

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 26/02/2020 4:15:15 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	VID1392/2019
File Title:	DBE17 (BY HIS LITIGATION GUARDIAN MARIE THERESA ARTHUR) v COMMONWEALTH OF AUSTRALIA
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



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

Dated: 26/02/2020 4:46:00 PM AEDT

Registrar

### Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 19  
Rule 9.32

**Originating application starting a representative proceeding under  
Part IVA of the Federal Court of Australia Act 1976**

No. VID 1392 of 2019

Federal Court of Australia  
District Registry: Victoria  
Division: General

**DBE17 (by his Litigation Guardian Marie Theresa Arthur)**

Applicant

**The Commonwealth of Australia**

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** Federal Court of Australia, 305 William Street, Melbourne VIC 3000

Date:

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of (name & role of party) DBE17 by his Litigation Guardian Marie Theresa Arthur, Applicant

Prepared by (name of person/lawyer) Nicole Lees

Law firm (if applicable) Maurice Blackburn Lawyers

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(include state and postcode) Melbourne VIC 3000



### **Details of claim**

Terms defined in the accompanying Amended Statement of Claim carry the same meaning when used in this Originating Application.

On the grounds stated in the accompanying Amended Statement of Claim, the Applicant (**DBE17**) claims, on his own behalf and on behalf of group members (as defined below):

- (a) damages for false imprisonment;
- (b) interest pursuant to s 51A of the *Federal Court of Australia Act 1976* (Cth);
- (c) costs; and
- (d) such further or other relief as the Court determines is appropriate.

### **Questions common to claims of Group Members**

The questions of law or fact common to the claims of the Applicant and the Group Members, or sub-groups of them, are:

1. What was the purpose or what were the purposes of the detention of:
  - (a) the Visa Group Members; and
  - (b) the Designated Regional Processing Cohort Group Members?
2. Was the detention of each Visa Group Member lawful only for the period of time for which one of the visa purposes was being pursued and carried into effect as soon as was reasonably practicable?
3. What was the maximum period of time for which the visa purposes were being pursued and carried into effect as soon as was reasonably practicable for the Group Members?
4. Was the detention of each Visa Group Member for a visa purpose unlawful beyond the visa process period other than for any period specified in paragraphs 22(a)-(b) of the Amended Statement of Claim?
5. Was the detention of each Regional Processing Cohort Group Member for the removal purpose only lawful for so long as the removal purpose was pursued and carried into effect as soon as reasonably practicable and/or capable of fulfilment?
6. What was the maximum period of time for which the removal purpose was pursued and carried into effect as soon as reasonably practicable for the Group Members?
7. Was the removal purpose capable of fulfilment and/or reasonably practicable to pursue and carry into effect at any time after 12 August 2012?
8. If the answer to question (7) is 'no', is this by reason of any or any combination of the matters referred to in paragraph 25 of the Amended Statement of Claim?



9. During the Relevant Period, was detention of Group Members removed from Australia to:
  - (a) Nauru; or
  - (b) Papua New Guinea
 lawful in those countries?
10. If the answer to question (9) is 'yes', when, if at all, was it reasonably practicable to remove to a regional processing country a Designated Regional Processing Cohort Group Member who had a family member who was:
  - (a) a child?
  - (b) a pregnant woman over 30 weeks gestation? or
  - (c) a person carrying a blood borne virus?
11. Did the detention of Group Members constitute false imprisonment?
12. The laws of which jurisdiction are applicable in the assessment of damages in respect of Group Members' claims?
13. What is the proper methodology for quantification of the Group Members' damages for false imprisonment?

### **Representative action**

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976* (Cth).

The Group Members to whom this proceeding relates are all persons who:

- (a) between 27 August 2011 and 26 February 2020 inclusive were in detention for more than two working days in any part or parts of Australia purportedly pursuant to s 189 of the *Migration Act 1958* (Cth) (***Migration Act***);
- (b) were not detained because they held a visa under the *Migration Act* that was cancelled or purportedly cancelled under the *Migration Act*;
- (c) did not, at any time after arriving in Australia, return voluntarily to their country of origin or former habitual residence;
- (d) were not at any time since 27 August 2011 removed from Australia to their country of origin or former habitual residence without later re-entering Australia;
- (e) were not detained after being lawful non-citizens (as defined in s 13 of the *Migration Act*) who remained outside detention without a valid visa, unless



they were, at any later time, granted a visa described in s 35A of the *Migration Act*; and

- (f) have not, at any time, received an adverse security assessment under the *Australian Security Intelligence Organisation Act 1979* (Cth),

**Applicant's address**

The Applicant's address for service is:

Place: Maurice Blackburn Lawyers, Level 21/380 La Trobe Street, Victoria, 3000.

Email: [Jkanis@mauriceblackburn.com.au](mailto:Jkanis@mauriceblackburn.com.au)

The Applicant's address is c/- Maurice Blackburn Lawyers, Level 21/380 La Trobe Street, Victoria 3000.

**Service on the Respondent**

It is intended to serve this application on the Respondent.

Date: 26 February 2020

A handwritten signature in blue ink that reads 'Nicole Lees'.

Signed by Nicole Lees  
Lawyer for the Applicant