Detention Centre in Sydney.	<b>AB Vol 3 926</b>

<sup>1</sup> **AB**: Revised Application Book filed 20 January 2023 pursuant to paragraph 3 of the orders made on 8 December 2022.

<b>Date</b>	<b>Event</b>	<b>Reference</b>
19 Dec 2013	The Attorney-General gave a criminal justice stay certificate in respect of the plaintiff pursuant to s 147 of the Act.	<b>AB Vol 3 936, Vol 1 43</b>
3 Jan 2014	The Minister refused the grant of a criminal justice stay visa to the plaintiff.	<b>AB Vol 3 936</b>
21 Feb 2014	The plaintiff is charged with a people smuggling offence and is taken into criminal custody.	<b>AB Vol 3 926</b>
15 Feb 2016	The plaintiff's father, mother and brother are granted protection visas. They reside in Sydney.	<b>AB Vol 2 121</b>
7 Sept 2016	The then Minister lifted the bar in respect of the plaintiff under s 46A of the Act (in respect of two sub-classes of visas, TPV and SHEV).	<b>AB Vol 3 936</b>
3 Feb 2017	The plaintiff makes a valid application ( <b>2017 visa application</b> ) for a Safe Haven Enterprise (Class XE) Subclass 790 (Safe Haven Enterprise) visa.	<b>AB Vol 2 159-218</b>
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.	<b>AB Vol 2 101-128</b>
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).	<b>AB Vol 2 101-128</b>
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 <i>The Australian</i> newspaper and the Australian Broadcasting Corporation (ABC), at 3:40PM.	<b>AB Vol 3 956, 963-964</b>
19 Oct 2017	The ABC publishes an article regarding the plaintiff's	<b>AB Vol 2 282</b>

<b>Date</b>	<b>Event</b>	<b>Reference</b>
	conviction and sentence at 4.09PM.	
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.	<b>AB Vol 3 955, 958-961</b>
20 Oct 2017	<i>The Australian</i> and <i>The Daily Telegraph</i> publish articles regarding the plaintiff's conviction and sentence.	<b>AB Vol 2 280-281</b>
8 Dec 2017	The criminal justice stay certificate was cancelled.	<b>AB Vol 3 936</b>
9 Dec 2017	The plaintiff is released from custody on parole, and immediately re-detained under the Act, at Villawood Immigration Detention Centre.	<b>AB Vol 3 926</b>
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.	<b>AB Vol 2 244-270</b>
29 May 2018	The decision of the delegate was referred to the IAA for review under Pt 7AA of the Act.	<b>AB Vol 3 936</b>
9 Jul 2018	The IAA 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.	<b>AB Vol 2 129-141</b> <b>AB Vol 2 91</b>
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.	<b>AB Vol 2 567-576</b>
18 Nov 2019	The plaintiff files an application for judicial review of the Minister's decision in the Federal Court of Australia.	<b>AB Vol 3 936</b>
8 Jan 2020	First consideration of non-compellable powers under s 195A commences.	<b>AB Vol 3 936</b>
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	<b>AB Vol 2 288</b>

Date	Event	Reference
	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 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.	<b>AB Vol 2 577-579</b>
5 May 2020	The plaintiff receives an invitation to comment on his conviction for an offence under s 233C of the Act, on the basis that consideration was being given to whether the grant of the SHEV may not be in the national interest.	<b>AB Vol 2 142-145</b>
7 May 2020	The plaintiff responds to the invitation to comment.	<b>AB Vol 2 146-158</b>
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 <i>Migration Regulations 1994</i> (Cth) ( <b>Regulations</b> ).	<b>AB Vol 3 586-595</b>
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	<b>AB Vol 3 629</b>

