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File Number:	VID545/2021
File Title:	DENNIS JAMES FISHER v COMMONWEALTH OF AUSTRALIA & ORS
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Registrar

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**Federal Court of Australia**  
**District Registry: Victoria**  
**Division: General**

**No VID 545 of 2021**

**DENNIS JAMES FISHER**

Applicant

**COMMONWEALTH OF AUSTRALIA AND OTHERS**  
**(NAMED IN THE SCHEDULE)**

Respondent

**1<sup>ST</sup> RESPONDENT'S LIST OF AUTHORITIES**

**PART A: CASES**

<b>No.</b>	<b>Name</b>	<b>Reference Details</b>
1.	<i>ADCO v Goudappel</i> (2014) 254 CLR 1; [2014] HCA 18	[29]
2.	<i>Attorney-General Vic; Ex rel Dale</i> (1945) 71 CLR 237; [1945] ALR 435	
3.	<i>Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue</i> (2009) 239 CLR 27; [2009] HCA 41	[47]
4.	<i>Aurukun Shire Council v Chief Executive Officer, Office of Liquor Gaming and Racing in the Department of Treasury</i> [2010] 1HCATrans	293
5.	<i>Aurukun Shire Council v Chief Executive Officer, Office of Liquor Gaming and Racing in the Department of Treasury</i> [2012] 1 Qd R 1; [2010] QCA 37	[169], [172]-[174], [176]-[179], [181], [259], [262]
6.	<i>Australian Medical Council v Wilson</i> (1996) 68 FCR 46; [1996] FCAFC 591	53-55, 74
7.	<i>Bara v Blackwell</i> [2022] NTCCA 17	[52], [55], [57]-[67], [111]
8.	<i>Blackwell v Bara</i> [2022] NTSC 17	[60], [89]-[90], [94], [106], [111]- [112]
9.	<i>Brennan v Comcare</i> (1994) 50 FCR 555; [1994] FCA 360	[572]
10.	<i>Bropho v Western Australia</i> (2008) 169 FCR 59; [2008] FCAFC 100	[83]
11.	<i>Brown v. Board of Education of Topeka</i> 347 U.S. 483 (1954)	[494]-[495]
12.	<i>Campbells Cash and Carry Pty Ltd v Fostif Pty Ltd</i> (2006) 229 CLR 386; [2006] HCA 41	[31], [51], [54], [57]-[59], [222]- [226], [322]
13.	<i>Carnie v Esanda Finance Corp</i> (1995) 182 CLR 398; [1995] HCA 9	403, 405, 410-411, 421-422

<b>No.</b>	<b>Name</b>	<b>Reference Details</b>
14.	<i>CIC Insurance Ltd v Bankstown Football Club Ltd</i> (1997) 187 CLR 384; [1997] HCA 2	408
15.	<i>Clark v Vanstone (in her capacity as Minister for Immigration and Multicultural and Indigenous Affairs)</i> (2004) 211 ALR 412; [2004] FCA 1105	[112]-[115]
16.	<i>Comcare v PVYW</i> (2013) 250 CLR 246; [2013] HCA 41	[15]-[16]
17.	<i>Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation</i> (1981) 147 CLR 297; [1981] HCA 26	304-305, 321
18.	<i>Duke of Bedford v Ellis</i> [1901] AC 1	7
19.	<i>Ebber v HREOC</i> (1995) 129 ALR 455; [1995] FCA 1134	472-473
20.	<i>Federal Commissioner of Taxation v Consolidated Media Holdings Ltd</i> (2012) 250 CLR 503; [2012] HCA 55	[39]
21.	<i>Gerhardy v Brown</i> (1985) 159 CLR 70; 1985 [HCA] 11	84-85, 98, 99, 102, 103, 107, 113, 118, 128, 133, 137-138, 145, 147, 149, 155-157, 161-162
22.	<i>Griggs v Duke Power Co</i> 401 US 424 (1971)	431
23.	<i>Hamzy v Commissioner of Corrective Services NSW</i> (2022) 400 ALR 507; [2022] NSWCA 16	[3], [21], [23]-[29], [32]-[33], [39], [89]-[91], [274]
24.	<i>IW v City of Perth</i> (1997) 191 CLR 1; [2022] HCA 30	12, 58
25.	<i>Jones v Public Trustee (Qld)</i> (2004) 209 ALR 106; [2004] QCA 269	[19], [22], [26]
26.	<i>Kerrison v Melbourne City Council</i> (2014) 228 FCR 87; [2014] FCAFC 130	[8], [103], [164]
27.	<i>Kowanyama Aboriginal Shire Council v CEO of Liquor, Gaming and Racing</i> [2010] HCATrans 293 (12 November 2010)	
28.	<i>Mabo v Queensland (No 1)</i> (1988) 166 CLR 1; [1988] HCA 69	198, 218, 230-232
29.	<i>Macoun v Federal Commissioner of Taxation</i> (2015) 257 CLR 519; [2015] HCA 44	[67]

