HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M32 of 2022

BETWEEN:

MARTIN JOHN DAVIS
Appellant

and

MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS
First Respondent

SECRETARY OF DEPARTMENT OF HOME AFFAIRS
Second Respondent

ASSISTANT DIRECTOR, MINISTERIAL INTERVENTION, DEPARTMENT OF HOME AFFAIRS
Third Respondent

APPELLANT'S SUBMISSIONS

I: Publication

1. These submissions are in a form suitable for publication on the internet.

II: Issues

2. The issues on the appeal are:

   (a) whether the decision by the Third Respondent (the **Assistant Director**) to finalise the Appellant's request for Ministerial intervention under s 351 of the *Migration Act 1958* (Cth) (the **Act**) on the basis that it did not meet the circumstances for referral to the First Respondent (the **Minister**) pursuant to the "Minister's guidelines on ministerial powers (s351, s417, s501J)" (the **Guidelines**) was legally unreasonable, in particular because the Assistant Director:

      (i) unreasonably misconstrued or misapplied the Guidelines;

      (ii) failed to have regard to evidence of unique and exceptional circumstances listed in clause 4 of the Guidelines;

      (iii) erroneously characterised the Appellant's letter dated 15 May 2019 as a "repeat request" and refused to refer it to the Minister on that basis; and

Rasan T Selliah
Suite 30, Level 4, 301 Castlereagh Street
SYDNEY NSW 2000
Tel: (02) 9635 5630
Email: rtslawyers@gmail.com
Ref: Rasan Thamilarasan Selliah

(iv) failed to consider whether it was in the public interest for the Appellant's request to be referred to the Minister under clause 12 of the Guidelines; and

(b) whether the Guidelines are unlawful and invalid in so far as they purport to authorise officers of the Department to "screen out" requests made to the Minister for intervention under s 351 of the Act and thereby prevent the Minister from receiving or being made aware of such requests, and/or purport to authorise officers of the Department to exercise personal and non-delegable powers conferred on the Minister or to preclude the exercise of such powers by the Minister.

3. The issues raised by the Notice of Contention filed by the Minister are whether the decision made by the Assistant Director is amenable to judicial review, and if so on what grounds, and whether any and if so what relief is available in respect of that decision.

III: Section 78B notices

4. On 9 June 2022, the First Respondent gave notice to the Attorneys-General under s 78B of the *Judiciary Act 1903* (Cth).

IV: Reasons for judgment below

5. The reasons of the primary judge are published as *Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCA 791. The reasons of the Full Court of the Federal Court are published as *Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FCAFC 213 (**FC**).

V: Relevant facts

6. The factual background is set out in paragraphs [12]-[26] of the reasons of the primary judge (Core Appeal Book ("**CAB**") 27-33), and paragraphs [309]-[314] of the reasons of Charlesworth J (CAB 142-146).

7. The Appellant, who is a citizen of the United Kingdom, first arrived in Australia on 9 July 1997 on a working holiday visa, accompanied by his then partner who was an Australian citizen. He commenced work at the Australian Taxation Office. Prior to the expiry of his working holiday visa, the Appellant lodged an application for a partner visa.[1]

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1 While the Department was unable to locate evidence of this visa application on "Departmental systems", there does not appear to have been any positive finding that the application was not in fact made: *cf* CAB 7, lines 34-41, CAB 8, lines 44-45). Nor was there any rejection of the Appellant's claimed belief that he was a permanent resident during the relevant period.

8. The Appellant left Australia on 7 July 1998 and returned on 28 August 1998 as the holder of an Electronic Travel Authority (subclass 976) ("**ETA**"). Although the Appellant's ETA was of 3 months' duration (expiring on 28 November 1998), the Appellant remained in Australia under the mistaken belief that he had permanent residency as a result of having lodged the partner visa application. He established a construction business, paid tax as an Australian resident, and had access to Medicare.

9. In November 2014, on his return from a 6-week visit to the United Kingdom, the Appellant became aware that he did not hold a current visa. He was granted a tourist visa allowing him to enter Australia, and was subsequently granted a subclass 457 visa. In May 2017, the subclass 457 visa was cancelled after the Appellant had ceased employment with his sponsoring employer.

10. In the meantime, the Appellant made an application for a partner visa. That application was refused by the Minister's delegate, whose decision was affirmed by the Administrative Appeals Tribunal on 14 January 2019.

11. On 11 February 2019, the Appellant (through his representatives) sent an email to the Minister requesting him to exercise his power under s 351 of the Act to substitute for the Tribunal's decision a more favourable decision (the **Request**).

12. The Appellant provided detailed submissions and supporting evidence that his case was one of unique and exceptional circumstances under the Guidelines. In addition to referring to his integration into the Australian community, his contribution to the Australian economy, the establishment of his successful small business in which many Australians had been employed, and his extensive skills and knowledge and commitment to the building industry, the Appellant submitted that his departure from Australia would have a severe emotional effect on Australian citizens with whom he had formed close relationships, including a 73-year-old Australian citizen (Ms Giddins) who relied on him for physical and emotional support and who stated that his departure would be "like losing a son".

13. On 8 May 2019, Assistant Director decided that the request did not meet the Guidelines and that "in accordance with the Guidelines, the Department should finalise this request without referral" (the **Decision**") (CAB 5-12). In making the Decision, the Assistant Director asserted that there was "no evidence that any Australian citizen, permanent resident, or Australian business, will suffer hardship as a result of [the Appellant's] departure" (CAB 10, lines 34-35).

14. On 15 May 2019, the Appellant's representatives wrote a letter to the Department in which it was submitted that there had been a failure to consider "various elements in our submissions that meet the Ministers guidelines for referral", including strong compassionate circumstances that if not recognised would result in serious, ongoing and

irreversible harm and continuing hardship to an Australian citizen. In that context, the Appellant's representatives drew particular attention to the statutory declaration by Ms Giddins, and indicated that "[f]urther documentation and evidence surrounding Ms Giddins' relationship and reliance on the [Appellant] can be provided upon request".

15. On 20 May 2019, the Assistant Director made a further decision not to refer the Appellant's request to the Minister because it did not meet the Guidelines (CAB 14-15). This decision was made on the sole basis that the letter of 15 May 2019 was a "repeat request", which the Guidelines indicated would not be referred to the Minister unless there had been a significant change in circumstances which raised new, substantive issues that were not provided before or considered in a previous request and which presented unique or exceptional circumstances. The Assistant Director determined that the request did not meet that aspect of the Guidelines – that is, for referral of a "repeat request" to the Minister – and again "finalised this request without referral".

