

Applicant Submissions

Case Title: *Tutoveanu v Minister for Home Affairs* [2026] FCA

Introduction

1. On 6th February 2026 the applicant is applying to the Duty Judge for an urgent order before start of proceedings:

"1. An injunction pursuant to r 7.01(1)(a) of *Federal Court Rules 2011* (Cth) to order the Minister for Home Affairs to make a migration decision under sections 501, 501A, 501B, 501BA, 501C or 501CA of the *Migration Act 1958* (Cth) regarding the Israeli President's visa for an upcoming official visit to Australia."

Evidence

2. Affidavit of Anton Tutoveanu dated 6th February 2026 with Exhibit 'AT1' containing:

- a. Affidavit (pages 1-3)
- b. Photo of Mr Isaac Herzog (page 5)
- c. UN Human Rights Council Report (pages 6-77)
- d. AHRC Complaint (pages 78-83)
- e. PM Press Conference Transcript, Canberra (pages 84-86)
- f. PM Press Conference Transcript, Cairns (pages 87-89)
- g. PM Press Conference Transcript, Sydney (pages 90-92)
- h. NSW Police Commissioner Press Conference Transcript (pages 93-95)
- i. Letter from Labor Friends of Palestine (page 96)
- j. Various Social Media Posts (pages 97-105)

Timeline

3. On 7th October 2023 the Israeli side of the Gaza-Palestinian boundary was attacked by Hamas terrorists.
4. A photo was taken and circulated of Mr Herzog with a marker pen writing on a missile for Gaza.¹
5. On 16th September 2025 "The Independent International Commission of Inquiry on the occupied Palestinian territory, including East Jerusalem, and Israel ("the Commission") was established on 27 May 2021 by the Human Rights Council to, *inter alia*, investigate in the occupied Palestinian territory, including East Jerusalem, and in Israel all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021, and establish the facts and circumstances that may amount to such violations and abuses and of crimes perpetrated."²
6. On 14th December 2025 a **mass terrorist shooting** occurred at a Jewish gathering held at Bondi Beach, New South Wales, Australia.
7. On 23rd December 2025 the applicant had lodged a complaint to the Australian Human Rights Commission alleging racial discrimination towards persons who are not Jewish or Israeli.³
8. On 24th December 2025 Mr Albanese announced he would request a **formal invitation** for the Israeli President to visit Australia in early 2026.⁴ The formal request was made to the Governor-General of

¹ Exhibit 'AT1', page 5

² Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (2025) *Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide*, UN Human Rights Council

[https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session60/advance-version/a-hrc-60-crп-3.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session60/advance-version/a-hrc-60-crp-3.pdf)

³ Exhibit 'AT1', pages 78-83

⁴ Prime Minister of Australia (2025) *Press conference - Parliament House, Canberra*, Parliament House, Canberra
<https://www.pm.gov.au/media/press-conference-parliament-house-canberra-41>

Australia.

9. On 28th January 2026 the Labour Friends of Palestine members wrote a letter to the Minister for Home Affairs, requesting Mr Herzog's visa cancellation on grounds of character.⁵
10. On 29th January 2026 Mr Albanese has confirmed the Governor-General of Australia has invited the Israeli President to Australia⁶.
11. On 30th January 2026 there was another media conference with Mr Albanese and Mr Minns who made comments about the Israeli President's upcoming visit.⁷
12. The public has since reacted with discord and protest.⁸
13. On 3rd February 2026 NSW Police Commissioner Lanyon held a media conference about Mr Herzog's purported upcoming visit.⁹
14. On 6th February 2026 the applicant Mr Tutoveanu applied to the Federal Court to injunct the entry of Mr Herzog "via a writ of mandamus to the Minister for Home Affairs to make a migration decision"¹⁰
15. On 7th February 2026 the applicant provided written submissions.
16. On 8th February 2026 Mr Isaac Herzog is expected to arrive in Australia.

Fact

17. The Minister for Home Affairs, and Immigration and Citizenship, is Mr Tony Burke MP.
18. The UN Human Rights Council Report stated:
 - a. "... the Commission concludes that the 'direct and public incitement to commit genocide' under article III(c) of the Genocide Convention is established in relation to the abovementioned speeches and statements of Israeli President Isaac Herzog, Prime Minister Benjamin Netanyahu and then Defence Minister Yoav Gallant. The Commission has not fully assessed statements by other Israeli political and military leaders, including Minister for National Security Itamar Ben-Gvir and Minister for Finance Bezalel Smotrich, and considers that they too should be assessed to determine whether they constitute incitement to commit genocide."¹¹
19. The NSW Police Commissioner's public statements¹²:
 - a. "We know there remains heightened tension."
 - b. "I know that there is significant animosity about President Herzog's visit."
 - c. "... on social media and in recent public assemblies, there has been significant animosity. ... to potentially put community safety at risk would be intolerable for me as the Commissioner."
 - d. "... what I fear is a large-scale public assembly with so much animosity could present a risk to community safety."
20. The Prime Minister and Governor-General of Australia have invited Mr Isaac Herzog, President of Israel to visit Australia between 9-12th February 2026 to commemorate and support the Jewish community after the terror attack that occurred at Bondi on 14th December 2025.

