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Details of Filing

Document Lodged:	Submissions
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File Title:	DIRECTOR-GENERAL OF SECURITY & ORS v PLAINTIFF S111A/2018
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 5/10/2022 6:03:49 PM AEDT

A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

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FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL

VID284/2022

On appeal from the Federal Court

DIRECTOR-GENERAL OF SECURITY

First Appellant

MINISTER FOR HOME AFFAIRS

Second Appellant

COMMONWEALTH OF AUSTRALIA

Third Appellant

PLAINTIFF S111A/2018

Respondent

APPELLANTS' REPLY

A. Procedural matters

1. On 7 September 2022, the respondent filed a notice of contention. The respondent's submissions (**RS**), contain no acknowledgment that the notice of contention was filed more than six weeks after the expiry of the 21-day period allowed by r 36.24 of the Federal Court Rules 2011 (Cth). Though to date the respondent has inexplicably failed to seek an extension of time from the Court, the appellants do not oppose the respondent being granted an extension for the notice of contention in this form.
2. On 29 September 2022, a week after service of the RS, and less than a fortnight before the hearing, the respondent served an amended notice of contention. The appellants were given no notice of the proposed amendment prior to 29 September 2022. The amended notice adds a ground which was not pleaded by the respondent below, was not agitated at trial, and could have been met by evidence at trial. It is thus impermissible for it to be advanced for the first time on appeal.¹ The appellants oppose the respondent being granted the necessary extension of time. In any event, as set out at [22] – [24] below, the proposed ground is without substance.
3. On 29 September 2022, the respondent also provided a supplementary appeal book which had been foreshadowed in the original version of the RS. The supplementary appeal book has now been combined with the original appeal book (**AB p 1084** and following). Save for two items, the appellants do not object to this Court receiving the contents of the supplementary appeal book. The appellants do object to the Court receiving items 17 and 18 (**AB pp 1287–1288**) because those documents were not ultimately received into evidence by the Court below.

B. Validity of the 2018 ASA – Ground 1

(a) Evidence from the Returnees from Albania trial

4. The premise of the RS, that “*evidence used against the respondent in that trial was the product of torture by Egyptian authorities*” (RS [5]), is flawed. None of the material before the Director-General at the time of the 2018 ASA — upon which any allegation of legal unreasonableness is to be determined² — supports this unqualified premise. It supports only that there was a *risk* that evidence from the Returnees from Albania trial was the product of torture.

¹ See, eg, *Suttor v Gundowda Pty Ltd* (1950) 81 CLR 418 at 438.

² *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 611 at [135]; *ABT17 v Minister for Immigration and Border Protection* (2020) 269 CLR 439 at [19].

5. First, ASIO did not determine at the time of the 2018 ASA that evidence from the trial was obtained through torture. The assessment in the 2018 TSOG (**AB Tab 18**) at [29] was that “*it is possible that some of the co-accused in the Returnees from Albania trial may have provided information under duress, torture, or other cruel, inhuman or degrading treatment or punishment*” (emphasis added). Further, ASIO noted (at [48]) that “*according to documents provided by [the respondent]*”, some of his co-accused had “*withdrawn their confessions because they claim they were provided under torture*”. As a result, ASIO stated (at [29], [48]) that it had “*treated [the/this] information with caution*”.
6. Secondly, contrary to RS [16], the Department of Home Affairs and its predecessors have never determined or accepted that evidence from the Returnees from Albania trial was obtained through torture. The respondent’s citation, to **AB Tab 3 p 49**, forms part of the appellants’ Defence to the respondent’s Second Further Amended Statement of Claim. At [44] of the Defence, the appellants say only that the Department formed the view that documents provided by the respondent “*raised concerns*” about the trial, and that those documents “*indicated*” that the evidence used was obtained under torture. Paragraph 44 of the Statement of Claim was otherwise denied. That paragraph, at **AB Tab 2 p 14**, reveals that this denial included a denial of the proposition that the Department formed the view that the evidence was, in fact, obtained by torture.
7. Thirdly, contrary to RS [15]–[16], other material before the Director-General did not establish that evidence from the Returnees from Albania trial was obtained through torture. As set out at AS [16]–[17], the finding of the Commission for Control of Interpol’s files, following an extensive consideration of material from that trial and submissions from the respondent, was only that there was a “*real risk*” that this occurred (**AB Tab 14 p 401 [71]**). That is consistent with the consideration of the Commission’s report in the 2018 TSOG (**AB Tab 18 p 410 [20]**). The 2018 TSOG at [22] and [48] also referred to an April 1999 Amnesty International report in relation to Egyptian military trials. Again, it revealed a risk, which ASIO accepted. Acceptance of that risk in relation to the evidence did not amount to “*acquiescence*” by ASIO to any particular past conduct of the Egyptian authorities.
8. Contrary to RS [15], the primary judge did not purport to make any independent factual finding as to whether evidence in the Returnees from Albania trial was obtained by torture. The relevant material from the trial was not before her Honour and it is not before this Court. Rather, as explained at AS [16]–[17], the statements at PJ [8] and [353] cited by the respondent relied on

a misunderstanding by her Honour of what were said to be “*careful and lengthy*” findings of the Interpol Commission but which were, in fact, not findings of the Commission at all.

(b) ASIO’s use of evidence from the trial in the 2018 ASA

9. At RS [18]-[23], the respondent submits that the Director-General “*abused his power*” by relying on “*torture evidence*”. In particular, the respondent contends that any reliance on “*torture evidence*” will be ultra vires s 37 of the ASIO Act (see RS [19]). The respondent does not seek to defend the primary judge’s sweeping conclusion that reliance on such information by any Australian agency in any way will be legally unreasonable and procedurally unfair (PJ [327], [337], [341]). In any event, the respondent’s new argument should be rejected.
10. *First*, it is premised on the conflation of a determination that information was obtained through torture and a determination that there is a risk this was so, discussed above. The distinction is elided by the respondent’s undifferentiated definition of “*torture evidence*” at RS [16].
11. *Second*, the respondent’s argument relies heavily on the decision of the House of Lords in *A v Secretary of State for the Home Department*.³ Yet it fails to appreciate that the Director-General’s approach in the 2018 ASA was unobjectionable when assessed against the statements of principle in that case. For example, their Lordships variously accepted that: “*the government cannot be expected to close its eyes to this information at the price of endangering the lives of its own citizens. Moral repugnance to torture does not require this*”;⁴ there is “*vital importance in the present state of global terrorism of being able to muster all material information in order to prevent the perpetration of violent acts endangering the lives of our citizens*”;⁵ “[g]enerally speaking it is accepted that the executive may make use of all information it acquires: both coerced statements and whatever fruits they are found to bear. Not merely, indeed, is the executive entitled to make use of this information; to my mind it is bound to do so. It has a prime responsibility to safeguard the security of the state and would be failing in its duty if it ignores whatever it may learn or fails to follow it up”;⁶ and refusing to rely on statements obtained under torture “*would mean that the Home Secretary might have to fail in one of the first duties of government, to protect people in this country from potential attack*”.⁷

³ [2006] 2 AC 221.