16. The letter from the Assistant Director to the Appellant dated 20 May 2019 followed from an internal minute of the same date headed "Assessment of repeat request for intervention in accordance with [the Guidelines]" (emphasis added): Joint Materials (**JM**), 62-64. The minute repeated the assertion from the Decision that there had been no evidence that any Australian citizen, permanent resident, or Australian business would suffer hardship as a result of the Appellant's departure, and stated that, in his current "repeat request", the Appellant "reiterates previously considered claims" including that he had formed close relationships with a range of people.

VI: Argument

17. Paragraphs 19 to 55 below reproduce the equivalent paragraphs 17 to 53 in the Appellant's written submissions dated 30 June 2022 filed in DCM20 v Secretary of Department of Home Affairs, Matter No S81 of 2021.

18. Paragraphs 56 to 61 below address the validity of the Guidelines (Ground 2). The arguments in relation to legal unreasonableness on the specific facts of this appeal (Ground 1) are set out in paragraphs 62 to 72 below.

Jabbour *is correct*

19. The reasoning of Robertson J in *Jabbour v Secretary, Department of Home Affairs*,[2] as affirmed by each Justice in the Full Court below, is correct. The decision by the Assistant Director under the Guidelines to finalise the Request without referral to the

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2 (2019) 269 FCR 438 (***Jabbour***) at 455-460 [79]-[103].

Minister is amenable to judicial review, including on the ground of legal unreasonableness.[3]

The Guidelines

20. The Guidelines (JM 69-74) were issued by the Minister in order to explain the circumstances in which he or she may wish to consider intervening in a case pursuant to the powers conferred by ss 351, 417 and 501J of the Act, and how a person may request the Minister to consider intervening in their case:. In contrast to previous versions of such Ministerial guidelines, the Guidelines not only explain when the Department should refer a case to the Minister, but also "confirm that if a case does not meet these guidelines, I do not wish to consider intervening in that case".

21. Under the heading "Cases that should be brought to my attention", section 4 of the Guidelines states that cases that have "one or more unique or exceptional circumstances" may be referred to the Minister for possible consideration of the use of the intervention powers, and describes examples of such cases including those with "strong compassionate circumstances that if not recognised would result in serious, ongoing and irreversible harm and continuing hardship to an Australian citizen". Section 7 relevantly provides that cases which do not meet the guidelines for referral are inappropriate for the Minister to consider, and the Department is instructed by the Minister to "finalise these cases without referral to me".[4]

22. Section 10.1 of the Guidelines deals with "first requests", and relevantly provides that, if the Department assesses that the case does not have unique or exceptional circumstances such as those described in section 4 of the Guidelines and is inappropriate for the Minister to consider as described in section 7 of the Guidelines, the request "will not be brought to my attention" and "will be finalised by the Department without referral to me".

23. Section 10.2 deals with "repeat requests". The Minister instructs that "I do not wish to consider repeat requests", but that such a request may be referred to the Minister "in limited circumstances", if the Department is satisfied there has been a "significant change in circumstances since the previous request(s) which raises new, substantive issues that were not provided before or considered in a previous request", and which are assessed by the Department as falling within the unique or exceptional circumstances described in section 4 of the Guidelines.

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3 FC at [3], [27]-[39], [46] (Kenny J), [50] (Besanko J), [96] (Griffiths J), [118(a)], [166]-[174] (Mortimer J), [292]-[307] (Charlesworth J).

4 See also section 8, which provides that "[i]f the Department assesses that the case does not meet my guidelines for referral, the Department will finalise the case according to these guidelines."

24. The Guidelines confer on Departmental officers the function of assessing requests for Ministerial intervention against the criteria set out therein, including by "screening out" those requests which do not meet the specified criteria. In contrast to the position under previous guidelines,[5] such requests are "finalised" by the assessment and decision of the Departmental officer without referral or notice to the Minister. The authority to perform that function is derived from the Guidelines, by which the Minister instructs Departmental officers that he does not wish to consider certain kinds of cases.[6] This reflects a decision by the Minister not to consider the exercise of intervention powers in those cases (as identified by the assessment to be performed by officers of his Department), which is in effect the converse of the "personal procedural decision" to consider the exercise of such powers that was identified in cases such as *Plaintiff M61/2010E v Commonwealth*[7] and *Minister for Immigration and Border Protection v SZSSJ*.[8]

25. The characterisation of the administrative process undertaken to inform the Minister as to the possible exercise of his or her intervention powers "requires close attention both to the structure of those powers and to the facts".[9] Where the Minister has not made a personal procedural decision to consider a request for intervention, the processes undertaken by the Department to assist the Minister to make the procedural decision have no statutory basis.[10]

26. However, while they have no statutory basis, Departmental assessments under the Guidelines cannot be said to have no relationship at all to the laws of the Commonwealth. In *Plaintiff S10/2011 v Minister for Immigration and Citizenship*, Gummow, Hayne, Crennan and Bell JJ considered that the processes "were not divorced from the exercise of authority conferred by statute".[11] French CJ and Kiefel J observed that the processes were to be regarded as "an executive function incidental to the administration of the Act and thus within that aspect of the executive power which 'extends to the execution and maintenance … of the laws of the Commonwealth'."[12]

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5 For example, under the guidelines in force as at 2009, cases that fell outside the ambit of the relevant sections of the guidelines were nevertheless required to be brought to the attention of the Minister "through a short summary of the issues in schedule format, so that I may indicate whether I wish to consider the exercise of my power". See *e.g.* FC at [94]-[95] (Griffiths J).

6 *Cf. Plaintiff S10/2011 v Minister for Immigration and Citizenship* (2012) 246 CLR 636 (***Plaintiff S10***) at 665 [91] (Gummow, Hayne, Crennan and Bell JJ); see also at 653 [51] (French CJ and Kiefel J).

7 (2010) 243 CLR 319 (***Plaintiff M61***) at [70]-[71].

8 (2016) 259 CLR 180 (***SZSSJ***) at [56].

9 *SZSSJ* (2016) 259 CLR 180 at 197 [41].

10 *SZSSJ* (2016) 259 CLR 180 at 200 [54].