⁵ Moss P., Turner W., van Ingen O. (2026) *Letter to Home Affairs Minister Tony Burke MP*, NSW, Qld, Vic <https://michaelwest.com.au/wp-content/uploads/2026/01/Labor-Friends-of-Palestine.pdf>

⁶ Prime Minister of Australia (2026) *Press conference - Cairns*, Cairns <https://www.pm.gov.au/media/press-conference-cairns-3>

⁷ Prime Minister of Australia (2026) *Press conference - Sydney*, Sydney <https://www.pm.gov.au/media/press-conference-sydney-27>

⁸ Exhibit 'AT1', pages 97-105

⁹ NSW Police Commissioner (2026) *NSW Police Commissioner extends protest restrictions ahead of Israeli President's visit*, Sky News Australia https://www.youtube.com/watch?v=_13xOh-MTTo

¹⁰ Tutoveanu A. (2026) *Certificate of urgency in support of listing before a duty judge*, NSW Registry, Federal Court of Australia

¹¹ ss 75, 79 of *Evidence Act 1995* (Cth)

¹² Transcription errata in Exhibit 'AT1' pages 93-95

Law

21. The *Commonwealth Constitution* is the entry point of the law:

"75. Original jurisdiction of High Court.

In all matters—

...

(ii.) Affecting consuls or other representatives of other countries:

...

(v.) In which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth:

the High Court shall have original jurisdiction."

22. The *Judiciary Act 1903* (Cth) follows s 77 of the *Commonwealth Constitution* having Part VI—Exclusive and invested jurisdiction listing matters exclusive to the High Court with s 39B extending conferral to Federal Courts:

"39B Original jurisdiction of Federal Court of Australia

Scope of original jurisdiction

(1) Subject to subsections ... (1EA), the original jurisdiction of the Federal Court of Australia includes jurisdiction with respect to any matter in which a writ of mandamus or prohibition or an injunction is sought against an officer or officers of the Commonwealth."

23. The *Federal Court of Australia Act 1976* (Cth) Part III—Jurisdiction of the Court confers the vested matters from the *Judiciary Act*.

"19 Original jurisdiction

(1) The Court has such original jurisdiction as is vested in it by laws made by the Parliament.

(2) The original jurisdiction of the Court includes any jurisdiction vested in it to hear and determine appeals from decisions of persons, authorities or tribunals other than courts."

24. The Federal Court may make declarations:

"21 Declarations of right

(1) The Court may, in civil proceedings in relation to a matter in which it has original jurisdiction, make binding declarations of right, whether or not any consequential relief is or could be claimed.

(2) A suit is not open to objection on the ground that a declaratory order only is sought."

25. It may also issue writs:

"23 Making of orders and issue of writs

The Court has power, in relation to matters in which it has jurisdiction, to make orders of such kinds, including interlocutory orders, and to issue, or direct the issue of, writs of such kinds, as the Court thinks appropriate."

26. The *Federal Court Rules 2011* (Cth) Chapter 2—Original jurisdiction—proceedings generally, Part 7—Orders before start of a proceeding provides:

"7.01 Order before start of proceeding

(1) If a matter is urgent, a person who intends to start a proceeding (a **prospective applicant**) may apply to the Court, without notice, as if the prospective applicant had started the proceeding and the application had been made in the proceeding, for an order:

(a) granting an injunction; or

...

(2) An application mentioned in subrule (1) must be in accordance with Form 12 and accompanied by an affidavit stating the facts on which the prospective applicant relies.

(3) A prospective applicant seeking an order under this rule must give an undertaking to the Court to start a proceeding in relation to the subject matter of the application within 14 days after the application has been determined."

27. The *Migration Act 1958* (Cth) (**Migration Act**) legislates the regulation of non-citizens entering and remaining in Australia.

"4 Object of Act

(1) The object of this Act is to regulate, in the national interest, the coming into, and presence in, Australia of non-citizens.

(2) To advance its object, this Act provides for visas permitting non-citizens to enter or remain in Australia and the Parliament intends that this Act be the only source of the right of non-citizens to so enter or remain.

...

(4) To advance its object, this Act provides for the removal or deportation from Australia of non-citizens whose presence in Australia is not permitted by this Act.