⁴ [2006] 2 AC 221 at [69] (Lord Nicholls).

⁵ [2006] 2 AC 221 at [149] (Lord Carswell).

⁶ [2006] 2 AC 221 at [161] (Lord Brown).

⁷ [2006] 2 AC 221 at [132] (Lord Rodger).

12. *A v Secretary of State* concerned the receipt of evidence by the Special Immigration Appeals Commission (SIAC), a superior court of record established by statute.⁸ It did not concern the use of information by the executive for security purposes, which was *accepted* to be permissible.⁹ That is what ASIO did in making the 2018 ASA. In any event, as noted at AS [20], even in relation to a judicial body such as the SIAC, the House of Lords majority concluded that evidence should only be excluded when it was established on the balance of probabilities that evidence was obtained by torture – a “*real risk*” was insufficient to warrant exclusion.¹⁰ When such a risk existed in respect of evidence, the SIAC was instead to “*bear its doubtful origins in mind when evaluating it*”.¹¹ That is what the Director-General did in making the 2018 ASA.
13. *Second*, the submission that reliance on “*torture evidence*” will necessarily be ultra vires s 37 of the ASIO Act is unsupported by the text or context of the provision. So much is demonstrated by the submissions at RS [20]–[21] that “*abhorrence of the fruits of torture must yield to the executive decision-maker’s duty to protect public safety*” and that there are circumstances which may necessitate the use of such information. It can readily be seen how ASIO might be called upon to make a security assessment engaging precisely those considerations, in line with ASIO’s policies.¹²
14. *Third*, at RS [7] and [23], the respondent contends that conclusions in the 2018 TSOG were “*premised upon an unquestioning acceptance*” of evidence from the Returnees from Albania trial. That is denied by the 2018 TSOG itself (**AB Tab 18**). It expressly and repeatedly emphasised the caution with which that material had been approached (at [29] and [48]). More specifically, at [26], it was noted that the “*authenticity of the Egyptian court documents relating to the Returnees from Albania trial cannot be verified*”, followed by a redacted portion. The “conclusions” at [43], [44] and [46], cited at RS [7], relate to the respondent’s activities in Albania between 1992 and 1997, and must be read with the entire section on those activities from [36]–[50]. That section includes significant redactions and references to confidential

⁸ [2006] 2 AC 221 at [1] (Lord Bingham).

⁹ [2006] 2 AC 221 at [47] (Lord Bingham), [69] (Lord Nicholls), [92]–[93] (Lord Hoffman), [133], [136] (Lord Rodger); [161] (Lord Brown).

¹⁰ [2006] 2 AC 221 at [56]–[57] (Lord Bingham).

¹¹ [2006] 2 AC 221 at [145] (Lord Rodger). See also at [118] (Lord Hope), [173] (Lord Brown).

¹² It is not necessary for the Court to reach any concluded view about what is permissible for the Administrative Appeals Tribunal to do when conducting merits review of an ASA (cf RS [21]–[22]). Nevertheless, there is force in the position that when reviewing the lawfulness of an executive decision a court or tribunal may have regard to all the matters the decision-maker properly took into account: *A v Secretary of State* [2006] 2 AC 221 at [73] (Lord Nicholls).

sources. Finally, contrary to RS [23], the degree to which ASIO has relied on potentially tainted information is plainly relevant to the legal reasonableness of its actions, including the making of security assessments.

15. The respondent's submissions in relation to the second ground of invalidity, procedural unfairness, are extremely brief. At RS [24], the respondent submits that the use of "*torture evidence*" is procedurally unfair for the "*reasons explained above at [18]–[23]*". Those reasons should be rejected on the grounds set out above and in the AS. The respondent does not engage with the criticisms at AS [18] of the primary judge's reasons on this point.

C. Validity of the 2020 ASA – Ground 2 and the notice of contention

16. Assuming leave is sought and granted to rely on the original form of the notice of contention out of time (which is not opposed), this Court should reject the respondent's contention that the 2020 ASA made use of information derived from the Returnees from Albania trial. It is contrary to ASIO's express statements (**AB Tab 24 p 749 [59]; AB Tab 25 p 753**) and the conclusion of the primary judge (PJ [318]), and is unsupported by any evidence.

(a) The terms of the 2020 TSOG

17. The respondent has provided a single example of a finding in the 2020 TSOG, the primary source for which he claims was "*torture evidence*". The finding is that the respondent travelled to Yemen in 1995 as a member of Egyptian Islamic Jihad (**EIJ**). Far from "*no source*" being cited for that proposition (see RS [27]), it is evident from the footnotes in the 2020 TSOG (**AB Tab 23 p 742**) that the assessment that the respondent travelled to Yemen at this time was supported by at least four separate classified sources (fnn 51–53) and that the assessment that EIJ members travelled to Yemen at this time was supported by at least two separate classified sources (fnn 55–56). It was also significant to ASIO that the respondent repeatedly denied travelling to Yemen (**AB Tab 23 p 742 [30]**).
18. The respondent also points to the reference in the 2020 TSOG at [29] to a *Wall Street Journal* article (at **AB 1344**). That article refers to EIJ members travelling to Yemen in December 1995 for a meeting attended by Al-Qaeda leader al-Zawahiri (at **AB 1349**). The article also quotes the confession of an EIJ member who attended that meeting. However, that quote is not relied upon in the 2020 TSOG. Contrary to RS [29], there is no indication that the primary source for the proposition that EIJ members travelled to Yemen in December 1995 was the confession of the EIJ member, let alone that it was in turn a source for ASIO in the 2020 TSOG.

19. The submissions at RS [28]–[29] provide no reasonable basis for the astoundingly serious submission that this Court should conclude that “*ASIO’s claim in the 2020 TSOG that it ‘has not taken into account any of the Returnees from Albania trial evidence’ was false*”.