No.	Name	Reference Details
30.	<i>Maloney v The Queen</i> (2013) 252 CLR 168; [2013] HCA 28	[9]-[11], [14], [16], [20], [23]-[24], [27], [38], [51], [58], [61], [64], [65], [66]-[68], [78]-[80], [84], [88], [95], [106], [112], [122],[126]-[127], [134], [142], [145], [148], [153]-[158], [163]-[165], [167]-[169], [173], [175]-[176], [182], [193], [200]-[201], [202] - [204], [213]-[214], [235], [245], [266], [289], [300], [302]-[303], [306], [310], [317], [325], [328]-[329], [331], [337] - [339], [343]-[344], [347]-[348], [356], [362]-[363]
31.	<i>Melkman v Commissioner of Taxation</i> (1988) 20 FCR 331; [1988] FCAFC 231	336-337
32.	<i>Military, Rehabilitation and Compensation Commission v May</i> (2016) 257 CLR 468; [2016] HCA 19	[52]
33.	<i>Minister for Environment v Sharma (No 2)</i> [2022] FCAFC 65	[7]-[9]
34.	<i>Minister for Immigration and Border Protection v WZAPN</i> (2015) 254 CLR 610; [2015] HCA 22	[53], [61]
35.	<i>Minister for Immigration and Multicultural and Indigenous Affairs v QAAH of 2004</i> (2006) 231 CLR 1; [2006] HCA 53	[34]
36.	<i>Muldoon v Melbourne City Council</i> (2013) 217 FCR 450; [2013] FCA 994	[173]
37.	<i>Munkara v Bencsevich &amp; Ors</i> [2018] NTCA 4	[15], [99]-[102], [104], [118]-[119], [179]
38.	<i>NAEN v Minister for Immigration and Multicultural and Indigenous Affairs</i> [2003] FCA 216	[72]
39.	<i>New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act</i> (2016) 260 CLR 232; [2016] HCA 50	[32], [92]
40.	<i>Newcastle City Council v GIO General Ltd</i> (1997) 191 CLR 85; [1997] HCA 53	99, 112-113
41.	<i>Nguyen v Refugee Review Tribunal</i> (1997) 74 FCR 311; [1997] FCA 293	326-327, 331, 320
42.	<i>O'Donnell v Commonwealth of Australia</i> [2021] FCA 1223	[18], [40], [43]
43.	<i>Project Blue Sky Inc v Australian Broadcasting Authority</i> (1998) 194 CLR 355; [1998] HCA 28	[69]-[71]
44.	<i>Purvis v New South Wales</i> (2003) 217 CLR 92; [2003] HCA 62	

