

## NOTICE OF FILING

### Details of Filing

Document Lodged: Notice of Contention - Form 124 - Rule 36.24  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 15/02/2024 2:11:22 PM AEDT  
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File Number: VID1006/2023  
File Title: SAVE THE CHILDREN AUSTRALIA v MINISTER FOR HOME AFFAIRS  
& ANOR  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. 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.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 124  
Rule 36.24

## NOTICE OF CONTENTION

**FEDERAL COURT OF AUSTRALIA**  
**DISTRICT REGISTRY: MELBOURNE**  
**DIVISION: GENERAL**

**NO VID1006/2023**

On appeal from the Federal Court of Australia

**SAVE THE CHILDREN AUSTRALIA**  
Appellant

**MINISTER FOR HOME AFFAIRS**  
First Respondent

**COMMONWEALTH OF AUSTRALIA**  
Second Respondent

To the Appellant

The Respondents contend that the judgment of the Federal Court of Australia should be affirmed on grounds other than those relied on by the Court.

The Respondents do not seek to cross-appeal from any part of the judgment.

### **GROUND(S) RELIED ON:**

1. The primary judge should have found that the Appellant did not have standing to bring the proceeding on behalf of the 'remaining Australian women and children' who were not 'STCA-authorized remaining Australian women and children'; and
2. The primary judge erred in finding at [108] that where the Court is left in doubt as to whether a respondent has custody or control over the relevant person, it is open to the Court to use the "pressure of the writ" to test whether the respondent's contention (of lack of custody or control) is correct. The primary judge should have found that:
  - 2.1. The Appellant bore the onus to prove control on the balance of probabilities; and

2.2. 'Doubt' as to whether a respondent has custody or control over the relevant person could not justify an order against a respondent when the applicant has not discharged their onus to prove control on the balance of probabilities and the application was required to be dismissed in those circumstances.

Date: 15 February 2024



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Hervee Dejean AGS lawyer  
for and on behalf of the Australian Government Solicitor  
Solicitor for the Respondents