(b) Alleged prejudgment

20. At RS [30]–[31], the respondent purports to give 12 further reasons to conclude that the 2020 ASA relied on “*torture evidence*” because it was a “*preconceived repetition*” of the 2018 ASA. Once again, that is a serious submission amounting to an accusation of dishonesty and actual bias by ASIO. None of the purported “reasons” support this submission.
21. ***First and twelfth points.*** Contrary to the first and twelfth points, prejudgment cannot be inferred from the fact that, apart from the information from the Returnees from Albania trial, the “*same classified and open source information*” was relied on for both ASAs (**AB Tab 23 p 749 [59]**). Apart from the information from the trial, there was no objection to ASIO’s reliance on any other information; it would be perverse for ASIO *not* to rely on information previously collected, together with further information obtained through the 5th Interview.
22. ***Second and eight points.*** The second point impugns the 2020 ASA on the basis that its “*purported purpose*” to “*recommend refusal of the respondent’s visa application*” was “*nonsensical*” because the visa application had already been refused. This argument is reflected in the amended notice of contention and is being advanced for the first time on appeal (see [2] above). Had it been advanced at trial, further evidence could have addressed *why* the 2020 ASA was expressed to be for this purpose. The respondent should not be permitted to rely on this argument.¹³ If permission is granted, the argument should be rejected for the following reasons.
23. As explained at trial in response to a query from the primary judge, albeit unconnected with any ground of challenge,¹⁴ ASIO periodically conducts internal reviews of certain ASAs, including where the subject remains in immigration detention. Re-exercise of the power to undertake security assessments is possible from time to time pursuant to s 33(1) of the *Acts Interpretation Act 1901* (Cth).¹⁵ Further, the Independent Reviewer of Adverse Security

¹³ See, eg, *Suttor v Gundowda Pty Ltd* (1950) 81 CLR 418 at 438.

¹⁴ See AB Tab 31, pp 850-852, at T66.1-68.46; AB Tab 33, pp 1005-1013, at T221.17-229.5.

¹⁵ See generally *Minister for Indigenous Affairs v MJD Foundation Ltd* (2017) 250 FCR 31 (FC) at [217].

Assessments (**IRASA**) process ensures fairness to the subjects of assessments who are detained and are owed protection obligations under international law.¹⁶

24. Both the 2018 ASA and the 2020 ASA were completed in line with ASIO's internal review policy.¹⁷ When ASIO undertakes an internal review of an ASA, the relevant "prescribed administrative action" remains the same as the prescribed administrative action contemplated in the ASA subject to the review. Where prescribed administrative action has been taken in relation to a person, it may be that it can be reconsidered at a later date, giving rise to a new exercise of the action. Because a security assessment is a point-in-time assessment, it cannot be amended, particularly after action has been taken. Instead, when a new security assessment is made, it replaces the old assessment. However, it does not do so retrospectively.
25. In this case, the relevant action was any action under the *Migration Act 1958* (Cth) in relation to the respondent's TPV application. In making the 2020 ASA, the Director-General was, in effect, reviewing his previous recommendation that the application be refused, and determining whether his position in that respect remained the same at a new point in time. The Director-General then appropriately informed the relevant Minister of the outcome of the review (**AB 1125**). As a matter of practical utility, had a non-adverse security assessment been issued, there were then possible actions that could be taken by the Minister, including choosing to make a residence determination or inviting the respondent to make a fresh visa application (to which the Director-General's non-adverse security assessment would then have been applicable, i.e., that he would not recommend refusal of that application). None of this evidences prejudgment. The respondent's second point falls away, as does his eighth point.
26. **Third to seventh points.** The respondent's third point fixes upon the comment in the Director-General's brief that "*ASIO is required to furnish this updated ASA by 29 October 2020 as directed by the Federal Court*" (**AB Tab 24 p 751**). It is said that the "*supposed impetus*" of a direction from the Court was "*fictitious*". The fourth to seventh points build on this. Again, these points are made for the first time on appeal and could have been met by evidence at trial as to why this comment was made; it is therefore impermissible for them to be advanced. In any event, they too are without substance.

¹⁶ See the reference to the IRASA terms of reference at AB Tab 20, pp 452, 485-495.

¹⁷ This was noted in the 2018 Briefing Note to the Director-General (AB Tab 19, p 441) and at [10] of the 2020 TSOG (AB Tab 23, p 737). See also AB Tab 20 p 448: "*when ASIO undertakes an internal review of the [2018 ASA]*".

27. As shown by the material annexed to these submissions on which the appellants would seek to rely if this point is permitted to be advanced, the explanation is as follows. At a case management hearing on 11 August 2020,¹⁸ there was discussion of a review of the respondent's 2018 ASA that was currently being undertaken by ASIO in line with ASIO's internal review policy. Consent orders embodying a schedule of reporting to the Court on the progress of the review were requested by the Court and agreed to by the respondent's representatives.¹⁹ Though no consent orders were actually made, the appellants' representatives provided updates consistent with the agreed reporting schedule. That reporting schedule provided for a final update to be given by 29 October 2020. It was this "reporting schedule" which resulted in the comment in the Director-General's brief.²⁰
28. This also disposes of the respondent's fourth point. There was nothing fictitious evidenced by this comment; nor could it possibly have been read by the Director-General to suggest that the Court had directed an adverse assessment. Likewise, far from being suspect (the respondent's fifth to seventh points), the matters above explain the timing and priority of the Director-General's brief, and the connection to this proceeding.
29. ***Ninth point.*** The ninth point, concerning the interviewing officers who conducted the 5th Interview, is the subject of ground 2 of the amended notice of appeal and is addressed at AS [32]–[34]. The respondent has not engaged with those submissions, which it is plainly now necessary for this Court to determine.
30. ***Tenth point.*** Contrary to the tenth point, prejudgment cannot be inferred from the fact that the 2020 TSOG identified expressly that the evidence from the Returnees from Albania Trial had not been considered without expressly identifying other material that had not been considered. ASIO adopted this course because the IRASA had recommended that, when the 2018 ASA was reviewed, ASIO exclude from consideration the evidence from the trial (**AB Tab 20 p 448**).
31. ***Eleven point.*** Contrary to the eleventh point, prejudgment cannot be inferred from the fact that the 2020 TSOG is more concise than the 2018 TSOG. For one thing, that does not reveal whether the classified reasoning underlying the 2020 ASA is more concise than that underlying the 2018 ASA. In any event, conciseness of expression and analysis does not demonstrate prejudgment.

¹⁸ The transcript of this hearing is Annexure A.

¹⁹ An email from the respondent's representative confirming that consent is Annexure B.

²⁰ An email chain reflecting this reporting schedule, and concluding on 29 October 2020, is Annexure C.

C. Validity of the 2020 ASA – Ground 3

32. The submission at RS [33]–[36] that, because the respondent’s visa had already been refused, the 2020 ASA was necessarily “backwards looking”, fixes again on the fact that the purpose was expressed to be by reference to the grant of the respondent’s visa. This fails to understand the reason for this and the nature of the internal review process explained in [23]–[24] above. The submission does not engage with any of the matters of substance at AS [23]–[30].