<b>No.</b>	<b>Name</b>	<b>Reference Details</b>
45.	<i>Queensland Construction Materials Pty Ltd (ACN 002 202 548) v Redland City Council</i> (2010) 271 ALR 624; [2010] QCA 182	[14], [47]-[48],
46.	<i>Queensland Construction Materials Pty Ltd v Tapp</i> [2011] HCASL 31	
47.	<i>R v A2</i> (2019) 269 CLR 507; [2019] HCA 35	[33], [37], [124]
48.	<i>R v Woods &amp; Williams</i> (2010) 246 FLR 4; [2010] NTSC 69	[41], [51]-[59]
49.	<i>Reynolds v Tasmanian Heritage Council</i> (2011) 277 ALR 394; [2011] TASSC 6	[36]
50.	<i>Sahak v Minister for Immigration and Multicultural Affairs</i> (2002) 123 FCR 514; [2002] FCAFC 215	[1]- [9], [45]-[49], [51]-[52]
51.	<i>Sremcevic v Gurry D.C</i> (1994) 51 FCR 194; [1994] FCA 383	210-211
52.	<i>Stacey Brothers Plumbing Pty Ltd v Waterco Limited</i> [2009] FCA 438	[25], [46]-[47]
53.	<i>Street v Queensland Bar Association</i> (1989) 168 CLR 461; [1989] HCA 53	
54.	<i>SZTAL v Minister for Immigration and Border Protection</i> (2017) 262 CLR 362; [2017] HCA 34	[14], [37], [39], [43]
55.	<i>Trau v Repatriation Commission</i> (1998) 88 FCR 349; [1988] FCA 1459	352
56.	<i>Vanstone v Clarke</i> (2005) 147 FCR 299; [2005] FCAFC 189	[19], [198]-[199], [208]
57.	<i>Victrawl Pty Ltd v Telstra Corp Ltd</i> (1995) 183 CLR 595; [1995] HCA 51	622
58.	<i>Waters v Public Transport Corporation</i> (1991) 173 CLR 349; [1991] HCA 49	357, 392
59.	<i>Western Australia v Commonwealth</i> (1995) 183 CLR 373; [1995] HCA 47 ( <i>Native Title Act</i> case)	437-438, 495
60.	<i>Western Australia v Ward</i> (2002) 213 CLR 1; [2002] HCA 28	[103], [105], [115], [117]-[121], [126], [599]
61.	<i>Wotton and Others v Queensland (No 5)</i> (2016) 157 ALD 14; [2016] FCA 1457	[561]

#### **PART B: LEGISLATION**

62.	<i>Aboriginal and Torres Strait Islander Commission Act 1989</i> (Cth)	s 4A
63.	<i>Acts Interpretation Act 1901</i> (Cth)	ss 15AA, 15AB
64.	<i>Alcohol Protection Orders Act 2013</i> (NT)	ss 6, 9(2)(c), 11(2)
65.	<i>Civil Rights Act 1964</i> 7 USC (1964)	s 703h

<b>No.</b>	<b>Name</b>	<b>Reference Details</b>
66.	<i>Commonwealth of Australia Constitution Act 1901</i> (Cth)	ss 51(xxiii), 51(xxiiiA), 75(v), 117
67.	<i>Commonwealth Electoral Act 1918</i> (Cth)	s 93(1)(a)
68.	<i>Crimes (Administration of Sentences) Regulation 2014</i> (NSW)	cll 101, 116, 119(6)
69.	<i>Disability Discrimination Act 1992</i> (Cth)	s 6
70.	<i>Federal Court of Australia Act 1976</i> (Cth)	ss 23, 25(6)
71.	<i>Federal Court Rules 2011</i> (Cth)	r 1.32, 9.21, 9.22, 9.22(1)
72.	<i>Financial Emergency Act 1932</i> (Cth)	ss 13-14
73.	<i>Financial Relief Act 1933</i> (Cth)	s 24
74.	<i>Firearms Acts 1996</i> (Vic)	ss 17(1)(b), 18(1), 23(1)(b), 25, 29(1)(b), 57(2)
75.	<i>Human Rights and Equal Opportunity Commission (Transitional Provisions and Consequential Amendments) Act 1986</i>	s 10(3)
76.	<i>Income Tax Assessment Act 1936</i> (Cth)	s 23(kc)
77.	<i>Indigenous Communities Liquor Licences Act 2002</i> (QLD)	ss 3(1), 64, 66
78.	<i>Integrated Planning Act 1997</i> (Qld)	ss 3.2.1, 3.2.8, 3.4.4(1), 4.1.56, 5.9.1, Sch 10
79.	<i>Invalid and Old-Age Pensions Act 1908</i> (Cth)	ss 15(1)-(2), 16(1)(c), 20, 24(1)
80.	<i>Invalid and Old-Age Pensions Act 1909</i> (Cth)	ss 11-13, 15, 17
81.	<i>Invalid and Old-Age Pensions Act No 2 1909</i> (Cth)	s 2
82.	<i>Invalid and Old-Age Pensions Act 1912</i> (Cth)	ss 4, 7-8
83.	<i>Invalid and Old-Age Pensions Act 1916</i> (Cth)	s 24
84.	<i>Invalid and Old-Age Pensions Act 1917</i> (Cth)	s 3
85.	<i>Invalid and Old-Age Pensions Act 1919</i> (Cth)	s 24
86.	<i>Invalid and Old-Age Pensions Act 1923</i> (Cth)	ss 17, 24
87.	<i>Invalid and Old-Age Pensions Act 1925</i> (Cth)	s 24
88.	<i>Invalid and Old-Age Pensions Act 1926</i> (Cth)	s 3
89.	<i>Invalid and Old-Age Pensions Act 1928</i> (Cth)	s 4
90.	<i>Invalid and Old-Age Pensions Act 1931</i> (Cth)	ss 34-35
91.	<i>Invalid and Old-Age Pensions Act 1937</i> (Cth)	s 2
92.	<i>Invalid and Old-Age Pensions Act 1940</i> (Cth)	ss 3-4
93.	<i>Invalid and Old-Age Pensions Act 1941</i> (Cth)	ss 5, 9
94.	<i>Invalid and Old-Age Pensions Act 1942</i> (Cth)	s 13
95.	<i>Invalid and Old-Age Pensions Act 1943</i> (Cth)	Pt 4A
96.	<i>Invalid and Old-Age Pensions Act 1944</i> (Cth)	ss 4-5, 7
97.	<i>Invalid and Old-Age Pensions Act 1946</i> (Cth)	ss 3, 6-7
98.	<i>Juries Act 1962</i> (NT)	ss 10(3)(a), 30(b)