11 *Plaintiff S10* (2012) 246 CLR 636 at 665 [93].

12 *Plaintiff S10* (2012) 246 CLR 636 at 655 [51]. See also FC at [13]-[14] (Kenny J).

27. The Guidelines derive their character from s 351(3) which provides that the power to substitute a more favourable decision for that of the Tribunal "may only be exercised by the Minister personally", and s 351(7) which provides that "[t]he Minister does not have a duty to consider whether to exercise the power … in respect of any decision". Subsection 351(7) makes the power conferred by s 351 "non-compellable", in the sense that the Minister cannot be compelled by mandamus to consider its exercise in any particular case.[13] Because the Minister is not required to consider whether to exercise the power, the Minister has issued the Guidelines as instructions to the Department as to which requests for intervention pursuant to the power are to be referred to him for possible consideration and which requests are to be finalised by the Departmental officer without referral to the Minister.

28. As Griffiths and Charlesworth JJ concluded below,[14] subject to any lawful instruction given by the Minister, the personal and discretionary nature of the powers conferred on the Minister by s 351 of the Act gives rise to a duty on the part of Departmental officers to bring to the Minister's attention a request for his intervention, such that the Minister is "made aware that an occasion for exercising the procedural power has arisen"[15] and has an opportunity to make either or both a procedural decision to consider the exercise of the power or a substantive decision to intervene. Thus, only the Minister personally can decide not to consider a request for Ministerial intervention.[16] However, by issuing the Guidelines, the Minister has decided (in advance) not to consider exercising the intervention powers in relation to requests that fall within specified categories, and given instructions to his Department accordingly, such that "so long as the Departmental officer acts in accordance with the Guidelines, there is no duty to bring the request to the Minister's attention".[17] That is, the Guidelines (if valid) confer on Departmental officers the authority not to bring a request to the Minister's attention, and define the scope of that authority.[18]

29. Further or alternatively, even if there were no duty to bring a request for Ministerial intervention under s 351 of the Act to the attention of the Minister, the Guidelines nevertheless constitute an instruction by the Minister as to the matters that are relevant to whether or not the Minister wishes to consider exercising the power to intervene. The Guidelines are intended to guide Departmental officers in conducting assessments of intervention requests, in a similar way to policies that are promulgated to guide the

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13 See *Plaintiff M61* (2010) 243 CLR 319 at 358 [99].
14 FC at [87] (Griffiths J), [253]-[270] (Charlesworth J).
15 FC at [260] (Charlesworth J).
16 FC at [259] (Charlesworth J).
17 FC at [264] (Charlesworth J).
18 FC at [268] (Charlesworth J).

exercise of a statutory discretion.[19] In so far as the Departmental officers are exercising the non-statutory executive power of the Commonwealth, as an incident of the execution and maintenance of laws of the Commonwealth (*i.e.* the Act) within s 61 of the *Constitution*, the Guidelines serve to identify the scope and purpose of the power and inform the manner in which the assessment is to be conducted by Departmental officers.[20]

30. It follows that Departmental officers cannot ignore the Guidelines when assessing a request for Ministerial intervention, any more than they can ignore the request itself. A request could not be arbitrarily discarded without any notice to the Minister that the request had been made. The finalisation of a request by a Departmental officer without referral to the Minister can only be done in good faith under the Guidelines.

The finalisation of the request affected rights and interests

31. A majority of this Court accepted in *Plaintiff S10* that a failure to exercise or to consider the exercise of the dispensing provisions (including s 351 of the Act) can adversely affect the interests of those seeking to engage the exercise of such powers.[21]

32. In so far as there is a duty to bring a request for Ministerial intervention to the attention of the Minister subject to any lawful instruction given by the Minister as to the cases that he does not wish to consider, the finalisation of a request by a Departmental officer under the Guidelines clearly affects the requestor's rights (and/or interests). If it is necessary to articulate the nature of the right (or interest), it is to have the request either brought to the Minister's attention (for possible consideration whether to exercise the power to intervene) or assessed under and in accordance with the Guidelines that have been promulgated by the Minister as instructions to his Department.[22]

33. Even in the absence of any such duty, the finalisation of a Ministerial intervention request by a Departmental officer nevertheless affects the interests of the person who made the request.[23] For example:

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19 Amanda Sapienza, *Judicial Review of Non-Statutory Executive Action* (2020, The Federation Press), 148-149.

20 *Jabbour* (2019) 269 FCR 438 at 458 [91], 460 [102].

21 *Plaintiff S10* (2012) 246 CLR 636 at 658-659 [64]-[70] (Gummow, Hayne, Crennan and Bell JJ). However, their Honours held that the relevant dispensing provisions revealed the "necessary intendment" to exclude the requirement to observe procedural fairness: (2012) 246 CLR 636 at 668 [100]; see also *SZSSJ* (2016) 259 CLR 180 at 199 [49].

22 Compare FC at [252] (Charlesworth J), referring to "an asserted right to have the intervention requests assessed in accordance with the Guidelines which obligation is said to include a requirement to act within the bounds of legal reasonableness". An identification of the right in issue in such terms is capable of giving rise to a "matter" for judicial determination.

23 See FC at [43]-[46] (Kenny J), [84]-[85] (Griffiths J), [51] (Besanko J), [118(b)], [119] (Mortimer J), [267] (Charlesworth J).

(a) The finalisation of a request prevents it from being referred to the Minister, who has power to affect the person's legal rights by substituting a more favourable decision (*e.g.* granting a visa). In *Plaintiff S10*, Gummow, Hayne, Crennan and Bell JJ described this as "obtain[ing] a measure of relaxation of what otherwise would be the operation upon non-citizens of the visa system",[24] which is clearly a matter in relation to which the person making the request has an interest.

(b) The making of a request for Ministerial intervention under s 351 of the Act (and other relevant dispensing provisions) is expressly recognised and given effect as a criterion for the grant of a bridging visa under Schedule 2 of the *Migration Regulations*: see cl 050.212(6). Thus, while there is a pending request for Ministerial intervention, the person may be entitled to the grant of a bridging visa which entitles him or her to remain at liberty in Australia. For present purposes, it makes no difference that the duration or expiry of such a bridging visa is not expressly tied to the finalisation of the request (see cl 050.517); such a finalisation will disentitle the person to the grant or renewal of any further bridging visa under cl 050.212(6).[25] The finalisation of a request by the Departmental officer thereby limits any possibility that the person might be able lawfully to remain at liberty in Australia beyond the expiry of any bridging visa.