Date: 5 October 2022



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TRANSCRIPT OF PROCEEDINGS

O/N H-1773723

FEDERAL COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY

MORTIMER J

No. NSD 584 of 2019

S111A/2018 and OTHERS

and

MINISTER FOR HOME AFFAIRS and OTHERS

SYDNEY

11.58 AM, TUESDAY, 11 AUGUST 2020

MR M.J. FINNANE QC appears for the applicant

MR P.D. HERZFELD appears for the respondents

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MR M.J. FINNANE QC: If the court pleases. I appear for the applicant.

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HER HONOUR: Thanks, Mr Finnane.

MR P.D. HERZFELD: And I appear for the respondents.

10 HER HONOUR: Thank you, Mr Herzfeld. All right. So, Mr Herzfeld, I see there has been some correspondence about a possible development.

MR HERZFELD: Yes. And Mr Finnane and I have had an opportunity to discuss that before this afternoon – or this afternoon in one minute. And as I understand it,
15 the proposed orders for the adjournment are now by consent. Could I just perhaps explain to your Honour, if it would assist, why we propose what I can understand might otherwise seem like a fairly lengthy period of

HER HONOUR: since the applicant is in detention.
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MR HERZFELD: Yes. Your Honour will recall that on the last occasion your Honour raised the question of a mediation. And the difficulty with that proposal is that while there's an adverse security assessment in place, there's not really much that can be sensibly progressed by way of a compromise. But the ordinary process is
25 that after a period of time an adverse security assessment would be re-assessed in any event, and so that's the process that's happening.

The timeline for that, and I should say it has already begun – that re-assessment process – the timeline is that it's proposed that in the next four to five weeks a time
30 will be made for a further interview with the applicant, and if necessary, in light of COVID, that will be done electronically if it can't be done in person. After that interview it will take approximately one month for the material, including the interview, to be reviewed and then for a security assessment to be prepared, because it is a redoing of the security assessment, and then after that it will take about two
35 weeks for the internal approval process to finalise that security assessment.

If that security assessment means that the adverse security assessment is effectively superseded, that then won't of itself change the Minister's previous decision, because that's – a decision has happened, but it does set out or does begin a process which we
40 explained in letter which in substance can lead to the decision of the Minister being overtaken by either an exercise of power under 195A to grant a visa or in the interim, potentially, for a residence determination detention. Now, those things in a substantive way, depending on where they end up, might render the applicant's complaints in this proceeding substantively overtaken, but we can't really progress
45 them without the review of the adverse security assessment taking place.

And the time for that, we think, sensibly, is the time we've proposed for the adjournment before your Honour. So that assessment can happen, a decision can be made, and then provided to the applicant, and then for there to be some opportunity for the applicant to decide what course he wants to take in the litigation in light of that assessment. I should say if that assessment continues to be adverse, then it might still have an impact for the proceeding which is that the applicant will want, presumably, to amend to challenge that assessment rather than in addition to the previous one, because otherwise even if the previous one is set aside, the defect – the current one – the new one will effectively take its place.

And so the proceeding really, even if that assessment is adverse, couldn't sensibly proceed only with the challenge to the previous one in any event. Now, I accept, as your Honour said, that the applicant is in detention, but it does seem to us that that is a sensible way for the proceeding to deal with this development. And, as I say, we understand that it's a position to which the applicant consents, which we think is also significant having regard to the concern which your Honour has understandably raised.

HER HONOUR: Does that timing that is proposed for the ASIO assessment reflect or take into account any recognition that this proceeding is on foot and perhaps some level of expedition ought to be applied to that review?

MR HERZFELD: Your Honour should assume that I have, without going into detail – that I have pressed for the timetable to be as expedited as it can realistically be.

HER HONOUR: There's some concern on my part, Mr Herzfeld, to both the court and the applicant, but actually in particular the court, being held to some unilateral executive process which is completely not transparent to the court, and the court's disposition of litigation to which the chief justice has given priority is being impeded.

MR HERZFELD: I understand. And our position if the applicant consenting to this might be considerably weaker, if I can put it that way, but – and I know that that doesn't address your Honour's concern from the court's perspective – but we do - - -

HER HONOUR: Well, it also, Mr Herzfeld, doesn't really address the issue, because the applicant is also at the mercy of the executive. The applicant is at the mercy of ASIOs timetable which could expand or contract not on the basis of any evidence before the court or necessarily anything that's said to the applicant, and it's all part of a unilateral executive decision-making process.

MR HERZFELD: Yes.

HER HONOUR: So it's not just the court that's affected. I mean, the applicant is looking for a solution, no doubt, that resolves his migration status. So he is in a position of not having a lot of choice over this. But, nevertheless, this is some

unilateral decision that has been made by the executive at the time – who knows when that was made, but I assume relatively recently. - - -

MR HERZFELD: Well, as I say, your – I'm so sorry, your Honour.

5

HER HONOUR: Would that be fair for me to assume it has been made relatively recently that decision?

MR HERZFELD: Well, as I understand it, the process of reviewing adverse security assessments is a standard process. I think before your Honour was involved in managing this matter – I think it was when Robertson J was managing it, there was an independent review done of the adverse security assessment, and that review was completed by the independent reviewer, and then this review of the ASA has followed relatively soon after that independent review has completed its process.

15

But it has also been prompted in part, your Honour, by your Honour's question about the possibility of a mediation, and we were trying to think through the utility of that, and it seems to us that there's realistically not very much that we can offer without this kind of process being undertaken. And we also didn't think it was suitable to offer this process as part of a compromise, because from our perspective it's not part of a compromise; it's part of the ordinary appropriate management of adverse security assessments. So if your Honour asks is it relatively recent relative to the commencement of this litigation, obviously that's so, but it's not in the last day or so, by any means.

25

HER HONOUR: Yes. All right. Well, Mr Finnane, what is the applicant's position?

MR FINNANE: Your Honour, the applicant agrees with the proposition. Excuse me. Obviously, if the assessment is set aside, then the Minister has an opportunity to – well, the department has an opportunity to make a recommendation to the Minister as to whether the Minister should review the matter and come to a different decision. So my client is anxious to be able to do that. If that assessment is set aside, well, of course, mediation, I suppose, could realistically be undertaken and, again, he would be happy to do that. At the present time he can only be interviewed via an AVL, as I understand it, because all these detention centres are locked down.

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HER HONOUR: Well, concerned to understand, Mr Finnane – and your client has been in detention for quite a long time, to put it mildly.

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MR FINNANE: six or seven years.

HER HONOUR: Yes. Longer than some people serve a sentence of imprisonment for homicide.

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MR FINNANE: That's so, your Honour.

HER HONOUR: And I do want to – and I’m not being critical of you at all or your instructor, Mr Finnane, but I do want to ensure that he reached an informed – otherwise I was going to give him a trial date in November. So I want to be sure that he has reached an informed decision that he prepared to put up with the longer
 5 restrictions on his liberty that is involved with this course. Well, I mean, longer in the sense of more delay before there’s an outcome one way or the other.