<b>No.</b>	<b>Name</b>	<b>Reference Details</b>
99.	<i>Land (Titles and Traditional Usage) Act 1993</i> (WA)	ss 3, 5, 7, 8(2), 17-24, 26, 27(3), 28-32, 38, Sch 1 (Pts 1, 2, 3, 6)
100.	<i>Law and Justice Legislation Amendment Act 1990</i> (Cth)	s 49
101.	<i>Liquor Act 1992</i> (Qld)	s 168B, Part 6A
102.	<i>Liquor Control Reform Act 1986</i> (Vic)	ss 119-123
103.	<i>Liquor Regulation Act 2002</i> (Qld)	ss 37A, 37B, Sch 1R
104.	<i>Migration Act 1958</i> (Cth)	ss 166BA(1)(b), 476, 478(1)(b)
105.	<i>Old-Age Pension Act 1900</i> (NSW)	ss 9(1), 10,
106.	<i>Old-Age Pension Act 1901</i> (Vic)	ss 6(1)(a)-(b)
107.	<i>Pitjantjatjara Land Rights Act 1918</i> (SA)	s 18, 19
108.	<i>Queensland Coast Islands Declaratory Act 1985</i> (Qld)	s 3
109.	<i>Racial Discrimination Act 1975</i> (Cth)	ss 3(1), 8, 8(1), 9, 9(1), 9(1A), 10, 10(1), 10(2), 10(3)
110.	<i>Racial Discrimination Amendment Act 1980</i> (Cth)	s 10(3)
111.	<i>Retirement Villages Act 1986</i> (Vic)	s 3(1)
112.	<i>Road Safety Act 1986</i> (Vic)	ss 19(1), 22(2)
113.	<i>Social Security Act 1991</i> (Cth)	ss, 8, 8(1), 8(8)(b), 14, 20A, 23, 23(5A), 23(5D), 43, 43(1C) and (4), 44-47A, 55, 94, 94(1)(c)(ii), 94(1)(da)(ii), 96, 117, 197A, 210, 500, 500D, 500Q, 503, 503A, 540, 540(2), 540AA, 541B, 543A, 543B, 568-570, 593, 593(1)(g)(i), 593(1B)(b)(i), 593(1D)(b)(i), 593(5)(e)(i), 611, 643, 729, 746, 1061, 1061EM, 1061Q-1061R, 1061SB, 1061ZG, 1064, 1064 (Modules BA, C, E, F, G, H), 1064-A1, 1064-A1 (steps 1-4), 1064-A1 (step 11-12), 1064-B1, 1064-G4, 1065, 1067, 1067 (Module BB), 1067G, 1067G (Module H), 1067L, 1067L (Module BA, C, D), 1068, 1068 (Module BB, G), 1068A, 1068A (Module C), 1068B (Module D, DA, DB, E), 1070A, 1118(1)(f) Pt 2.2, Pt 2.3, Pt 2.5, Pt 2.10, Pt 2.11, Pt 2.11A, Pt 2.12, Pt 2.15, Pt 3.15A, Pt 3.15B, Pt 3.16A, Pt 3.16B, Subdivision AB and B of Div 2 of Pt 2.11
114.	<i>Social Security (Administration) Act 1999</i> (Cth)	ss 11, 66A
115.	<i>Social Security and other Legislation Amendment (Pension Reform and other 2009 Budget Measures) Act 2009</i> (Cth)	Sch 11, ss 1, 2