5 Interpretation

(1) In this Act, unless the contrary intention appears:

...

association: a person has an association, for the purposes of subsections 5C(1A), 500A(1A) and 501(6A), with an organisation if the person meets or communicates with the organisation.

Note: The association may consist of a single meeting or communication.

...

behaviour concern non-citizen means a non-citizen who:

...

(e) has been excluded from another country in prescribed circumstances;

...

character concern has the meaning given by section 5C.

...

Covenant means the International Covenant on Civil and Political Rights, a copy of the English text of which is set out in Schedule 2 to the *Australian Human Rights Commission Act 1986*.

crime includes any offence.

...

cruel or inhuman treatment or punishment means an act or omission by which:

(a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or

(b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

(c) that is not inconsistent with Article 7 of the Covenant; or

(d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

diplomatic or consular representative, in relation to a country other than Australia, means a person who has been appointed to, or is the holder of, a post or position in a diplomatic or consular mission of that country in Australia, not being a person who was ordinarily resident in Australia when he or she was appointed to be a member of the mission.

...

hate crime has the same meaning as in section 114A.3 of the Criminal Code.

...

lawful non-citizen has the meaning given by section 13.

...

member:

(a) in relation to a terrorist organisation—has the same meaning as in Division 102 of the *Criminal Code*; and

(b) in relation to a state sponsor of terrorism—has the same meaning as in Division 110 of the *Criminal Code*; and

(c) in relation to a prohibited hate group—has the same meaning as in Division 114A of the *Criminal Code*.

...

migration decision means:

(a) a privative clause decision; or

(b) a purported privative clause decision; or

(c) a non-privative clause decision; or

(d) an ART Act migration decision.

...

prescribed means prescribed by the regulations.

...

privative clause decision has the meaning given by subsection 474(2).

...

purported privative clause decision has the meaning given by section 5E.

...

serious Australian offence means an offence against a law in force in Australia, where:

(a) the offence:

(i) involves violence against a person; or

...

(iii) involves serious damage to property; or

(iv) is an offence against section 197A or 197B (offences relating to immigration detention); and

(b) the offence is punishable by:

(i) imprisonment for life; or

(ii) imprisonment for a fixed term of not less than 3 years; or

(iii) imprisonment for a maximum term of not less than 3 years.

serious foreign offence means an offence against a law in force in a foreign country, where:

(a) the offence:

(i) involves violence against a person; or

...

(iii) involves serious damage to property; and

(b) if it were assumed that the act or omission constituting the offence had taken place in the Australian Capital Territory, the act or omission would have constituted an offence (the **Territory offence**) against a law in force in that Territory, and the Territory offence would have been punishable by:

(i) imprisonment for life; or

(ii) imprisonment for a fixed term of not less than 3 years; or

(iii) imprisonment for a maximum term of not less than 3 years.

significant harm means harm of a kind mentioned in subsection 36(2A).

...

special purpose visa has the meaning given by section 33.

...

temporary visa has the meaning given by subsection 30(2).

...

terrorist organisation has the same meaning as in Division 102 of the *Criminal Code*.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

(a) for the purpose of obtaining from the person or from a third person information or a confession; or

(b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or

(c) for the purpose of intimidating or coercing the person or a third person; or

(d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or

(e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

unlawful non-citizen has the meaning given by section 14.

...

5C Meaning of character concern

(1) For the purposes of this Act, a non-citizen is of **character concern** if:

(a) the non-citizen has a substantial criminal record (as defined by subsection (2)); or

...

(bb) the Minister reasonably suspects:

(i) that the non-citizen has been or is a member of a group or organisation, or has had or has an association with a group, organisation or person; and

(ii) that the group, organisation or person has been or is involved in criminal conduct; or

- (bba) subsection (1A) applies to the non-citizen (spreading hatred and extremism); or
- (bc) the Minister reasonably suspects that the non-citizen has been or is involved in conduct constituting one or more of the following:
- ...
- (iii) the crime of genocide, a crime against humanity, a war crime, a crime involving torture or slavery or a crime that is otherwise of serious international concern;
- whether or not the non-citizen, or another person, has been convicted of an offence constituted by the conduct; or
- (c) having regard to either or both of the following:
- (i) the non-citizen's past and present criminal conduct;
- (ii) the non-citizen's past and present general conduct;
- the non-citizen is not of good character; or
- (d) in the event that the non-citizen were allowed to enter or to remain in Australia, there is a risk that the non-citizen might:
- (i) engage in criminal conduct in Australia; or
- (ii) harass, molest, intimidate or stalk another person in Australia; or
- (iii) vilify a segment of the Australian community; or
- (iv) incite discord in the Australian community or in a segment of that community; or
- (v) represent a danger to the Australian community or to a segment of that community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community or segment, or in any other way; or
- ...
- (f) the non-citizen has, in Australia or a foreign country, been charged with or indicted for one or more of the following:
- (i) the crime of genocide;
- (ii) a crime against humanity;
- (iii) a war crime;
- (iv) a crime involving torture or slavery;
- (v) a crime that is otherwise of serious international concern; or
- ...
- Spreading hatred and extremism*
- (1A) This subsection applies to a non-citizen if the Minister reasonably suspects that:
- (a) both of the following apply:
- (i) the non-citizen is, or has been, a member of an organisation;
- (ii) at any time the non-citizen was a member of the organisation, the organisation was a terrorist organisation, ...
- (b) all of the following apply:
- (i) the non-citizen has, or has had, an association with an organisation;
- (ii) at any time during the non-citizen's association, the organisation was a terrorist organisation, ...