(c) The finalisation of a request under the Guidelines has the practical effect of rendering any future request a "repeat request", which is subject to mandatory non-referral unless stringent criteria can be met (s 10.2).

34. Accordingly, the decision by the Assistant Director to finalise the Appellant's request clearly affected his interests, if such an effect on interests is necessary to render that decision amenable to judicial review on the ground of legal unreasonableness.

Judicial supervision and enforcement of limits on executive power

35. Section 61 of the *Constitution* relevantly provides that the executive power of the Commonwealth extends to the execution and maintenance of the *Constitution* and of the laws of the Commonwealth. The Governor-General is authorised by s 64 of the Constitution to appoint Ministers to administer departments of State.

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24 *Plaintiff S10* (2012) 246 CLR 636 at 659 [68]-[69], as recognised in *SZSSJ* (2016) 259 CLR 180 at 205 [76].

25 See FC at [6], [10]-[11], [44]-[45] (Kenny J), [85] (Griffiths J), [119], [125] (Mortimer J), [210], [288] (Charlesworth J). In this regard, cl 050.212(6)(c) expressly excludes an applicant who has previously sought the exercise of the Minister's power under the relevant dispensing provisions. In other words, a person who made a previous request that was finalised by a Departmental officer is not entitled to a bridging visa under cl 050.212(6) based on a "repeat request". Accordingly, the finalisation of the initial request by the Departmental officer curtails the applicant's ongoing entitlements to obtain a bridging visa.

36. Sections 75(iii) and (v) of the *Constitution* confer jurisdiction on this Court to enforce limits on the extent and exercise of Commonwealth executive powers, both statutory and non-statutory. It is settled that "all power of government is limited by law", and that "the function of the judicial branch of government is to declare and enforce the law that limits its own power and the power of other branches of government through the application of judicial process and through the grant, where appropriate, of judicial remedies".[26]

37. By conferring jurisdiction "to enforce the law that limits and governs the power of [an officer of the Commonwealth]",[27] s 75(v) of the *Constitution* "secures a basic element of the rule of law".[28] Sections 75(iii) and s 75(v) of the *Constitution* establish that the Commonwealth and its officers can be sued for acts done in their official capacity and can be restrained from exceeding their authority or from acting inconsistently with any applicable legal constraint on such authority.[29]

38. The position is no different in relation to non-statutory executive powers, functions and capacities. It has long been accepted that the courts can review the legality of executive action in the exercise of non-statutory powers or the performance of non-statutory functions, subject to any applicable limits on justiciability arising from the nature or subject matter of the relevant executive power or function.[30] Judicial review is available of both prerogative powers and other non-statutory executive powers or capacities.[31]

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26 *Graham v Minister for Immigration and Border Protection* (2017) 263 CLR 1 (***Graham***) at 24 [39] (Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ).

27 *Graham* (2017) 263 CLR 1 at 25 [42] (Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ).

28 *Plaintiff S157/2002 v The Commonwealth* (2003) 211 CLR 476 at 482 [5]. See also at 513-514 [104]; *Graham* (2017) 263 CLR 1 at 25 [44]; *Plaintiff M68/2015 v Minister for Immigration and Border Protection* (2016) 257 CLR 42 (***Plaintiff M68***) at 95-96 [126], [128] (Gageler J); *MZAPC v Minister for Immigration and Border Protection* (2021) 95 ALJR 441 (***MZAPC***) at 463-464 [91]-[95] (Gordon and Steward JJ), and cases cited therein. See also FC at [27]-[29] (Kenny J).

29 *Plaintiff M68* (2016) 257 CLR 42 at 95 [126] (Gageler J).

30 See FC [28]-[34] (Kenny J), [167]-[173] (Mortimer J), and the cases there cited, including *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410-411, 417, 423-424 and *Minister for Arts, Heritage and Environment v Peko-Wallsend Ltd* (1987) 15 FCR 274 at 277-278, 280-281, 302-304. See also, *eg*, *Kioa v West* (1985) 159 CLR 550 at 611 (Brennan J); *Victoria v Master Builders' Association* [1995] 2 VR 121 at 133-136, 139 (Tadgell J), 147-149 (Ormiston J), 160-161 (Eames J). In the United Kingdom, it has been accepted that an exercise of prerogative powers is amenable to judicial review; the question is whether and how the power is limited by the common law in a particular case: see *Elgizouli v Secretary of State for the Home Department* [2020] WLR 857; [2020] UKSC 10 at [4]-[5] (Lady Hale, summarising the position of the Justices), see also [161]-[163] (Lord Kerr, dissenting on the question of the existence of the common law limitation claimed), [169], [181]-[187] (Lord Reed, with whom Lady Black and Lord Lloyd-Jones agreed); [191] (Lord Carnwath), [231] (Lord Hodge). In the Hong Kong Court of Final Appeal, see also *C v Director of Immigration* (2013) 16 HKCFAR 280 at [77]-[81] (Sir Anthony Mason NPJ, with whom Chan PJ and Ribeiro PJ agreed).

31 In relation to what have been called in the United Kingdom the "general administrative powers" of the Crown, see *New London College Ltd, R (on the application of) v Secretary of State for the Home*

Legal reasonableness as a constraint on executive power

39. By operation of a common law principle of statutory construction, statutory powers conferred on an officer of the Commonwealth are generally subject to an implied condition that they must be exercised within the bounds of legal reasonableness.[32] That principle is "deeply rooted" in the common law.[33] The condition is derived from "the rules of reason and justice".[34] The presumptions of legislative intention were developed to protect values and principles that the common law valued so highly that courts afforded them a measure of protection from statutory incursion, unless displaced by express provision or necessary implication.[35]

10 40. Because of the common law foundation of such an implied condition, any debate about whether the limit is regarded as a common law duty or an implication from statute "proceeds upon a false dichotomy and is unproductive".[36]

41. The implied condition of legal reasonableness is applicable even where there is no duty to exercise the relevant power.[37] The condition applies to the consideration of the

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Department [2013] UKSC 51 at [28]-[29]. The exercise of the Crown's "residual freedom" (sometimes referred to as the "third source" of authority) is generally recognised as being subject to both statutory and common law rules, and is reviewable by the courts: see *Television New Zealand Ltd v Rogers* [2008] 2 NZLR 277 at [110]; *R v Ngan* [2008] 2 NZLR 48 at [97]-[98]; *Minister for Canterbury Earthquake Recovery v Fowler Developments Limited* [2014] 2 NZLR 587 at [81]; *cf Quake Outcasts v Minister For Canterbury Earthquake Recovery* [2015] NZSC 27 [2016] 1 NZLR 1 at [112]. See generally B V Harris, "The 'Third Source' of Authority for Government Action" (1992) 109 LQR 626 at 626; B V Harris, "The 'Third Source' of Authority for Government Action Revisited" (2007) 123 LQR 225; B V Harris, "Government 'third source' action and common law constitutionalism" (2010) 126 LQR 373.