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116.	<i>Social Security and Repatriation Legislation Amendment Act 1983</i> (Cth)	s 4
117.	<i>Social Security Legislation Amendment Act (No 2) 1994</i> (Cth)	s 29
118.	<i>Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994</i> (Cth)	s 8, sch 6
119.	<i>Social Services Act 1959</i> (Cth)	s 24
120.	<i>Social Services Act 1966</i> (Cth)	s 29
121.	<i>Social Services Act 1973 (No 4)</i> (Cth)	s 5
122.	<i>Social Services Act 1975</i> (Cth)	s 4
123.	<i>Social Services Act 1976 (No 3)</i> (Cth)	s 3
124.	<i>Social Services Amendment Act (No 3) 1978</i> (Cth)	s 5
125.	<i>Social Services Consolidation Act 1947</i> (Cth)	
126.	<i>Succession Act 1981</i> (Cth)	Pt 3

#### PART C: OTHER MATERIALS

127.	Australian Bureau of Statistics, <i>Life Tables for Aboriginal and Torres Strait Islander Australians, some select states 2015-17</i> (Report, 29 November 2018)	[33], [149], [283]
128.	<i>Budget Paper No. 1 (2009-10)</i> , Presented to the Parliament by the Treasurer, Mr Swan, on 12 May 2009 - Commonwealth Parliamentary Debates, House of Representatives, 12 May 2009	1-36
129.	<i>Budget Paper No. 1 (1983-1984)</i>	115
130.	Commonwealth, Commonwealth of Australia Gazette, No 71, 19 November 1910	1765
131.	Commonwealth, <i>Parliamentary Debates</i> , House of Representatives, 3 June 1908 (Mr Groom)	11922
132.	Commonwealth, <i>Parliamentary Debates</i> , House of Representatives, 10 March 1943 (Mr Holloway)	1964-5
133.	Commonwealth, <i>Parliamentary Debates</i> , House of Representatives, 12 July 1946 (Mr Holloway)	2457
134.	Commonwealth, <i>Parliamentary Debates</i> , House of Representatives, 21 September 1972 (Mr Wentworth)	1964-5
135.	Commonwealth, <i>Parliamentary Debates</i> , House of Representatives, 11 September 1973 (Mr Hayden)	755
136.	Commonwealth, <i>Parliamentary Debates</i> , House of Representatives, 13 February 1975	285



