

Preliminary Independent Inquiry into non-disclosure of material in the matter of Benbrika v A-G (Cth)**Terms of Reference****Background**

The Department of Home Affairs (**HA**) and the Attorney-General's Department (**AGD**) are establishing an independent preliminary inquiry into the conduct of certain Australian Public Service employees involved in the management of recent litigation in relation to Mr Abdul Nacer Benbrika (**the Inquiry**). The conduct has been subject of recent judicial criticism in *Benbrika v Attorney-General of the Commonwealth* [2024] VSC 265 (5 June 2024). In that decision Justice Hollingworth found that 'The non-disclosure of various expert reports amounts to a serious interference with the administration of justice.' [317]. Furthermore, her Honour made a number of statements about the conduct of some employees of HA and to a lesser extent employees of AGD (e.g. The non-disclosure issues [247-253], The Corner report [254-304], Conclusions on non-disclosure [315-322]).

The Hon. Alan Robertson SC will undertake the Inquiry (**Head of the Inquiry**).

The Inquiry will be resourced by HA and AGD.

Nature and subject of the Inquiry

The Inquiry has not been established under legislation.

The Inquiry is an independent preliminary inquiry examining and reporting on the conduct of current and former employees of HA and AGD in connection with non-disclosure of exculpatory material in post-sentence order proceedings concerning Mr Benbrika under Division 105A of the *Criminal Code* (Cth).

Conduct of the Inquiry

The Inquiry will commence on 24 June 2024 and conclude by 31 October 2024. The Inquiry may be extended for a further 4 weeks if the Head of the Inquiry considers that extension to be necessary.

APS employees will be encouraged to cooperate with the Inquiry.

The Inquiry will be conducted consistently with the requirements of procedural fairness.

The Head of the Inquiry:

- will be assisted by Ashurst;
- will be provided with all relevant documents, including documents that are subject to the Commonwealth's legal professional privilege;
- may conduct interviews with relevant employees;
- may provide one or more interim reports;
- will provide regular updates to the First Assistant Secretary, People and Strategy Division AGD and the First Assistant Secretary, Integrity, Security and Assurance Division HA.

The Commonwealth does not waive legal professional privilege in relation to any document supplied to the Inquiry which is subject to the Commonwealth's legal professional privilege.

Documents provided to the Inquiry will not be disclosed to any person not involved in the Inquiry, except with the Commonwealth's prior approval.

The Inquiry and all reports made by the Head of the Inquiry will be confidential to the Commonwealth.

Inquiry Report

The Head of the Inquiry will provide a report to the Agency Heads of HA and AGD at the conclusion of the Inquiry and no later than 31 October 2024, unless otherwise agreed.

The Inquiry report will include recommendations on:

- a. whether particular conduct should be investigated as giving rise to a potential breach or breaches of the Australian Public Service Code of Conduct;
- b. any other appropriate action regarding potential breaches of legal obligations or professional or ethical duties of the employees involved (for example, the model litigant obligations in Appendix B of the *Legal Services Directions 2017* and the duties contained in the *Legal Profession (Solicitors) Conduct Rules 2015*);
- c. how conduct, of the kind the Head of Inquiry identifies, may be guarded against or avoided in the future.

From: [Clare SHARP](#)
To: [s. 22\(1\)\(a\)\(ii\)@ag.gov.au](#)
Cc: [Roy, Tim](#)
Subject: CM: RE: FOR INFORMATION: Response to Ashurst letter of 10 July re_Preliminary Inquiry [SEC=OFFICIAL:Sensitive]
Date: Wednesday, 24 July 2024 5:50:45 PM
Attachments: [image001.jpg](#)
[image002.png](#)

OFFICIAL: Sensitive

Thanks Brooke. Appreciate you sharing this.

Clare

Clare Sharp

Group Manager

Legal Group

Department of Home Affairs

P: [s. 22\(1\)\(a\)\(ii\)](#) | **M:** [s. 22\(1\)\(a\)\(ii\)](#)

E: [s. 22\(1\)\(a\)\(ii\)@homeaffairs.gov.au](#)

-
Executive Assistant – [s. 22\(1\)\(a\)\(ii\)@homeaffairs.gov.au](#)

Acknowledgement of Country Signature Block Graphic 2022 (1)



LTW Sig Block Small



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From: [Rebecca CARPENTER](#)
To: s. 22(1)(a)(ii)
Subject: RE: Draft letter - Secretaries Jones and Foster to Mr Robertson [SEC=OFFICIAL:Sensitive]
Date: Monday, 26 August 2024 7:41:05 AM
Attachments: s. 22(1)(a)(ii) [2024-08-23_17-33-59-829.pdf](#)

OFFICIAL: Sensitive
Here you go lovely! Happy Monday

OFFICIAL: Sensitive

s. 22(1)(a)(ii)

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From: [Clare SHARP](#)
To: [Blunn, Matthew](#); [Chidgey, Sarah](#)
Cc: [Dawson, Bridie](#); [Anthony COLES](#); [Eagle, Kenneth](#)
Subject: CM: Redacted reports [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]
Date: Wednesday, 11 September 2024 3:21:00 PM
Attachments: [image001.jpg](#) s. 47E(c), s. 47F(1)
[Robertson Report -](#)
[Robertson Report -](#)
[Robertson Report -](#)

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Personal-Privacy**

Hi Matthew and Sarah

As discussed, attached are redacted reports for:

- s. 47E(c), s. 47F(1)
- [Redacted]
- [Redacted]

Confirming our agreement that once we have the go-ahead to release these and have agreed to the text of the cover email, AGD will release the report to these individuals and Home Affairs will release the report the remainder. Sarah – would you mind sending me s. 47E(c), s. 47F(1) email address if you have it? (I don't have it.)