Date	Event	Reference
	2017 visa application] earlier that day.”	
2 June 2020	On or around this date the plaintiff informally states to a Departmental officer that he would be willing to be removed to a safe third country.	<b>AB Vol 3 875-883</b>
3 June 2020	The plaintiff files an application for judicial review of the decision of 13 May 2020 in the then Federal Circuit Court of Australia (FCCA).	<b>AB Vol 3 936, cf AB Vol 3 642</b>
3 July 2020	First consideration of non-compellable powers comes to an end.	<b>AB Vol 3 936</b>
6 Nov 2020	The FCCA dismisses the application for judicial review of the Minister’s decision dated 13 May 2020: <i>ENT19 v Minister for Home Affairs</i> [2020] FCCA 2653.	–
27 Nov 2020	The plaintiff files an appeal from the decision of the FCCA in the Federal Court of Australia.	<b>AB Vol 3 936</b>
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.	<b>AB Vol 3 926</b>  <b>AB Vol 3 892</b>
19 Mar 2021	Second consideration of non-compellable powers under ss 195A or 197AB commences.	<b>AB Vol 3 936</b>
25 Mar 2021	The Migration Amendment (Clarifying International Obligations for Removal) Bill 2021 (Cth) ( <b>Bill</b> ) is introduced and read a first time in the House of Representatives.	–
21 Apr 2021	The Senate Standing Committee for the Scrutiny of Bills scrutinises the Bill.	–
29 Apr 2021	The Parliamentary Joint Committee on Human Rights scrutinises the Bill.	–
29 Apr 2021	Full Court of the Federal Court of Australia hears the appeal from the decision of the FCCA.	<b>AB Vol 3 936</b>
13 May 2021	The then Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs provides a response	–

Date	Event	Reference
	to the Senate Standing Committee.	
25 May 2021	The then Minister provides a response to the Parliamentary Joint Committee on Human Rights.	–
25 May 2021	<i>Migration Amendment (Clarifying International Obligations for Removal) Act 2021</i> (Cth) amends the Act, inserting, relevantly, ss 36A, 197C(3) and 197D.	–
23 June 2021	The Court hands down its decision in <i>Commonwealth v AJL20</i> (2021) 273 CLR 43.	–
18 Oct 2021	Second consideration of non-compellable powers comes to an end.	<b>AB Vol 3 936</b>
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: <i>ENT19 v Minister for Home Affairs</i> (2021) 289 FCR 100.	–
22 Dec 2021	The Minister files an application for special leave to appeal from the decision of the Full Court.	<b>AB Vol 3 727-747</b>
11 Jan 2022	Third consideration of non-compellable powers under ss 195 or 197AB of the Act commences.	<b>AB Vol 3 936</b>
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.	<b>AB Vol 3 747</b>
10 Apr 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.	<b>AB Vol 3 748-750</b>

Date	Event	Reference
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: <i>Minister for Home Affairs v ENT19</i> [2022] HCASL 94.	–
21 May 2022	Federal election and change of government.	–
1 June 2022	Minister Clare O’Neil is sworn in as Minister for Home Affairs.	<b>AB Vol 1 16</b>
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.	<b>AB Vol 3 753-755</b>
9-10 June 2022	The plaintiff’s application filed on 2 June 2022 is heard before Raper J.	<b>AB Vol 3 756-874</b>
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.	<b>AB Vol 1 51-55</b>
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.	<b>AB Vol 1 16</b>
15 June 2022	Raper J publishes reasons for judgment: <i>ENT19 v Minister for Home Affairs</i> [2022] FCA 694.	–
17 June 2022	The plaintiff is invited by the Department to comment on the Minister taking into account <i>non-refoulement</i> 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	<b>AB Vol 2 289-302</b>



<b>Date</b>	<b>Event</b>	<b>Reference</b>
	and 21 June 2022.	
22 June 2022	The Minister is presented with a “Submission” from the Department regarding the 2017 visa application.	<b>AB Vol 1 56-64</b>
27 June 2022	The Minister, 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 Regulations.	<b>AB Vol 2 91-99</b>
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.	<b>AB Vol 2 555-560</b>
6 July 2022	The plaintiff files an application for a constitutional or other writ in the High Court of Australia.	–
12 July 2022	The Minister issues a conclusive certificate in relation to the Decision and published a statement of reasons for that decision.	<b>AB Vol 2 561-566</b>

**Dated:** 23 January 2023

*L De Ferrari*

Lisa De Ferrari  
T (03) 9225 8444  
E [lisa.deferrari@vicbar.com.au](mailto:lisa.deferrari@vicbar.com.au)