<b>No.</b>	<b>Name</b>	<b>Reference Details</b>
137.	Commonwealth, <i>Parliamentary Debates</i> , House of Representatives, 22 April 1975 (Mr Hayden)	1951-2
138.	Commonwealth, <i>Parliamentary Debates</i> , House of Representatives, 28 September 1978 (Mr Hunt)	1522
139.	Commonwealth, <i>Parliamentary Debates</i> , House of Representatives, 7 December 1983 (Mr Hayden)	3395
140.	Commonwealth, <i>Parliamentary Debates</i> , House of Representatives, 7 November 1994 (Mrs Crosio)	2687
141.	Commonwealth, <i>Parliamentary Debates</i> , House of Representatives, 15 June 2009 (Ms Macklin)	5853
142.	Commonwealth, <i>Parliamentary Debates</i> , Senate, 15 April 1975	999
143.	Commonwealth, Pension Review Background Paper	v
144.	Commonwealth, Secure and Sustainable Pensions, May 2009 ("Harmer Review")	xi, xix, xxi, 7, 8, 13, 23-24, 120, 128, 144-146
145.	Commonwealth, Women's Budget Statement 1993-4	230
146.	Explanatory Memorandum, Law and Justice Legislation Amendment Bill 1990	[162]
147.	Explanatory Memorandum, Social Security and other Legislation Amendment (Pension Reform and other 2009 Budget Measures) Bill 2009	2
148.	Explanatory Memorandum, Social Security Bill 1990	outline and financial impact statement.
149.	Explanatory Memorandum, Social Security Legislation Amendment Bill (No 2) 1994	55
150.	New South Wales, <i>Parliamentary Debates</i> , Legislative Council, 14 November 1900 (Dr Graham)	5146
151.	New South Wales, <i>Parliamentary Debates</i> , Legislative Council, 27 November 1900 (Mr Ashton; Arthur Renwick)	5164, 5746
152.	Racial Discrimination Act 1975: A Review: Community Consultation Guide (1995)	61, ff 18
153.	Report from the Royal Commission on Old-Age Pensions, 20 June 1906	[4], vii, xii
154.	Social Security Guide, version 1.297 (15 August 2022)	1.2.8.30, 5.1.7.20, 5.1.7.60, 5.1.9.10

#### **Treaties and UN Materials**

No.	Name	Reference Details
155.	<i>Concluding Observations of the Committee on the Elimination of Racial Discrimination: Albania</i> , UN Doc CERD/C/ALB/CO/5-8, 14 September 2011	[14]
156.	<i>Concluding Observations of the Committee on the Elimination of Racial Discrimination: China</i> , UN Doc CERD/C/CHIN/CO/13, 15 September 2009	[14]
157.	<i>General Comment No. 3: The Nature of States Parties' Obligations</i> , UN Doc E/1991/23, 14 December 1990	[9], [10]
158.	<i>General Comment No. 19: The Right to Social Security</i> , UN Doc E/C.12/GC/19, 4 February 2008	[2], [4]-[5], [12], [15],
159.	<i>International Convention on the Elimination of All Forms of Racial Discrimination</i> , opened for signature 21 December 1965, 660 UNTS 195 (adopted 4 January 1969)	Art 1, Art 1(1), Art 1(4), Art 2, Art 2(1), Art 2(1)(c), Art 2(2), Art 5-6, Art 5(e)(iv), Art 8
160.	<i>International Covenant on Economic, Social and Cultural Rights</i> , opened for signature 16 December 1966, 993 UNTS 3 (adopted 3 January 1976)	Art 2(2)-2(1), Art 9, Art 26, Part IV
161.	<i>Moylan v Australia</i> , Committee on the Elimination of Racial Discrimination, Views: Communication No. 47/2010, 83rd session, UN Doc CERD/C/83/D/47/2010 (27 August 2013)	[4.10]
162.	<i>Oulajin &amp; Kaiss v The Netherlands</i> , Communications Nos. 406/1990 and 426/1990, U.N. Doc. CCPR/C/46/D/406/1990 and 426/1990 (1992)	Appendix
163.	Report of the Committee on the Elimination of Racial Discrimination, UN Doc A/51/18, 30 September 1996	124[1]
164.	<i>Sprenger v The Netherlands</i> , Communications Nos. 396/1990, U.N. Doc. CCPR/C/44/D/395/1990 (1992)	Appendix
165.	<i>Trujillo Calero v Ecuador</i> , Communications No. 10/2015, UN Doc. E/C.12/62/D/10/2015 (26 March 2018)	
166.	<i>United Nations Economic and Social Council (ECOSOC) Resolution</i> , GA Res 1985/17, UN Doc No E/RES/1985/17 (adopted 28 May 1985)	
167.	<i>Universal Declaration of Human Rights</i>	Art 22
168.	<i>Vienna Convention on the Law of Treaties</i> , opened for signature 23 May 1969, 1155 UNTS 331 (adopted 27 January 1980)	Art 4, 31

## Schedule

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: VICTORIA  
Division: General

No VID 545 of 2021

### Respondents

Second Respondent

Minister for Government Services

Third Respondent

Minister for Families and Social Services

Date: 31 January 2023