32 *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332 (***Li***) at 349-351 [24]-[29] (French CJ), 362 [63], 369 [86] (Hayne, Kiefel and Bell JJ), 370-371 [88]-[92] (Gageler J); *Minister for Immigration and Border Protection v SZVFW* (2018) 264 CLR 541 (***SZVFW***) at 564-565 [53] (Gageler J), 575 [89] (Nettle and Gordon JJ); *ABT17 v Minister for Immigration and Border Protection* (2020) 269 CLR 439 at 435 [3]; *Plaintiff M174/2016 v Minister for Immigration and Border Protection* (2018) 264 CLR 217 at 227 [21], 245 [86]; *BVD17 v Minister for Immigration and Border Protection* (2019) 268 CLR 29 (***BVD17***) at 38-39 [15], 44 [33].

33 *Li* (2013) 249 CLR 332 at 370 [90], 375 [105] (Gageler J); see also *Giris Pty Ltd v Federal Commissioner of Taxation* (1969) 119 CLR 365 at 383 (Windeyer J); *SZVFW* (2018) 264 CLR 541 at 567 [59] (Gageler J).

34 *Li* (2013) 249 CLR 332 at 349-350 [24], [26] (French CJ), 363 [65] (Hayne, Kiefel and Bell JJ), 370-371 [90] (Gageler J); *MZAPC* (2021) 95 ALJR 441 at 468-469 [168]-[169] (Edelman J); *Hossain v Minister for Immigration and Border Protection* (2018) 264 CLR 123 at 134 [28] (Kiefel CJ, Gageler and Keane J). See also FC at [30]-[33] (Kenny J), [81] (Griffiths J).

35 Sapienza, *Judicial Review of Non-Statutory Executive Action* (2020), 122-123.

36 *Plaintiff S10* (2012) 246 CLR 636 at 666 [97] (Gummow, Hayne, Crennan and Bell JJ), in relation to the presumption that statutory powers must be exercised with procedural fairness.

37 For example, in relation to the power conferred by s 426A of the Act, see *SZVFW* (2018) 264 CLR 541 at 549 [4] (Kiefel CJ), 564-565 [53] (Gageler J), 572-573 [80], 575 [89] (Nettle and Gordon JJ). See also *Li* (2013) 249 CLR 332 at 371 [92], 374 [102]-[103] (Gageler J); *Plaintiff S183/2021 v Minister for Home Affairs* (2022) 399 ALR 644 at 651 [30] (Gordon J).

exercise of an available power, and to the manner in which a power is considered and exercised.[38]

42. Given its source in the common law, there is no reason why an implied condition of legal reasonableness should not equally extend to the exercise of non-statutory powers or capacities falling within s 61 of the *Constitution*, subject to any exclusion by statute, subject matter or context. It is necessary to look to the *Constitution* to ascertain the ambit of executive power,[39] and the limits of that power "are to be understood … in light of the purpose of Ch. II being to establish the Executive Government as a national responsible government and in light of constitutional history and the tradition of the common law".[40] It would be incongruous for the common law to imply a condition of reasonableness in the exercise of a statutory power, but not to extend such a limitation to the exercise of non-statutory executive powers.[41]

Application of legal reasonableness to the dispensing power under s 351 of the Act

43. In the present case, there is no dispute that the Appellant has standing to challenge the Assistant Director's decision to finalise his request for the exercise of the power conferred by s 351 of the Act without referral to the Minister. Nor is there anything in the nature or the subject matter of the relevant power that would prevent judicial review of the Assistant Director's decision, by the enforcement of judicially ascertainable standards that are capable of application by a court.[42]

44. It should be accepted that any consideration or exercise by the Minister personally of the dispensing powers, including the power conferred by s 351 of the Act, would be subject to the implied condition that the power must be considered and exercised within the bounds of legal reasonableness, including in good faith.[43] In that context, it is not possible for the Minister, by the issue of the Guidelines, to "obviate" the requirements of legal reasonableness which arise in relation to the consideration or exercise of the power conferred by s 351 of the Act.[44]

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38 *Li* (2013) 249 CLR 332 at 371 [91] (Gageler J).

39 See, eg, *Attorney-General (WA) v Marquet* (2003) 217 CLR 545 at 570 [66] (Gleeson CJ, Gummow, Hayne and Heydon JJ).

40 *Plaintiff M68* (2016) 257 CLR 42 at 99 [138] (Gageler J), see also *Williams v Commonwealth (No. 2)* (2014) 252 CLR 416 at 468 [80] (French CJ, Hayne, Kiefel, Bell and Keane JJ).

41 *Jabbour* (2019) 269 FCR 438 at 460 [101] (Robertson J); see also FC at [305] (Charlesworth J).

42 FC at [38]-[39] (Kenny J), [61(c)] (Griffiths J), [168] (Mortimer J), [245], [300] (Charlesworth J); see also *Jabbour* (2019) 269 FCR 438 at 457 [88], 458 [92] (Robertson J).

43 *SZVFW* (2018) 264 CLR 541 at 572-573 [80]-[81] (Nettle and Gordon JJ). See also *Murphyores Incorporated Pty Ltd v Commonwealth* (1976) 136 CLR 1 at 12 (Stephen J).

44 *Plaintiff S10* (2012) 246 CLR 636 at 666 [94] (Gummow, Hayne, Crennan and Bell JJ).