MR FINNANE: Yes. Yes, I understand what your Honour is saying. Could I just speak to my solicitor for one minute. Well, your Honour, my client is – let’s call it
 10 anxious to see that his detention ends as soon as possible, but he doesn’t want to do anything that would prejudice a realistic possibility of that occurring, and that’s why we consented to the video re-assessment process or whether that’s the delay thing. If we were to try and set down a timetable now, I would have to spend some time with him via AVL clarifying various things, affidavits and so on, and I think
 15 considerable difficulties with the assessment which would also be attempting to do things. And then when the assessment is finished, by the time we get to a hearing it might have an impact. So I really don’t see there’s any realistic alternative but to agree to what the Commonwealth is proposing.

20 HER HONOUR: Yes.

MR FINNANE: We as I see it and my solicitor sees it, that he be given a chance to establish that the security assessment is wrong, and if that can be done outside the court and then it has just got to go through the usual approaches to the Minister and
 25 so on, he’s in a much better position. That’s the way we would see it.

HER HONOUR: Well, look, I understand that, Mr Finnane, but I just wanted to be sure that - - -

30 MR FINNANE: Yes. I understand that, your Honour.

HER HONOUR: - - - that’s an informed choice. Mr Herzfeld, just run me through – in terms of the timing of the ASIO review, when’s the estimate for that to be completed, then?
 35

MR HERZFELD: Yes. So the best information I have is this – that ASIO will seek to make a time to interview the applicant in the next four to five weeks. And, as I say, if that can’t be done in person – and Mr Finnane is right, it might not be able to be done in person – then we will seek to arrange it electronically. It will then take
 40 about one month after that to prepare the assessment itself, and then it will take approximately two weeks for an internal approval process to finalise the assessment. What I was going to suggest, if it would assist, is that we can communicate to your Honour’s chambers, effectively, when each, to the extent that we can – when each step has happened so that your Honour is aware of whether things are starting to
 45 slide, and it might also - - -

HER HONOUR: Well, I actually wondered, Mr Herzfeld – sorry to interrupt you – but what I might do – because there’s a level at which if I’m to hear a trial I don’t want to get too closely involved in managing this in respect of alternative process.

5 MR HERZFELD: Yes.

HER HONOUR: So I wondered if I might refer the matter to mediation to a judicial registrar who could then, on the basis – and the information that was sent by my chambers to the National Operations Registry on this referral would indicate that
10 there’s this process, so that the reporting lines would be to the judicial registrar. And then if there are any problems with timing, if the parties started to have different views about timing or whatever, the judicial registrar could manage that, and there would be no sense in which I, as the potential trial judge, was getting involved in that alternative process.

15 MR HERZFELD: Yes. Well, can I do two things: first of all, just talk for a little while to give those instructing me an opportunity to send me a message if there’s some difficulty with that proposal. But while that’s happening, I just wanted to make clear – in a sense, I understand why your Honour refers to it as a referral to
20 mediation, but there’s no – it’s a slightly strange – it’s not quite a mediation at this stage. We’re not actually having any settlement discussions. I understand why your Honour is proposing to use that - - -

HER HONOUR: - - -
25

MR HERZFELD: - - - mechanism, but - - -

HER HONOUR: I could say case management.

30 MR HERZFELD:

HER HONOUR: And I was trying to avoid a second referral, that is – and to keep some continuity. So I could say case management and mediation if mediation becomes appropriate.

35 MR HERZFELD: As I say, unless someone sends me a message in a very short period of time to tell me that there’s a problem with that, I can’t see a problem with that. I mean, it really is just, at this point – it will be frankly no more than a reporting line, if I can put it that way.

40 HER HONOUR: Yes. Although it may become a bit more than that, Mr Herzfeld, if there’s – if somebody perceives there’s some delays - - -

MR HERZFELD: Yes.
45

HER HONOUR: - - - or there’s some difficulties in the process. And what I don’t – and, again, I don’t mean this disrespectfully to the respondents at all – but I don’t

want to give over the timing of steps in this proceeding entirely to unilateral decision-making within the executive.

5 MR HERZFELD: Yes. Without seeking to – I understand what your Honour is saying. From - - -

10 HER HONOUR: And it's not said critically. It's just trying to balance the fact that there is a proceeding in this court, and while affording, of course, the parties an opportunity, as Mr Finnane has sensibly observed and is obvious – an opportunity to pursue an outcome to the applicant's migration status that might be more beneficial than running this proceeding through to its conclusion.

15 MR HERZFELD: Yes. I think, your Honour, the word "unilateral" causes people to arc up. I will take it neutrally. And in that context, your Honour's use of it, I think, is not objectionable.

HER HONOUR: It's simply an objective description, Mr Herzfeld.

20 MR HERZFELD: Your Honour, I was confident that was the way it was being used. And, happily, I have now stalled long enough for me to get a communication that there's no difficulty with the second course, I think, that your Honour had proposed which was referral for case management and, if appropriate, mediation. And we will, at least in the first instance, use that as a reporting line to give updates as to where things are going. And if there's a problem, which I hope there won't be, then that can be at least the forum in the first instance to resolve it.

HER HONOUR: Yes.

30 MR FINNANE: Well, we would agree with that course, your Honour.

HER HONOUR: Thank you, Mr Finnane.

MR FINNANE: It seems entirely sensible.

35 HER HONOUR: And I'm just wondering if I should put an end point on that so that I can bring the parties back. There's two ways I could do that. I could either just make it an open-ended referral and ask the registrar to report to me by a particular date, which perhaps gives more flexibility. Do you have a view about that, Mr Herzfeld?

40 MR HERZFELD: I don't. We had proposed bringing it back before your Honour simply on a date after the three-month period, but that was without the reporting line, if I can put it that way, that your Honour has suggested. We don't have a firm view. If your Honour is comfortable with leaving it more flexibly, then we would be comfortable with that too.

45

MR FINNANE: I think we would prefer, your Honour, if it could be – a date could be fixed in November before your Honour so we move forward at that point.

5 HER HONOUR: Yes. All right. Well, we can be fairly flexible about choosing a date in November. What about in the week – I might just list it for the week commencing, and then a bit closer to the date we can try and tie down a time. What if I was to say the week commencing 16 November?

10 MR HERZFELD: That's suitable for us, your Honour.

HER HONOUR: Mr Finnane?

MR FINNANE: Yes, your Honour.

15 HER HONOUR: All right. Pardon me. Well, do the parties want me to keep the order about liberty to apply on three-days notice?

MR FINNANE: We would like that, your Honour.

20 HER HONOUR: Yes. Mr Herzfeld, any difficulties with that?

MR HERZFELD: No, your Honour.