- (iii) the non-citizen intends, or intended, by the association, to support terrorism, extremism or hatred or to further acts of terrorism, extremism or hatred; or
- (c) the non-citizen has been or is involved in conduct constituting a hate crime (whether or not the non-citizen, or another person, has been convicted of an offence constituted by the conduct); or
- (d) both of the following apply:
 - (i) the non-citizen has made one or more public statements, or has endorsed a statement publicly, (whether in Australia or overseas, and including online statements) that involves the dissemination of ideas based on superiority over or hatred of other persons on the basis of race, colour, or national or ethnic origin;
 - (ii) in the event the non-citizen were allowed to enter or to remain in Australia, there is a risk of harm to the Australian community or to a segment of that community; or
- (e) both of the following apply:
 - (i) the non-citizen has encouraged one or more other persons to make a statement publicly (whether in Australia or overseas, and including an online statement) that involves the dissemination of ideas based on superiority over or hatred of other persons on the basis of race, colour, or national or ethnic origin;
 - (ii) in the event the non-citizen were allowed to enter or to remain in Australia, there is a risk of harm to the Australian community or to a segment of that community.

Note 1: Antisemitic statements are an example of statements that involve harmful ideas based on superiority over or hatred of other persons on the basis of ethnic origin, as mentioned in subparagraphs (d)(i) and (e)(i).

Note 2: See also subsection 5(1) for definitions of terms used in this subsection.

Limbs do not limit each other

(1B) None of the limbs of subsection (1) or (1A) are intended to limit or otherwise affect each other.

Minister not required to determine whether membership or association is ongoing

(1C) The Minister is not required to determine whether a person's membership of or association with an organisation is continuing or has concluded when making a decision for the purposes of paragraph (1A)(a) or (b).

...

5E Meaning of purported privative clause decision

(1) In this Act, ***purported privative clause decision*** means a decision purportedly made, proposed to be made, or required to be made, under this Act or under a regulation or other instrument made under this Act (whether in purported exercise of a discretion or not), that would be a privative clause decision if there were not:

- (a) a failure to exercise jurisdiction; or
- (b) an excess of jurisdiction;

in the making of the decision.

(2) In this section, ***decision*** includes anything listed in subsection 474(3).

...

5M Particularly serious crime

For the purposes of the application of this Act and the regulations to a particular person, paragraph 36(1C)(b) has effect as if a reference in that paragraph to a particularly serious crime included a reference to a crime that consists of the commission of:

- (a) a serious Australian offence; or
- (b) a serious foreign offence."

28. Part 2—Arrival, presence and departure of persons defines immigration status:

"13 Lawful non-citizens

(1) A non-citizen in the migration zone who holds a visa that is in effect is a lawful non-citizen.

...

14 Unlawful non-citizens

(1) A non-citizen in the migration zone who is not a lawful non-citizen is an unlawful non-citizen.

...

15 Effect of cancellation of visa on status

To avoid doubt, ... if a visa is cancelled its former holder, if in the migration zone, becomes, on the cancellation, an unlawful non-citizen unless, immediately after the cancellation, the former holder holds another visa that is in effect."

29. Visas are defined:

"29 Visas

(1) Subject to this Act, the Minister may grant a non-citizen permission, to be known as a visa, to do either or both of the following:

- (a) travel to and enter Australia;
- (b) remain in Australia.

(2) Without limiting subsection (1), a visa to travel to, enter and remain in Australia may be one to:

- (a) travel to and enter Australia during a prescribed or specified period; and
- (b) if, and only if, the holder travels to and enters during that period, remain in Australia during a prescribed or specified period or indefinitely.

(3) Without limiting subsection (1), a visa to travel to, enter and remain in Australia may be one to:

- (a) travel to and enter Australia during a prescribed or specified period; and
- (b) if, and only if, the holder travels to and enters during that period:
 - (i) remain in it during a prescribed or specified period or indefinitely; and
 - (ii) if the holder leaves Australia during a prescribed or specified period, travel to and re-enter it during a prescribed or specified period.