45. For the reasons set out above, the Assistant Director's decision to finalise the Appellant's request for Ministerial intervention had an effect on his rights and interests. Nevertheless, where an applicant has standing, the requirement of legal reasonableness, and the amenability of the decision to judicial review on that ground, does not depend on whether or not the decision affects an individual's rights or interests.[45] While there is a requirement that an administrative decision must affect rights or interests in order to attract an obligation to accord procedural fairness, such a requirement does not limit other grounds of review including legal unreasonableness. And it is clear that an obligation to exercise a power within the bounds of reasonableness can apply even if the statute excludes the implication of procedural fairness.[46]

46. The power exercised by the Assistant Director in applying the Guidelines may be regarded as part of the executive power of the Commonwealth within s 61 of the *Constitution*, whether as incidental to the execution and maintenance of the laws of the Commonwealth or as an aspect of the prerogative powers or capacities of the Crown. The Assistant Director's function involves more than the mere collection and review of information provided to the Minister, including the classification of requests for Ministerial intervention in order to assist the Minister in making any personal procedural or substantive decisions under s 351 of the Act. Rather, the Guidelines confer on Departmental officers the power to "finalise" requests without notice to the Minister, thereby precluding the Minister from any consideration whether to exercise the power conferred by s 351 of the Act. This involves the exercise by the Departmental officers of an executive power pursuant to the Guidelines, rather than any bare "capacity" of a kind that is shared in common with any subject.

47. The exercise of such an executive power of the Commonwealth conferred by s 61 of the *Constitution* is subject to the "rules of reason and justice" including the common law requirement of legal reasonableness.

48. Further, by both issuing and publishing the Guidelines, the Minister has instructed Departmental officers as to the circumstances in which he does not wish to consider a request for Ministerial intervention. It is necessarily implicit in those instructions that any assessment of a request for Ministerial intervention under the Guidelines is required to be conducted within the bounds of legal reasonableness. In order to carry out the Minister's instructions, Departmental officers must properly apply the Guidelines when considering requests that are made to the Minister for an exercise of the dispensing powers. Departmental officers are therefore not free to ignore the Guidelines, nor to

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45 FC at [50] (Besanko J), [83] (Griffiths J), [118](b) (Mortimer J), see also [40]-[42] (Kenny J).

46 See e.g. *BVD17* (2019) 268 CLR 29 at 44 [33] (Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ).

deal with any request for Ministerial intervention in a way that is arbitrary, unreasonable or otherwise not in accordance with the Guidelines.

49. Accordingly, if a Departmental assessment under the Guidelines were to be made for reasons that were extraneous to any objects that the Minister could have had in view,[47] the assessment process could be said to be legally unreasonable. Judicial review of the decision made by the Departmental officer would concentrate on an examination of the reasoning process by which the decision was reached.[48] Alternatively, the outcome itself might be unreasonable, in the sense that no reasonable decision-maker could have failed to refer the request to the Minister in accordance with the Guidelines.[49]

50. A clear example would be where the Departmental officer refuses to refer a request to the Minister because of an animosity in relation to the person making the request, or based on some other personal interest that conflicts with the officer's duties. Another example would be where the Departmental officer completely fails to assess a request for Ministerial intervention under the Guidelines, and instead discards the request without looking at its contents. More generally, any assessment by a Departmental officer of a request must be conducted in a manner that is consistent with the Guidelines, and by a proper consideration and application of the Guidelines to the facts and circumstances of the particular request.

51. Accordingly, a misconstruction or misunderstanding of the Guidelines may give rise to an error of law, in that it demonstrates an illogicality or perversity in the purported application of the Guidelines by the Departmental officer.[50]

52. Further, and in any event, the Guidelines constitute evidence of what a reasonable process would entail, such that a material departure from the Guidelines would either constitute legal unreasonableness or support the drawing of an inference that the assessment process was not conducted reasonably. The Guidelines, being instructions given by the Minister to Departmental officers as to the approach to be taken in dealing with (and potentially finalising) requests for the exercise of the Minister's personal dispensing powers, direct the attention of Departmental officials to the content of such requests with a view to their assessment against the criteria set out in the Guidelines. In order for the process to be within the bounds of legal reasonableness, the relevant

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47 Compare *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492 at 505 (Dixon J).

48 See *Jabbour* (2019) 269 FCR 438 at 460 [102].

49 See *Jabbour* (2019) 269 FCR 438 at 460 [102].

50 *Jabbour* (2019) 269 FCR 438 at 457 [89] (Robertson J), referring to *Minister for Immigration, Local Government and Ethnic Affairs v Gray* (1994) 50 FCR 189 at 208 and *Taveli v Minister for Immigration, Local Government and Ethnic Affairs* (1989) 86 ALR 435 at 453. See also FC [61(d)] (Griffiths J).

Departmental officer must comprehend the content of the request and properly assess the request in accordance with the Guidelines.[51]

Relief

53. For the reasons given by Griffiths and Charlesworth JJ in the Full Court below, s 351 of the Act gives rise to a duty to bring a request for the exercise of powers under that section to the attention of the Minister for possible consideration.[52] In so far as the Minister has displaced that duty by giving lawful instructions to Departmental officers as to the circumstances in which the Minister does not wish to consider the exercise of the dispensing powers, a purported decision by a Departmental officer that is legally unreasonable will attract an order in the nature of mandamus requiring the Departmental officer to comply with the Guidelines or to bring the request to the Minister's attention. An order in the nature of certiorari would also be available to quash the effect of the purported decision.

54. Prohibition or an injunction may also be available to prevent the purported decision from being acted upon, including for the purposes of applying the criteria for the grant of a bridging visa under cl 050.212(6) of Sched 2 of the *Migration Regulations*.[53]

55. In any event, even if mandamus and certiorari are unavailable, the court can grant declaratory relief to give effect to a finding that the decision by a Departmental officer to finalise a request without referral to the Minister was legally unreasonable.[54] A declaration of that kind will have foreseeable, or practical, consequences for the parties.[55] Among other things, it will ensure that the impugned decision is not relied upon to characterise a future request as a "repeat request" pursuant to s 10.2 of the Guidelines, and will direct attention to the nature of the error so as to inform the future assessment of the request. It also has a potential effect on the person's current or future entitlements to a bridging visa under the *Migration Regulations*.

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51 *Jabbour* (2019) 269 FCR 438 at 455 [78], summarising the submissions of the applicants in that case.