25 HER HONOUR: All right. So the first order will be that:

- (1) The matter be referred to a judicial registrar for case management and mediation, if mediation becomes appropriate.
- (2) The second order will be the matter be listed for further case management before the court at a date to be fixed in the week commencing 16 November 2020.
- (3) The third order will be there be liberty to apply on three-days notice.
- 35 (4) And the fourth order will be costs be reserved.

Is that - - -

40 MR FINNANE: Yes, your Honour.

MR HERZFELD: And as I understand it, your Honour, the judicial registrar will have some background so as to expect, effectively, if all goes well, communications from us about the progress of the matter. And it might be, at least in the first instance, that if all is going well, then there will just be a series of
45 communications and no further directions needed.

HER HONOUR: That's right. And the judicial registrar, whoever it is, will be able to look at the transcript, and at the communications that have been sent in and, yes, will understand that it's really a bit of a monitoring role. And if and when that moves on to a mediation role, then that will be a matter between the parties and the
5 judicial registrar.

MR HERZFELD: Yes. And I assume the judicial registrar will let us know which judicial registrar it is so that we can communicate with them.

10 HER HONOUR: Yes. We've got to go through an allocation process now to get a judicial registrar. That might take a few days. But as soon as one is allocated, then that person will be in touch with the parties, I'm sure.

MR FINNANE: Thank you, your Honour.
15

HER HONOUR: All right.

MR HERZFELD: Thank you, your Honour.

20 MR FINNANE: Thank you.

HER HONOUR: Well, thank you, both. I hope the process goes well. Thank you for your attendance.

25 MR FINNANE: Thank you, your Honour.

HER HONOUR: Please adjourn the court.

30 **MATTER ADJOURNED at 12.23 pm ACCORDINGLY**

From: mail@zaliburrows.com
Sent: Wednesday, 2 September 2020 11:24 AM
To: Anderson, James
Subject: Re: Case management: NSD584/2019 - PLAINTIFF S111A/2018 v MINISTER FOR HOME AFFAIRS & ORS [SEC=UNCLASSIFIED] [AGSDMS-DMS.FID3492283]

CAUTION: This email originated from outside of the organisation. Do not follow guidance, click links, or open attachments unless you recognise the sender and know the content is safe.

Please be advised we consent to the proposed orders.

I sent an email to that effect yesterday that failed to leave outbox, my apologies.

Yours faithfully,
Zali Burrows
Lawyer



Telephone: (02) 8815 8182

NSW 1/299 Elizabeth St Sydney NSW 2000

Liability limited by a scheme approved under Professional Standards Legislation.

On 2 Sep 2020, at 9:05 am, Anderson, James <James.Anderson@ags.gov.au> wrote:

Dear Registrar

Further to your email below, the Third Respondent has proposed the following reporting schedule:

1. By 15 September 2020, the Third Respondent is to inform the Registrar and the Applicant whether the Applicant has completed his security interview and, if not, provide an estimate of when this is expected to occur.
2. By 15 October 2020, the Third Respondent is to inform the Registrar and the Applicant whether a draft assessment has been drafted and, if not, provide an estimate of when this is expected to occur.
3. By 29 October 2020, the Third Respondent is to inform the Registrar and the Applicant whether the assessment has been considered by the decision maker and an estimated time for the assessment to be finalised and provided to the Applicant.

We are seeking the position of the Applicant, with a view to proposing consent orders. In the meantime, we continue to work toward the dates in this proposal.

Yours sincerely

James Anderson

James Anderson

Senior Lawyer
Australian Government Solicitor
T 02 6253 7592 F 02 6253 7380
james.anderson@ags.gov.au

Find out more about AGS at <http://www.ags.gov.au>

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From: Simon Haag [<mailto:Simon.Haag@fedcourt.gov.au>]
Sent: Friday, 21 August 2020 3:14 PM
To: Zali Burrows <law@zaliburrows.com>; Zali Burrows <mail@zaliburrows.com>; Anderson, James <James.Anderson@ags.gov.au>; Watson, Dale <Dale.Watson@ags.gov.au>; Knowles, Justine <Justine.Knowles@ags.gov.au>; Ng, Grace <Grace.Ng@ags.gov.au>; Hutton, Jonathon <Jonathon.Hutton@ags.gov.au>
Cc: NSD584/2019 Emails <NSD5842019@fedcourt.gov.au>
Subject: Case management: NSD584/2019 - PLAINTIFF S111A/2018 v MINISTER FOR HOME AFFAIRS & ORS

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Dear Parties,

This matter has been referred to me for case management in accordance with the attached orders of Mortimer J.

At the case management hearing on 11 August 2020, there was discussion of a review of the applicant's adverse security assessment currently being undertaken by ASIO. Mortimer J has listed the matter for a further case management hearing in the week commencing 16 November 2020, on the basis of the following timetable indicated by the representatives for the respondent (and the understanding that the below times run from 11 August):

- ASIO will seek to interview the applicant within 4-5 weeks
- ASIO will then take 1 month to prepare the assessment
- It will take approximately 2 weeks for the internal approval process to be completed

I would be grateful if you could please advise whether the parties have come to an agreement as to a proposed reporting schedule that could form the basis of consent orders.

Kind Regards,

SIMON HAAG | Judicial Registrar (Migration)

<image001.jpg>

P 03 8600 3356 | E Simon.Haag@fedcourt.gov.au
Level 16, Owen Dixon Commonwealth Law Courts Building
305 William Street, Melbourne, VIC 3000 | www.fedcourt.gov.au

<image002.gif> I acknowledge the Traditional Owners of the land on which I live and work, and recognise their continuing connection to land, waters and culture. I pay my respects to their Elders past, present and emerging.

If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.

From: Simon Haag <Simon.Haag@fedcourt.gov.au>
Sent: Thursday, 29 October 2020 6:06 PM
To: Anderson, James
Cc: NSD584/2019 Emails; Zali Burrows; Zali Burrows; Watson, Dale; Knowles, Justine; Ng, Grace; Hutton, Jonathon
Subject: RE: Case management: NSD584/2019 - PLAINTIFF S111A/2018 v MINISTER FOR HOME AFFAIRS & ORS [AGSDMS-DMS.FID3492283]

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Dear Mr Anderson,

Thank you for your email notifying that the assessment has been completed. We note that a copy of that assessment has been provided to the applicant.

Would the parties please advise the Court whether, in light of the assessment:

- the parties now seek to resolve this matter through a mediation process; or
- the applicant seeks to amend the application; or
- the parties propose to proceed by some other course.

Please provide your answers as soon as possible, but in any event no later than 4pm AEDT on Wednesday 4 November.

Kind Regards,

SIMON HAAG | Judicial Registrar (Migration)



P 03 8600 3356 | E Simon.Haag@fedcourt.gov.au
Level 16, Owen Dixon Commonwealth Law Courts Building
305 William Street, Melbourne, VIC 3000 | www.fedcourt.gov.au



I acknowledge the Traditional Owners of the land on which I live and work, and recognise their continuing connection to land, waters and culture. I pay my respects to their Elders past, present and emerging.