(4) Without limiting section 83 (person taken to be included in visa), the regulations may provide for a visa being held by 2 or more persons.

30 Kinds of visas

...

(2) A visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a temporary visa, to remain:

- (a) during a specified period; or
- (b) until a specified event happens; or
- (c) while the holder has a specified status.

31 Classes of visas

(1) There are to be prescribed classes of visas.

(2) As well as the prescribed classes, there are the classes provided for by the following provisions:

...

(b) section 33 (special purpose visas);
...

33 Special purpose visas

(1) There is a class of temporary visas to travel to, enter and remain in Australia, to be known as special purpose visas.

(2) Subject to subsection (3), a non-citizen is taken to have been granted a special purpose visa if:

(a) the non-citizen:

(i) has a prescribed status; or
...

(4) A special purpose visa granted under subsection (2) is granted at the beginning of the later or latest of the following days:

(a) if paragraph (2)(a) applies:

(i) the day the non-citizen commences to have the prescribed status;
...

(5) A special purpose visa ceases to be in effect at the earliest of the following times:

(a) if paragraph (2)(a) applies:

(i) if the non-citizen ceases to have a prescribed status—the end of the day on which the non-citizen so ceases; or
...

(iii) if the Minister makes a declaration under subsection (9) in relation to the non-citizen, ... —the time when that declaration takes effect;
...

(9) The Minister may make a written declaration, for the purposes of this section, that it is undesirable that a person, or any persons in a class of persons, travel to and enter Australia or remain in Australia.

(10) Section 43 and Subdivisions AA, AB, AC (other than section 68), AG, AH, C, D, E, F, FA, FB and H do not apply in relation to special purpose visas.
...

42 Visa essential for travel

(1) ... a non-citizen must not travel to Australia without a visa that is in effect.

..."

30. Grant of visa is defined:

"68 When visa is in effect

(1) Subject to subsection (2), a visa has effect as soon as it is granted.

(2) A visa may provide that it comes into effect at the beginning of a day, being a day after its grant:

- (a) specified in the visa; or
- (b) when an event, specified in the visa, happens.

(3) A visa can only be in effect during the visa period for the visa."

31. Part 8—Judicial review defines privative clauses:

"474 Decisions under Act are final

(1) A privative clause decision:

- (a) is final and conclusive; and
- (b) must not be challenged, appealed against, reviewed, quashed or called in question in any court; and
- (c) is not subject to prohibition, mandamus, injunction, declaration or certiorari in any court on any account.

(2) In this section:

privative clause decision means a decision of an administrative character made, proposed to be made, or required to be made, as the case may be, under this Act or under a regulation or other instrument made under this Act (whether in the exercise of a discretion or not), other than a decision referred to in subsection (4), (4A) or (5).

(3) A reference in this section to a decision includes a reference to the following:

- (a) granting, making, varying, suspending, cancelling, revoking or refusing to make an order or determination;
- (b) granting, giving, suspending, cancelling, revoking or refusing to give a certificate, direction, approval, consent or permission (including a visa);
- (c) granting, issuing, suspending, cancelling, revoking or refusing to issue an authority or other instrument;
- (d) imposing, or refusing to remove, a condition or restriction;
- (e) making or revoking, or refusing to make or revoke, a declaration, demand or requirement;
- (f) retaining, or refusing to deliver up, an article;
- (g) doing or refusing to do any other act or thing;
- (h) conduct preparatory to the making of a decision, including the taking of evidence or the holding of an inquiry or investigation;
- (i) a decision on review of a decision, irrespective of whether the decision on review is taken under this Act or a regulation or other instrument under this Act, or under another Act;
- (j) a failure or refusal to make a decision.

...

(7) To avoid doubt, the following decisions are ***privative clause decisions*** within the meaning of subsection (2):

- (a) a decision of the Minister not to exercise, or not to consider the exercise, of the Minister's power under subsection 37A(2) or (3), section 48B, paragraph 72(1)(c), section 91F, 91L, 91Q, 195A, 197AB, 197AD, 198AE, 199G or 351 or subsection 503A(3);

...

476A Limited jurisdiction of the Federal Court

(1) Despite any other law, including section 39B of the *Judiciary Act 1903* and section 8 of the *Administrative Decisions (Judicial Review) Act 1977*, the Federal Court has original jurisdiction in relation to a migration decision if, and only if:

- (a) both:
 - (i) the Federal Circuit and Family Court of Australia (Division 2) transfers a proceeding pending in that court in relation to the decision to the Federal Court under section 153 of the *Federal Circuit and Family Court of Australia Act 2021*; and
 - (ii) the Federal Court confirms the transfer under section 32AD of the *Federal Court of Australia Act 1976*; or
- (b) the decision is a privative clause decision, or a purported privative clause decision, of the ART on review under section 500; or

(c) the decision is a privative clause decision, or purported privative clause decision, made personally by the Minister under section 501, 501A, 501B, 501BA, 501C or 501CA; or

(d) the Federal Court has jurisdiction in relation to the decision under section 176 (Federal Court has jurisdiction) or subsection 185(3) (referring questions of law) of the ART Act.

