

# HIGH COURT OF AUSTRALIA

EDELMAN J

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DBO19

APPLICANT

AND

MINISTER FOR IMMIGRATION, CITIZENSHIP,  
MIGRANT SERVICES AND MULTICULTURAL  
AFFAIRS & ANOR

RESPONDENTS

[2026] HCASJ 8

*Date of Judgment: 22 April 2026*

M72 of 2021

## ORDERS

- 1. Leave is granted for Maddocks to withdraw as solicitors on the record for the applicant.*
- 2. Maddocks serve a sealed copy of this order on every other party to the proceeding.*
- 3. Leave is granted for the first respondent to file a bill of costs in this proceeding.*

### **Representation**

The applicant is represented by Maddocks

The first respondent is represented by Clayton Utz

No appearance for the second respondent



1 EDELMAN J. On 17 February 2023, this Court refused, with costs, an application by DBO19 for special leave to appeal to this Court from the judgment and order of Anderson J in the Federal Court of Australia given and made on 8 October 2021. There are now two applications before this Court. The first is an application by the solicitors for DBO19, Maddocks, for leave to withdraw as solicitors. The second is an application by the first respondent, the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, for leave to file a bill of costs. Both applications should be granted.

### **An application by solicitors for DBO19 for leave to withdraw**

2 On 2 April 2026, Maddocks filed an application under r 6.02.5 of the *High Court Rules 2004* (Cth) to cease acting as solicitors for DBO19. Although the application does not specify the subrule of r 6.02.5 upon which Maddocks rely, it appears that it is seeking leave pursuant to r 6.02.5(c), which provides that a solicitor may cease to be the solicitor for a party "if, the solicitor having first given notice in writing to the party of intention to apply for leave to withdraw as solicitor, the Court or a Justice grants the solicitor leave to withdraw and the solicitor serves a copy of that order on every other party".

3 In the affidavit filed in support of Maddocks' application, its special counsel explains that on 4 September 2023, DBO19 instructed Maddocks by email that he did not want Maddocks to engage further with the Minister's lawyers and that he would contact the Minister's lawyers directly and resolve the issue of costs himself. Maddocks confirmed by email to DBO19 that it was no longer instructed to act for him in this proceeding and that it would advise the Minister's solicitors of that.

4 Following an application by the Minister on 16 March 2026 for leave to take a step in the proceeding (to file a bill of costs) under r 4.03.2 of the *High Court Rules*, the special counsel also informed DBO19 that Maddocks would be taking steps to seek leave to withdraw as his solicitor if Maddocks did not hear from DBO19 by 5.00 pm on 1 April 2026. No reply was received by Maddocks from DBO19 at the time the special counsel's affidavit was made on 2 April 2026.

5 In all the circumstances, it is appropriate for leave to be granted. Orders should be made in accordance with r 6.02.5(c) of the *High Court Rules* as follows:

1. Leave be granted for Maddocks to withdraw as solicitors on the record for DBO19.
2. Maddocks serve a sealed copy of this order on every other party to the proceeding.

### **An application for leave to file a bill of costs**

6 On 16 March 2026, the Minister filed an application for leave to take a step in the proceeding (to file a bill of costs) under r 4.03.2 of the *High Court Rules*.

The Minister relied on affidavits filed on 16 and 26 March 2026 by a partner of the firm of solicitors representing him and on written submissions filed on 26 March 2026. The requirement for leave arose because "3 years or more has elapsed since any party has taken any step" in the proceeding.

7 Some decisions of single Justices of this Court have held that in cases where an applicant seeks leave to take a step under r 4.03.2 to give effect to a court order, the applicant need not show any reason for the delay; the issue has been treated simply as one of the prejudice to the other party or parties.<sup>1</sup> Perhaps the origin of this line of authority is *Hospital Products Ltd v United States Surgical Corporation*,<sup>2</sup> where Gaudron J held, in relation to an earlier form of the rule, that in "a case which has proceeded to judgment and in which leave is sought to take a step to give effect to the judgment, or some aspect of it", no "positive reason" need be shown; "the matter should be resolved by a consideration of the prejudice involved in the step proposed". In other cases, however, where applicants have sought the same leave to take a step under r 4.03.2 to give effect to a court order,<sup>3</sup> single Justices of this Court have proceeded on the basis that a "good" (or, perhaps more accurately, "sufficient") reason for the delay needs to be shown for leave to be granted.<sup>4</sup>

8 For two independent reasons, I proceed on the basis that a sufficient reason must be shown under r 4.03.2 for leave to be granted for a party to take a step in a proceeding in this Court after three years have elapsed. First, in circumstances in which DBO19 has not filed any affidavits or submissions despite being given liberty to do so, it is appropriate at least to commence with the basis which is most favourable to DBO19.

9 Secondly, an applicant who bears the onus of establishing that an order should be made should be required to demonstrate a sufficient reason for making the order. Nevertheless, even a weak reason will sometimes be sufficient where there is no apparent prejudice to the other party or parties. In this case, only a weak reason need be shown in circumstances where: (i) there is no apparent prejudice to

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1 *Cross Country Realty Pty Ltd v Peebles* [2015] HCATrans 278; *Mineralogy Pty Ltd v Sino Iron Pty Ltd* [2021] HCATrans 55.

2 (1993) 67 ALJR 777 at 779; 116 ALR 218 at 221.

3 Compare *William Crosby & Co Pty Ltd v The Commonwealth* (1963) 109 CLR 490.

4 See *Jazabas Pty Ltd v City of Botany Bay Council* [2008] HCATrans 31; *Falamaki v Wollongong City Council* [2009] HCATrans 56; *Theophanous v The Commonwealth* [2011] HCATrans 104; *Doppstadt Australia Pty Ltd v Lovick & Son Developments Pty Ltd* [2021] HCATrans 1; *Defteros v Google LLC* (2024) 99 ALJR 206 at 208 [9]-[10]; *Brisbane City Council v Amos* [2024] HCSJ 35.

3.

DBO19 by the grant of leave since he retains the ability to challenge any of the entries in the bill of costs; (ii) the step proposed involves the enforcement of an order of this Court about which DBO19 had been on notice; and (iii) the delay was less than a month more than the three year period following the date at which a party had last taken a step in the proceeding (17 February 2023), which is a precondition for the requirement of leave under r 4.03.2.

10           The reason provided by the solicitors on behalf of the Minister is weak. They point to work undertaken after the disposal of the special leave application on 17 February 2023, including a costs letter to DBO19 and the preparation of a draft bill of costs with a view to commencing a taxation, and the departure of the partner with control of the matter on 13 February 2026 which led to a review of that partner's files. The explanation for the delay between the communications with DBO19 in 2023 and 13 February 2026 is weak because no express reason is given for the inaction by the original partner. One possibility from the correspondence is that the applicant's reasonably justified claims to have no finances at all provided a motive for the solicitors for the Minister, on instructions, not to incur further costs that would at that time have been wasted. But the subsequent responses to DBO19's email indicate that such a view was not taken and support a more likely inference that the inaction arose as a result of overlooking the need to complete the bill of costs. That reason, while weak and based on inference, is sufficient in the circumstances described.

11           The Minister properly does not seek costs of this application. Costs would not be appropriate. An order should be made granting leave to the Minister under r 4.03.2 of the *High Court Rules* to file a bill of costs in this proceeding.