



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID403/2023

**SAVE THE CHILDREN AUSTRALIA**

Applicant

**MINISTER FOR HOME AFFAIRS**

First Respondent

**COMMONWEALTH OF AUSTRALIA**

Second Respondent

## **ORDER**

**JUDGE:** CHIEF JUSTICE MORTIMER

**DATE OF ORDER:** 16 June 2023

**WHERE MADE:** Melbourne

### **THE COURT NOTES THAT:**

- A. The Affidavit of Mathew Tinkler affirmed on 5 June 2023 has not been read in court, and leave will not be granted to any non-party to inspect the affidavit unless and until it is read, and then only after hearing the parties' submissions on leave to third parties to inspect.

### **THE COURT ORDERS THAT:**

1. Pursuant to s 37AF of the *Federal Court of Australia Act 1976* (Cth), on the grounds that the order is necessary to prevent prejudice to the proper administration of justice and that the order is necessary to protect the safety of any person, there be a suppression order prohibiting the disclosure (by publication or otherwise), in connection with this proceeding, of the names, or other identifying details, of the women and children described in the Concise Statement as "the remaining Australian women and children" (who are named in the confidential annexure to the Concise Statement dated 5 June 2023). Such suppression orders do not limit or control the disclosure or use of the names of the detainees in the confidential annexure by the Commonwealth and its officers in relation to their duties and functions separate from the proceedings.



2. The confidential annexure to the Concise Statement dated 5 June 2023 is confidential within the terms of r 2.32(3)(a) of the *Federal Court Rules 2011* (Cth) and is not to be inspected under any circumstances, except and unless pursuant to further order of the Court, after hearing the parties.
3. There is to be established an online file in relation to this proceeding, with the parties to be consulted each time before further material is added to the online file.
4. The following documents are currently to be made available on the online file:
  - a. the Originating Application dated 5 June 2023;
  - b. the applicant's Concise Statement dated 5 June 2023 with the confidential annexure referred to in order 2 redacted;
  - c. the applicant's Genuine Steps Statement dated 5 June 2023;
  - d. the respondents' Genuine Steps Statement dated 15 June 2023.
5. On or before 4 pm on 14 July 2023, the respondents file and serve their Concise Response, and indicate whether they agree to the Concise Response being placed on the online file.
6. On or before 4 pm on 28 July 2023, the applicant file and serve its Concise Reply, and indicate whether it agrees to the Concise Reply being placed on the online file.
7. By 28 July 2023, the respondents shall make discovery (including production) of:
  - a. documents recording or evidencing any agreements or arrangements dated 1 January 2018 to present between the second respondent and the Autonomous Administration of North East Syria relating to the second respondent funding, supporting or otherwise enabling the detention of the "Australian women and children" (as defined in the applicant's Concise Statement dated 5 June 2023) at Al-Roj camp; and
  - b. documents recording or evidencing agreements or arrangements dated 1 January 2018 to present between the second respondent and AANES in relation to the potential or actual repatriation of Australian citizens (or people who are known to the second respondent to be eligible to be Australian citizens) held in Al-Roj camp.
8. For the avoidance of doubt, a reference in order 7 of these orders to the second respondent includes any officer of the second respondent, including the first respondent, and any other representative of the second respondent (whether as agent, contractor or otherwise).
9. If the respondents rely on public interest immunity or s 130 of the *Evidence Act 1995* (Cth) as a basis for not identifying and/or producing any document, or class of documents, the parties will be referred to a Registrar of the Court for the purposes of determining the



appropriate procedure for resolving those claims, or dealing with those documents in the proceeding.

10. A Registrar be generally assigned to this proceeding, in order to deal with issues between the parties as they arise, and as directed by a Judge.
11. By 4 August 2023, the applicant may:
  - a. provide to the Court any minute of consent order concerning further specific discovery; or
  - b. file and serve any further application for specific discovery.
12. After consultation with the respondents, the applicant is to serve notices under s 78B of the *Judiciary Act 1903* (Cth) prior to the next case management hearing.
13. The proceeding be listed for a case management hearing before Chief Justice Mortimer on 7 August 2023 at 10.15am.
14. Liberty to apply.

Date that entry is stamped: 16 June 2023

*Sia Lagos*  
Registrar