Note: The Federal Court's jurisdiction referred to in paragraph (d) is limited: see section 474AA.

(1A) To avoid doubt, the Federal Court does not have original jurisdiction in relation to a migration decision under subsection (1) in respect of proceedings that are transferred to the Federal Court under section 32AC of the *Federal Court of Australia Act 1976*.

(2) Where the Federal Court has jurisdiction in relation to a migration decision under paragraph (1)(a), (b) or (c), that jurisdiction is the same as the jurisdiction of the High Court under paragraph 75(v) of the Constitution.

...

(5) In this section:

judgment has the same meaning as in the *Federal Court of Australia Act 1976*."

32. The *Migration Regulations 1994* (Cth) (**Migration Regulations**) regulates the prior Act.

"1.03 Definitions

In these Regulations, unless the contrary intention appears:

...

guest of Government means:

(a) an official guest of the Australian government; or

(b) a member of the immediate family of the official guest of the Australian Government, who is accompanying the official guest.

...

proliferation of weapons of mass destruction includes directly or indirectly assisting in the development, production, trafficking, acquisition or stockpiling of:

(a) weapons that may be capable of causing mass destruction; or

(b) missiles or other devices that may be capable of delivering such weapons.

...

public interest criterion means a criterion set out in a clause of Part 1 of Schedule 4, and a reference to a public interest criterion by number is a reference to the criterion set out in the clause so numbered in that Part.

...

weapons of mass destruction determination means a determination mentioned in any of the following provisions:

(a) sub subparagraph 2.43(1)(a)(i)(B);

(b) subparagraph 2.43(1)(a)(ii);

(c) paragraph (b) of public interest criterion 4003;

(d) public interest criterion 4003A.

...

1.06 References to classes of visas

A class of visas may be referred to:

(a) in the case of a class of visas referred to in Schedule 1—by the code allotted to the class in the heading of the item in Schedule 1 that relates to that class of visas; or

...

1.07 References to subclasses of visas

(1) A reference to a visa of a particular subclass (for example, 'a visa of Subclass 414') is a reference to a visa granted on satisfaction of the criteria for the grant of the visa, or the grant of the visa in a stream, set out in the Part of Schedule 2 that bears the number of the subclass.

(2) A reference to an applicant for a visa of a particular subclass is a reference to an applicant who applies for a visa of a class that may, under Schedule 1, be granted on satisfaction of the criteria for the grant of the visa, or the grant of the visa in a stream, set out in the Part of Schedule 2 that bears the number of the subclass.

...

1.13B Meaning of associated with

(1) Two persons are associated with each other if:

(a) they:

...

(iv) belong or belonged to the same social group, unincorporated association or other body of persons; or

(v) have or had common friends or acquaintances; or

(b) one is or was a consultant, adviser, partner, representative on retainer, officer, employer, employee or member of:

(i) the other; or

(ii) any corporation or other body in which the other is or was involved (including as an officer, employee or member); or

(c) a third person is or was a consultant, adviser, partner, representative on retainer, officer, employer, employee or member of both of them; or

(d) they are or were related bodies corporate (within the meaning of the *Corporations Act 2001*); or

(e) one is or was able to exercise influence or control over the other; or

(f) a third person is or was able to exercise influence or control over both of them.

(2) For the purposes of subregulation (1), it does not matter if a person has ceased to exist.

(3) This regulation does not limit the circumstances in which persons are **associated with** each other.

(4) In this regulation:

officer has the meaning given by section 9 of the *Corporations Act 2001*."

33. Part 2—Visas regulates classes, criteria, conditions:

"2.01 Classes of visas

Classes of visas prescribed by section 31 of the Act

(1) For the purposes of section 31 of the Act, the prescribed classes of visas are:

(a) such classes (other than those identified by an item in the table in subregulation (2)) as are set out in the respective items in Schedule 1; and

(b) the following classes:

...

(ii) transitional (temporary).

Classes of visas provided for by the Act

(2) A class of visas provided for by the Act that is identified by an item in the following table is classified under these Regulations, by Class and Subclass, as indicated in the item."

34. Special purpose visa are defined:

"2.40 Persons having a prescribed status—special purpose visas (Act, s 33(2)(a))

Persons who hold prescribed status

(1) For the purposes of paragraph 33(2)(a) of the Act (which deals with persons who are taken to have been granted special purpose visas), and subject to this regulation, each non-citizen who is included in one of the following classes of person has a prescribed status:

...