52 FC [87] (Griffiths J), [253]-[270] (Charlesworth J).

53 For completeness, neither prohibition nor the remedy of injunction requires that the relevant decision will have a legal effect: see *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 at 581 (Mason CJ, Dawson, Toohey and Gaudron JJ), 591, 594-595 (Brennan J).

54 Compare *Plaintiff M61* (2010) 243 CLR 319 at 359 [101]; see also *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 at 581.

55 See *Plaintiff M61* (2010) 243 CLR 319 at 359-360 [103]-[104]; *Plaintiff M76/2013 v Minister for Immigration, Multicultural Affairs and Citizenship* (2013) 251 CLR 322 at 391 [232] (Kiefel and Keane JJ).

Invalidity of the Guidelines (Ground 2)

56. The Guidelines are inconsistent with the personal and discretionary nature of the powers conferred on the Minister by s 351 of the Act.

57. While it is within the competence of the Minister to issue guidelines to his Department in relation to requests for the exercise of his personal dispensing powers under provisions such as s 351 of the *Migration Act*,[56] any such guidelines must be consistent with the Act. In particular, any guidelines issued for the purposes of s 351 must not be inconsistent with the requirement in s 351(3) that the power of the Minister must be exercised personally.

10 58. The Minister may be able to give a guideline which directs Departmental officers to determine objective facts, or to advise the Minister whether or not a case meets specified criteria for possible consideration of the exercise of his personal power (at least where the Minister is made aware of the existence of requests that are assessed unfavourably).

59. However, the Minister cannot issue a guideline that effectively transfers to Departmental officers part of the power conferred by s 351, namely to decide whether to consider the exercise of power or whether to substitute a more favourable decision for the decision of the Tribunal. It is inconsistent with the personal and non-delegable nature of the power under s 351 for the Minister to require Departmental officers to evaluate and determine that a request should not be referred to the Minister for possible
20 consideration because it does not raise unique or exceptional circumstances or involve the public interest, and to finalise the request on that basis without any further notice to the Minister. Those are matters that are entrusted by the Parliament to the Minister acting personally.

60. Parts 4 and 7 of the Guidelines require the Departmental officer to assess whether or not there are "unique or exceptional circumstances" and, if the Departmental officer assesses that there are no such "unique or exceptional circumstances" within the categories described, to finalise the cases without referral to the Minister. This removes from the Minister any consideration of whether to exercise, or to consider the exercise, the power conferred on the Minister personally by s 351, and thereby excludes requests
30 from possible consideration by the Minister.[57] The Guidelines contradict the intention

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56 *Plaintiff S10-2011* (2012) 246 CLR 636 at [91], citing *Bedlington v Chong* (1998) 87 FCR 75 at 80-81; *Raikua v Minister for Immigration* (2007) 158 FCR 510 at 522-523 [63]-[66].

57 This inconsistency is not removed by the note in Part 12 of the Guidelines that the Minster's power is not circumscribed by the process of the Guidelines, because there is no suggestion of any process by which a request could otherwise reach the Minister, apart from the "screening" process administered by Departmental officers under the Guidelines. As Mortimer J observed, the system purportedly established by the Guidelines contemplates that the Minister will never see such requests or know of their existence: FC at [134].

of Parliament that the power given to the Minister by s 351(1) must be exercised personally, according to the judgment of the Minister and not according to the judgment of anyone else. The Guidelines are therefore inconsistent with s 351 and are unlawful and invalid.

61. For the reasons given by Mortimer J,[58] this ground has merit. Whatever the position may have been at intermediate appellate court level, there is nothing to preclude this Court from upholding this ground and concluding that the Guidelines are invalid to the extent that they purport to transfer to Departmental officers the Minister's personal discretionary powers to decide whether or not to consider a request for Ministerial intervention.

The Decision was legally unreasonable (Ground 1)

62. The Full Court correctly made the following findings of fact.[59]

(a) When making the initial decision on the Appellant's request, the Assistant Director misapplied the Guidelines by failing to have regard to the evidence and submissions in relation to the detrimental impact of the Appellant's removal from Australia on Ms Giddins, an Australian citizen.

(b) The Assistant Director erroneously characterized the Applicant's complaints about flaws in the initial assessment as a "repeat request" (which the Guidelines instructed were not to be referred to the Minister unless the Department was satisfied that there was a *significant change in circumstances* since the previous request which raised new, substantive issues that fell within the unique or exceptional circumstances described in the Guidelines).

63. However, the Full Court erred in concluding that the above errors did not affect the decision made by the Assistant Director under the Guidelines to finalise the request and not to refer the request to the Minister.

64. Under the Guidelines, the Assistant Director was required to determine, among other things, whether there were "strong compassionate circumstances that if not recognised would result in serious, ongoing and irreversible harm and continuing hardship to an Australian citizen". In her letter of support, Ms Giddins stated that the Appellant's removal from Australia would have a serious impact on her life and that it would be "like losing a son". The Assistant Director did not consider this claim, and instead wrongly asserted that there was "no evidence that any Australian citizen, permanent

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58 FC at [125]-[155].

59 FC at [324]-[328] (Charlesworth J); see also FC at [3] (Kenny J), [50] (Besanko J), [97]-[113] (Griffiths J), [118(c)] (Mortimer J).

resident, or Australian business, will suffer hardship as a result of [the Appellant's] departure".

65. As a result of this fundamental oversight, the Appellant's request was not properly assessed in accordance with the Guidelines, and the decision to finalise his request without considering this evidence was legally unreasonable.

66. Contrary to the Full Court's reasons, the subsequent decision made by the Assistant Director on 20 May 2019 did not cure the earlier oversight and consequent unreasonableness in the decision to finalise the Appellant's request.

(a) By erroneously characterizing the letter on behalf of the Applicant dated 15 May 2019 as a "repeat request", the Assistant Director thereby expressly constrained her powers in relation to how the request could be dealt with under the Guidelines. The Assistant Director's re-assessment of the request was viewed entirely through the prism that it could not be referred to the Minister unless there was a "significant change in circumstances which were not provided before or considered in a previous request and which present unique or exceptional circumstances as described in the guidelines".

(b) The Assistant Director therefore asked herself the wrong question – namely whether there had been a significant change in circumstances since the "previous" request – so as to preclude any proper consideration of the hardship to Ms Giddins as attracting unique or exceptional circumstances within the meaning of the Guidelines. Rather, the Assistant Director wrongly characterised those matters as a reiteration of "previously considered claims".