From: Anderson, James <James.Anderson@ags.gov.au>
Sent: Thursday, 29 October 2020 4:13 PM
To: Simon Haag <Simon.Haag@fedcourt.gov.au>
Cc: NSD584/2019 Emails <NSD5842019@fedcourt.gov.au>; Zali Burrows <law@zaliburrows.com>; Zali Burrows <mail@zaliburrows.com>; Watson, Dale <Dale.Watson@ags.gov.au>; Knowles, Justine <Justine.Knowles@ags.gov.au>; Ng, Grace <Grace.Ng@ags.gov.au>; Hutton, Jonathon <Jonathon.Hutton@ags.gov.au>
Subject: RE: Case management: NSD584/2019 - PLAINTIFF S111A/2018 v MINISTER FOR HOME AFFAIRS & ORS [SEC=UNCLASSIFIED] [AGSDMS-DMS.FID3492283]

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Dear Registrar

An adverse security assessment dated 27 October 2020 has been finalised and a copy has been provided to the Department of Home Affairs and to the applicant.

Please do not hesitate to contact me if you require any further information.

Yours sincerely

James Anderson

James Anderson

Senior Lawyer

Australian Government Solicitor

T 02 6253 7592 F 02 6253 7380

james.anderson@ags.gov.au

Find out more about AGS at <http://www.ags.gov.au>

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From: Simon Haag [<mailto:Simon.Haag@fedcourt.gov.au>]

Sent: Thursday, 15 October 2020 4:41 PM

To: Anderson, James <James.Anderson@ags.gov.au>

Cc: NSD584/2019 Emails <NSD5842019@fedcourt.gov.au>; Zali Burrows <law@zaliburrows.com>; Zali Burrows <mail@zaliburrows.com>; Watson, Dale <Dale.Watson@ags.gov.au>; Knowles, Justine <Justine.Knowles@ags.gov.au>; Ng, Grace <Grace.Ng@ags.gov.au>; Hutton, Jonathon <Jonathon.Hutton@ags.gov.au>

Subject: RE: Case management: NSD584/2019 - PLAINTIFF S111A/2018 v MINISTER FOR HOME AFFAIRS & ORS [AGSDMS-DMS.FID3492283]

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Dear Mr Anderson,

Thank you for your confirmation and we note a further update is expected by 29 October 2020.

Kind Regards,

SIMON HAAG | Judicial Registrar (Migration)



P 03 8600 3356 | E Simon.Haag@fedcourt.gov.au
 Level 16, Owen Dixon Commonwealth Law Courts Building
 305 William Street, Melbourne, VIC 3000 | www.fedcourt.gov.au



I acknowledge the Traditional Owners of the land on which I live and work, and recognise their continuing connection to land, waters and culture. I pay my respects to their Elders past, present and emerging.

From: Anderson, James <James.Anderson@ags.gov.au>
Sent: Thursday, 15 October 2020 9:46 AM
To: Simon Haag <Simon.Haag@fedcourt.gov.au>
Cc: NSD584/2019 Emails <NSD5842019@fedcourt.gov.au>; Zali Burrows <law@zaliburrows.com>; Zali Burrows <mail@zaliburrows.com>; Watson, Dale <Dale.Watson@ags.gov.au>; Knowles, Justine <Justine.Knowles@ags.gov.au>; Ng, Grace <Grace.Ng@ags.gov.au>; Hutton, Jonathon <Jonathon.Hutton@ags.gov.au>
Subject: RE: Case management: NSD584/2019 - PLAINTIFF S111A/2018 v MINISTER FOR HOME AFFAIRS & ORS [SEC=OFFICIAL] [AGSDMS-DMS.FID3492283]

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OFFICIAL

Dear Registrar

We are informed by our client that the draft assessment has been prepared and is presently undergoing the usual internal approval process.

We will provide a further update by 29 October 2020.

Please do not hesitate to contact me if you require any further information.

Yours sincerely

James Anderson

James Anderson
 Senior Lawyer
 Australian Government Solicitor
 T 02 6253 7592 F 02 6253 7380
james.anderson@ags.gov.au

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OFFICIAL

From: Simon Haag [<mailto:Simon.Haag@fedcourt.gov.au>]
Sent: Thursday, 17 September 2020 1:04 PM
To: Anderson, James <James.Anderson@ags.gov.au>; Zali Burrows <law@zaliburrows.com>; Zali Burrows <mail@zaliburrows.com>; Watson, Dale <Dale.Watson@ags.gov.au>; Knowles, Justine <Justine.Knowles@ags.gov.au>; Ng, Grace <Grace.Ng@ags.gov.au>; Hutton, Jonathon <Jonathon.Hutton@ags.gov.au>
Cc: NSD584/2019 Emails <NSD5842019@fedcourt.gov.au>
Subject: RE: Case management: NSD584/2019 - PLAINTIFF S111A/2018 v MINISTER FOR HOME AFFAIRS & ORS [AGSDMS-DMS.FID3492283]

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Dear Mr Anderson,

Thank you for sending the confirmation below and we expect to hear from you in due course.

Kind Regards,

SIMON HAAG | Judicial Registrar (Migration)



P 03 8600 3356 | E Simon.Haag@fedcourt.gov.au
Level 16, Owen Dixon Commonwealth Law Courts Building
305 William Street, Melbourne, VIC 3000 | www.fedcourt.gov.au



I acknowledge the Traditional Owners of the land on which I live and work, and recognise their continuing connection to land, waters and culture. I pay my respects to their Elders past, present and emerging.

From: Anderson, James <James.Anderson@ags.gov.au>

Sent: Wednesday, 16 September 2020 4:00 PM

To: Simon Haag <Simon.Haag@fedcourt.gov.au>; Zali Burrows <law@zaliburrows.com>; Zali Burrows <mail@zaliburrows.com>; Watson, Dale <Dale.Watson@ags.gov.au>; Knowles, Justine <Justine.Knowles@ags.gov.au>; Ng, Grace <Grace.Ng@ags.gov.au>; Hutton, Jonathon <Jonathon.Hutton@ags.gov.au>

Cc: NSD584/2019 Emails <NSD5842019@fedcourt.gov.au>

Subject: RE: Case management: NSD584/2019 - PLAINTIFF S111A/2018 v MINISTER FOR HOME AFFAIRS & ORS [SEC=UNCLASSIFIED] [AGSDMS-DMS.FID3492283]

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UNCLASSIFIED

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Dear Registrar

We confirm that the interview with the Applicant proceeded as planned, and was concluded, yesterday.

We will continue to work toward the next steps in the proposal below.