(c) guests of Government;"

35. *Criminal Code Act 1995* (Cth) contains relevant criminal offences in Part 5.3—Terrorism, ss 100.1, 100.4, 101.6, 102.1, 102.1AA, 102.2, 102.3, 102.4, 102.6, 102.7, 102.8, 102.9, 103.1, 103.2, 103.3.

36. *Foreign States Immunities Act 1985* (Cth)

37. *Diplomatic Privileges and Immunities Act 1967* (Cth)

38. *International Organisations (Privileges and Immunities) Act 1963* (Cth)

Mandamus

39. It is an administrative order from a Court to compel the public duty of a Commonwealth official:

Plaintiff S297-2013 v Minister for Immigration and Border Protection [2015] HCA 3 at [39]: "A peremptory mandamus commands performance of the duty which was the subject of the writ but remains unperformed."

BHL19 v Commonwealth of Australia (No 2) [2022] FCA 313 at [177]: "Mandamus is a remedy which is specifically directed at compelling the performance of a duty imposed by the law: *Plaintiff S157/2002* at [5] (Gleeson CJ). It is no doubt for that reason that the majority in *AJL20 (HC)* reasoned that, where the Executive is [slow] in performing the duties imposed by s 198 of the Migration Act, "the remedy of mandamus is available to compel the proper performance of those duties": *AJL20 (HC)* at [52] (Kiefel CJ, Gageler, Keane and Steward JJ); see also [53] and [73]. Similarly, in *WAIS*, French J said (at [56]) that "[t]he remedy for a failure in the discharge of that duty [the duty in s 198] may be mandamus, possibly directed to the Minister". And in *Minister for Immigration and Multicultural and Indigenous Affairs v Al Masri* (2003) 126 FCR 54; [2003] FCAFC 70, the Full Court said that "if the Minister were not fulfilling his duty under s 198(1) to remove as soon as reasonably practicable ... the appropriate remedy would be an order in the nature of mandamus to compel the Minister to take the steps required for the performance of his duty": at [134] (Black CJ, Sundberg and Weinberg JJ)"

Injunctions

40. The legal principles and criteria of interlocutory injunctions are well-known and still agreed today:

- a. *Serious question to be tried* of *prima facie* case depending on the nature of the rights asserted.
- b. *Balance of convenience* depending on the practical consequences likely to result and the degree of the danger or risk sufficient to justify an order in the terms made.

Samsung Electronics Co. Limited v Apple Inc. [2011] FCAFC 156; *BHL19 v Commonwealth of Australia (No 2)* [2022] FCA 313; *First Class Securities Limited v Global Future Holdings Pty Ltd* [2026] FCA 1 at [6];

41. Usual Undertaking as to Damages Practice Note (GPN-UNDR) requires:

"2. Usual Undertaking as to Damages

2.1 Before the Court will grant an interlocutory injunction, the party seeking the order will almost always offer or be required to give to the Court the "usual undertaking as to damages" (set out below).

2.2 The "usual undertaking as to damages" if given to the Court in relation to any interlocutory order made by it or any interlocutory undertaking given to it, is an undertaking:

- (a) to submit to such order (if any) as the Court may consider to be just for the payment of compensation, (to be assessed by the Court or as it may direct), to any person, (whether or not that person is a party), affected by the operation of the order or undertaking or any continuation (with or without variation) of the order or undertaking; and
- (b) to pay the compensation referred to in (a) to the person affected by the operation of the order or undertaking."

Submissions

42. The following addresses several issues.

Jurisdiction

- 43. The jurisdiction of the Federal Court application seeking an "injunction ... to order the Minister for Home Affairs to make a migration decision" is provided by s 39B(1) of *Judiciary Act 1903* (Cth).
- 44. The jurisdiction and venue of the relief sought depends on competing provisions in the **Migration Act** as deliberated in *BHL19 v Commonwealth of Australia (No 2)* [2022] FCA 313 at [84], [85].

Applicant Standing

- 45. The applicant is an Australian citizen not the non-citizen having been granted the special purpose visa in question.
- 46. The visit of the official visitor Mr Isaac Herzog causes indirect harm due to the public's significantly negative and outward reaction at the purported President's presence in Australia. The applicant's company is due to pay income tax which is a resource that will be spent quelling the protests.
- 47. In addition to personal impact, the applicant is applying on behalf of the upset community to injunct the controversial presence amidst perceived criminal notoriety which is civilly akin to well-known "citizen's arrests" (see s 100 of *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW)).
- 48. The applicant is not formally employed law enforcement and expresses dissatisfaction at the lack of satisfactory intervention of proper, paid state police powers.
- 49. Applicant standings in mandamus and public administrative actions have been discussed in *Ex parte Aala* [2000] HCA 57 at [145] "... compliance with the law by public officers was not merely an interest which individuals affected may claim but one of great concern to the community generally."
- 50. Although the sought injunctive mandamus may simply warrant a mere public interest, special interest is discussed in *Animals' Angels e.V. v Secretary, Department of Agriculture* [2014] FCA 398 at [123]: "Stephen J said ... any ready rule of thumb, capable of mechanical application; the criterion of "special interest" supplies no such rule. As the law now stands it seems rather to involve in each case a curial assessment of the importance of the concern which a plaintiff has with particular subject matter and of the closeness of that plaintiff's relationship to that subject matter."
- 51. The applicant submits he is *especially* close to the subject-matter being Australia.¹³