(c) In such circumstances, the oversight or flaw in the Assistant Director's initial assessment infected her purported reassessment of the request as a "repeat request".

(d) It cannot be said that there was no realistic possibility that, if the Assistant Director had properly considered the claims in relation to hardship to Ms Giddins afresh (as opposed to having been made in the context of a "repeat request"), the request might have been differently assessed under the Guidelines and might have been referred to the Minister.

67. The Full Court also erred in concluding that it was open to the Assistant Director to deal with these matters on the basis that there was "no evidence that no other person in the community such as relatives, friends or community support services" were unable to provide the support that Ms Giddins claimed to receive from the Applicant.[60]

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60 FC at [326]-[328] (Charlesworth J).

68. First, in circumstances where Ms Giddins had described the emotional impact of the Applicant's removal as "like losing a son", it was irrational and legally unreasonable to find that other unidentified persons in the general community could provide such support to Ms Giddins so as to mitigate the hardship caused to her by the Appellant's departure from Australia.

69. Second, it was irrational and legally unreasonable to dismiss those matters on the basis of an absence of evidence in circumstances where the Appellant had offered to provide further documentation on request.[61]

70. Third, notwithstanding that the Guidelines contained a general statement that "[a]ll information relevant to the request … must be provided at the time the request is made", it remained the case that the Assistant Director had power to seek further information from the Appellant or to make other inquiries. In the circumstances of the present case, including where there was no material before the Assistant Director as to the availability of any equivalent physical and emotional support to Ms Giddins and the Appellant had expressly indicated that he could provide further information, it was irrational and legally unreasonable for the Assistant Director not to seek further information about these matters from the Appellant before finalising the request.

71. Finally, it was irrational and legally unreasonable for the Assistant Director:

(a) to discount the importance of the length of time the Appellant had lived in Australia on the basis that he was unlawful for a significant part of that period, given the explanation for that situation was his mistaken belief that he had been granted permanent residency (which was consistent with his payment of tax as a resident and his entitlement to Medicare); and

(b) to conclude that, simply because it was open to the Applicant to sell his Australian business and property interests, these ties did not give rise to potential harm (including loss of employment of Australian citizens and permanent residents) and loss of economic benefits within the meaning of the Guidelines; and

(c) to fail to consider or make any finding whether the referral of the Appellant's request to the Minister was, or might be considered by the Minister to be, in the public interest under section 12 of the Guidelines even if there were no unique or exceptional circumstances as described in section 4 of the Guidelines.

72. Accordingly, the Assistant Director's conclusion that the Appellant's case did not present unique or exceptional circumstances within the meaning of the Guidelines, and

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61 *Cf* FC at [102]-[104] (Griffiths J), [326]-[327] (Charlesworth J).

her decision to finalise the Request without referral to the Minister, was legally unreasonable.[62] The Decision lacked "an evident and intelligible justification".[63]

VII: Orders sought

73. The Appellant seeks the following orders:

1. *The appeal is allowed.*
2. *The orders made by the Full Court of the Federal Court of Australia on 23 November 2021 be set aside, and in lieu thereof it is ordered that:*
   - *(a) The appeal is allowed.*
   - *(b) The orders made by O'Callaghan J on 9 June 2020 be set aside, and in lieu thereof the following orders are made:*
     - *(i) Declare that the Third Respondent erred in law in deciding on 8 May 2019 and giving notice on 10 May 2019 that the Applicant's request for Ministerial intervention did not meet the guidelines for referral to the First Respondent (the **Decision**).*
     - *(ii) A writ of certiorari be issued to quash the Decision.*
     - *(iii) Declare that the Applicant's request for Ministerial intervention is not finalised.*
     - *(iv) A writ of mandamus be issued to require the Second Respondent to deal with the Applicant's request for Ministerial intervention according to law.*
     - *(v) The First Respondent pay the Applicant's costs.*
   - *(c) The First Respondent pay the Appellant's costs.*
3. *The First Respondent pay the Appellant's costs.*

VIII: Estimate for oral argument

74. The Appellant estimates that he will require 1.5 hours for the presentation of oral argument (together with the oral argument in DCM20 v Secretary of Department of Home Affairs, Matter No S81 of 2021).

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62 *Li* (2013) 249 CLR 332 at 350-351 [27]-[28] (French CJ), 365-366 [72] (Hayne, Kiefel and Bell JJ); *cf Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 611 at 624 [39] (Gummow A-CJ and Kiefel J).

63 *Li* (2013) 249 CLR 332 at 367 [76] (Hayne, Kiefel and Bell JJ).

Dated: 30 June 2022

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C J Horan
T: (03) 9225 8430
F: (03) 9225 8668
E: chris.horan@vicbar.com.au

.....

A Krohn
T: (03) 9225 7301
F: (03) 9225 8686
E: akrohn@vicbar.com.au

.....

A R Sapienza
T: (02) 9151 2232
F: (02) 9335 3500
E: a.sapienza@level22.com.au

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M32 of 2022

BETWEEN:

MARTIN JOHN DAVIS
Appellant
and
MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS
First Respondent
SECRETARY OF DEPARTMENT OF HOME AFFAIRS
Second Respondent
ASSISTANT DIRECTOR, MINISTERIAL INTERVENTION, DEPARTMENT OF HOME AFFAIRS
Third Respondent

ANNEXURE TO APPELLANT'S SUBMISSIONS

List of the particular constitutional provisions, statutes and statutory instruments referred to in the submissions.

(Provisions are relevant as current, except where otherwise stated.)

1. *Constitution,* sections 61, 64, 75(iii), 75(v).
2. *Judiciary Act 1903* (Cth), s 78B.
3. *Migration Act 1958* (Cth) (as at 8 May 2019, the date of the Third Respondent's decision), sections 351, 417, 501J.
4. *Migration Regulations* 1994 (Cth), cl 050.212(6) of Schedule 2.
5. *Minister's guidelines on ministerial powers (s351, s417, s501J)* (as issued on 11 March 2016 and in force on 8 May 2019), sections 4, 7, 10.1, 10.2, 12.

Dated: 30 June 2022

Rasan T Selliah
Suite 30, Level 4, 301 Castlereagh Street
SYDNEY NSW 2000

Tel: (02) 9635 5630
Email: rtslawyers@gmail.com
Ref: Rasan Thamilarasan Selliah