Please do not hesitate to contact me if you require any further information.

Yours sincerely

James Anderson

James Anderson

Senior Lawyer
 Australian Government Solicitor
 T 02 6253 7592 F 02 6253 7380
james.anderson@ags.gov.au

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UNCLASSIFIEDUNCLASSIFIED

From: Simon Haag [<mailto:Simon.Haag@fedcourt.gov.au>]
Sent: Monday, 14 September 2020 5:43 PM
To: Anderson, James <James.Anderson@ags.gov.au>; Zali Burrows <law@zaliburrows.com>; Zali Burrows <mail@zaliburrows.com>; Watson, Dale <Dale.Watson@ags.gov.au>; Knowles, Justine <Justine.Knowles@ags.gov.au>; Ng, Grace <Grace.Ng@ags.gov.au>; Hutton, Jonathon <Jonathon.Hutton@ags.gov.au>
Cc: NSD584/2019 Emails <NSD5842019@fedcourt.gov.au>
Subject: RE: Case management: NSD584/2019 - PLAINTIFF S111A/2018 v MINISTER FOR HOME AFFAIRS & ORS [AGSDMS-DMS.FID3492283]

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UNCLASSIFIED

Dear Mr Anderson,

Thank you for your email, and we would be grateful if the Third Respondent could confirm once the security interview is completed.

Kind Regards,

SIMON HAAG | Judicial Registrar (Migration)



P 03 8600 3356 | E Simon.Haag@fedcourt.gov.au
 Level 16, Owen Dixon Commonwealth Law Courts Building
 305 William Street, Melbourne, VIC 3000 | www.fedcourt.gov.au



I acknowledge the Traditional Owners of the land on which I live and work, and recognise their continuing connection to land, waters and culture. I pay my respects to their Elders past, present and emerging.

From: Anderson, James <James.Anderson@ags.gov.au>
Sent: Monday, 14 September 2020 5:22 PM
To: Simon Haag <Simon.Haag@fedcourt.gov.au>; Zali Burrows <law@zaliburrows.com>; Zali Burrows <mail@zaliburrows.com>; Watson, Dale <Dale.Watson@ags.gov.au>; Knowles, Justine <Justine.Knowles@ags.gov.au>; Ng, Grace <Grace.Ng@ags.gov.au>; Hutton, Jonathon <Jonathon.Hutton@ags.gov.au>
Cc: NSD584/2019 Emails <NSD5842019@fedcourt.gov.au>

Subject: RE: Case management: NSD584/2019 - PLAINTIFF S111A/2018 v MINISTER FOR HOME AFFAIRS & ORS
[SEC=UNCLASSIFIED] [AGSDMS-DMS.FID3492283]

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Dear Registrar

Further to the below, we confirm that the security assessment interview between officers of the Third Respondent and the Applicant will take place tomorrow 15 September 2020 at Villawood Detention Centre. We are instructed the Applicant's solicitor (copied) will also be in attendance.

Please do not hesitate to let me know if there is any further assistance we can provide.

Yours sincerely

James Anderson

James Anderson

Senior Lawyer

Australian Government Solicitor

T 02 6253 7592 F 02 6253 7380

james.anderson@ags.gov.au

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From: Anderson, James

Sent: Wednesday, 2 September 2020 9:06 AM

To: 'Simon Haag' <Simon.Haag@fedcourt.gov.au>; Zali Burrows <law@zaliburrows.com>; Zali Burrows <mail@zaliburrows.com>; Watson, Dale <Dale.Watson@ags.gov.au>; Knowles, Justine <Justine.Knowles@ags.gov.au>; Ng, Grace <Grace.Ng@ags.gov.au>; Hutton, Jonathon <Jonathon.Hutton@ags.gov.au>

Cc: NSD584/2019 Emails <NSD5842019@fedcourt.gov.au>

Subject: RE: Case management: NSD584/2019 - PLAINTIFF S111A/2018 v MINISTER FOR HOME AFFAIRS & ORS
[SEC=UNCLASSIFIED] [AGSDMS-DMS.FID3492283]

Dear Registrar

Further to your email below, the Third Respondent has proposed the following reporting schedule:

1. By 15 September 2020, the Third Respondent is to inform the Registrar and the Applicant whether the Applicant has completed his security interview and, if not, provide an estimate of when this is expected to occur.
2. By 15 October 2020, the Third Respondent is to inform the Registrar and the Applicant whether a draft assessment has been drafted and, if not, provide an estimate of when this is expected to occur.
3. By 29 October 2020, the Third Respondent is to inform the Registrar and the Applicant whether the assessment has been considered by the decision maker and an estimated time for the assessment to be finalised and provided to the Applicant.

We are seeking the position of the Applicant, with a view to proposing consent orders. In the meantime, we continue to work toward the dates in this proposal.

Yours sincerely

James Anderson

James Anderson

Senior Lawyer

Australian Government Solicitor

T 02 6253 7592 F 02 6253 7380

james.anderson@ags.gov.auFind out more about AGS at <http://www.ags.gov.au>

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From: Simon Haag [<mailto:Simon.Haag@fedcourt.gov.au>]

Sent: Friday, 21 August 2020 3:14 PM

To: Zali Burrows <law@zaliburrows.com>; Zali Burrows <mail@zaliburrows.com>; Anderson, James <James.Anderson@ags.gov.au>; Watson, Dale <Dale.Watson@ags.gov.au>; Knowles, Justine <Justine.Knowles@ags.gov.au>; Ng, Grace <Grace.Ng@ags.gov.au>; Hutton, Jonathon <Jonathon.Hutton@ags.gov.au>

Cc: NSD584/2019 Emails <NSD5842019@fedcourt.gov.au>

Subject: Case management: NSD584/2019 - PLAINTIFF S111A/2018 v MINISTER FOR HOME AFFAIRS & ORS

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Dear Parties,

This matter has been referred to me for case management in accordance with the attached orders of Mortimer J.

At the case management hearing on 11 August 2020, there was discussion of a review of the applicant's adverse security assessment currently being undertaken by ASIO. Mortimer J has listed the matter for a further case management hearing in the week commencing 16 November 2020, on the basis of the following timetable indicated by the representatives for the respondent (and the understanding that the below times run from 11 August):

- ASIO will seek to interview the applicant within 4-5 weeks
- ASIO will then take 1 month to prepare the assessment
- It will take approximately 2 weeks for the internal approval process to be completed

I would be grateful if you could please advise whether the parties have come to an agreement as to a proposed reporting schedule that could form the basis of consent orders.

Kind Regards,

SIMON HAAG | Judicial Registrar (Migration)



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I acknowledge the Traditional Owners of the land on which I live and work, and recognise their continuing connection to land, waters and culture. I pay my respects to their Elders past, present and emerging.

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