Timing

- 52. The confirmation of the Israeli President's **formal invitation** was made public on 29th January 2026 which is 1-2 weeks ago¹⁴.

¹³ Deep state.

¹⁴ Prime Minister of Australia (2026) *Press conference - Cairns*, Cairns <https://www.pm.gov.au/media/press-conference-cairns-3>

53. The applicant is a full-time company director balancing business and personal commitments which has impacted on the time in applying to the Court. In addition to not having prior knowledge on the **Migration Act**¹⁵ or **Regulations**, it took time to read, research and prepare a mature justification.
54. The relatively reasonable but rightfully perceived delay does not bar the relief sought as the purported official guest has not arrived nor entered Australia yet.
55. It is assumed he is in transit to entry at the time of these submissions (read further for *balance of convenience*).

Visa Class

56. The visa assumed to have been granted to Mr Isaac Herzog is a special purpose visa pursuant to s 33 of the **Migration Act**. These are granted to non-citizens of the prescribed status listed in r 2.40(1)(c) "guests of Government" defined in r 1.03 of the **Migration Regulations**:
 - (a) an official guest of the Australian government; or
 - (b) a member of the immediate family of the official guest of the Australian Government, who is accompanying the official guest."
57. This visa is not subject to the usual application and cancellation provisions¹⁶ in Subdivision D, section "**116 Power to cancel**".
58. Although the specific statutory cancellation sections do not apply, the Minister may make a declaration under subsection (9) of s 33 in relation to the non-citizen if "it is **undesirable** that [the] person, ... travel to and enter Australia or remain in Australia."

Discretionary or mandatory?

59. It is submitted that:
 - a. If the non-citizen's visit and stay in Australia is **undesirable**,
 - b. and the non-citizen's visit and stay in Australia is indeed **undesirable**,
 - c. then the Minister *must* make a written declaration under subsection (9), andthe special purpose visa ceases to be in effect under subsection (5)(a)(iii).

Injunctive Mandamus

60. The criteria of an urgent injunction:

Urgency

- a. Mr Isaac Herzog is arriving tomorrow on 8th February 2026 for a purported 4-day visit.

Is it undesirable for Mr Isaac Herzog to enter Australia?

- b. Yes.

¹⁵ Cooked minefield.

¹⁶ s 33(10) of **Migration Act**

- c. See photo of Mr Isaac Herzog,¹⁷ UN Human Rights Council Report paragraph [233],¹⁸ Letter from Labor Friends of Palestine,¹⁹ various social media posts.²⁰

Balance of convenience

- d. It is in the higher national interest to preserve the public resources that will be used to quell an upset community and protect a foreign visitor, rather than to indulge the Israeli President's visit to console the Jewish minority in Australia.
- e. There is a real risk to community safety.
- f. There exists alternative platforms of diplomatic engagement such as virtual meetings.

61. In addition to criteria of mandamus:

- a. Minister for Home Affairs, Mr Tony Burke MP.
- b. Unfulfilled duty (at common law) of declaring under section 33(9) of **Migration Act** that a non-citizen is **undesirable** to travel and enter Australia or remain in Australia when it is amongst a likely, probable or reasonable criminal background and reputation.

Undertaking as to Damages

62. With all due respect, the affected persons' hands are dirty.

Orders Sought

63. The following:

- a. Declare that:
 - i. It is **undesirable** for non-citizen Mr Isaac Herzog to travel to and enter Australia or remain in Australia.
- b. Injunct:
 - i. The entry of Mr Isaac Herzog, President of Israel, via:
- c. Mandamus Order that:
 - i. The Minister make a written declaration, for the purposes of section 33 of *Migration Act 1958* (Cth), that it is **undesirable** that Mr Isaac Herzog, and any persons associated, travel to and enter Australia or remain in Australia.

Anton Tutoveanu (Applicant)
7 February 2026

¹⁷ Exhibit 'AT1', page 5

¹⁸ Exhibit 'AT1', page 72

¹⁹ Exhibit 'AT1', page 96

²⁰ Exhibit 'AT1', pages 97-105