Clare

Clare Sharp

Group Manager

Legal Group

Department of Home Affairs

P: s. 22(1)(a)(ii) | **M:** s. 22(1)(a)(ii)

E: s. 22(1)(a)(ii) [@homeaffairs.gov.au](mailto:s.22(1)(a)(ii)@homeaffairs.gov.au)

- Executive Assistant – s. 22(1)(a)(ii) [@homeaffairs.gov.au](mailto:s.22(1)(a)(ii)@homeaffairs.gov.au)

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From: [Clare SHARP](#)
To: [Chidgey, Sarah](#)
Subject: CM: Re: Robertson Report[SEC=OFFICIAL:Sensitive]
Date: Thursday, 19 September 2024 5:27:16 PM

OFFICIAL: Sensitive

Ok thanks Sarah.

Clare Sharp

Group Manager

Legal Group

Department of Home Affairs

P: s. 22(1)(a)(ii) | **M:** s. 22(1)(a)(ii)

E: [@homeaffairs.gov.au](#)

-
Executive Assistant – s. 22(1)(a)(ii) [@homeaffairs.gov.au](#)

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s. 22(1)(a)(ii)

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From: [Rebecca CARPENTER](#)
To: ["Dawson, Bridie"](#)
Cc: [Office of the Secretary](#)
Subject: RE: Robertson Review - Consideration of Options [SEC=OFFICIAL]
Date: Thursday, 30 January 2025 12:54:23 PM

OFFICIAL

Thanks Bridie, much appreciated
Bec

OFFICIAL

s. 22(1)(a)(ii)

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s. 22(1)(a)(ii)

From: Rebecca CARPENTER s. 22(1)(a)(ii) @homeaffairs.gov.au>
Sent: Wednesday, 29 January 2025 5:01 PM
To: Dawson, Bridie s. 22(1)(a)(ii) @ag.gov.au>
Cc: Office of the Secretary s. 22(1)(a)(ii) @homeaffairs.gov.au>
Subject: RE: Robertson Review - Consideration of Options [SEC=OFFICIAL]

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Hi Bridie

I understand from Clare that she and Sarah C have agreed on the dot points to the journalist, as opposed to the statement being published. Sorry it's taken me all day to get back to you – you're probably well aware of this by now.

Thanks
 Bec

OFFICIAL

s. 22(1)(a)(ii)

From: Rebecca CARPENTER s. 22(1)(a)(ii) @homeaffairs.gov.au>
Sent: Wednesday, 29 January 2025 10:26 AM
To: Dawson, Bridie s. 22(1)(a)(ii) @ag.gov.au>

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Cc: Office of the Secretary s. 22(1)(a)(ii) @homeaffairs.gov.au>

Subject: RE: Robertson Review - Consideration of Options [SEC=OFFICIAL]

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Good morning Bridie

Thank you for your email – I'm working through the options with Clare and Stephanie and will come back to you as soon as possible today.

Cheers

Bec

Rebecca Carpenter | Chief of Staff to the Secretary

Department of Home Affairs

Ph: s. 22(1)(a)(ii)

E: s. 22(1)(a)(ii) @homeaffairs.gov.au



The Department of Home Affairs and the Australian Border Force acknowledge the Traditional Custodians throughout Australia and their continuing connection to land, sea and the community. We pay respect to all Aboriginal and Torres Strait Islander peoples, their cultures and to their Elders past and present.

OFFICIAL

s. 22(1)(a)(ii)

From: [Anthony COLES](#)
To: [Dawson, Bridie](#)
Cc: [Chidgey, Sarah](#); [Charlotte TRESSLER](#); [Melissa KAY](#)
Subject: FW: Meeting - Alan Robertson [SEC=OFFICIAL]
Date: Friday, 21 June 2024 1:22:00 PM
Attachments: S. 47C(1)

OFFICIAL

Hi Bridie

I attach our proposed edits to the ToRs. Happy to discuss.

HA participants in the briefing would be:

- Clare Sharp – General Counsel
- Anthony Coles – FAS, Integrity, Security and Assurance
- Mel Kay – AS Integrity & Professional Standards.
- Charlotte Tressler - COO (**TBC**)

I will give you a call re the provision of documents.

Regards,

Anthony

Anthony Coles

First Assistant Secretary Integrity, Security and Assurance Division | Chief Audit Executive

Chief Operating Officer Group

Department of Home Affairs

P: [s. 22\(1\)\(a\)\(ii\)](#) | M: [s. 22\(1\)\(a\)\(ii\)](#)

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s. 22(1)(a)(ii)

From: [Anthony COLES](#)
To: [Eagle, Kenneth](#)
Cc: [Dawson, Bridie](#); [Melissa KAY](#)
Subject: RE: Draft contract with Alan Robertson SC and next steps [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Tuesday, 25 June 2024 11:03:00 AM

OFFICIAL: Sensitive
Legal-Privilege

Thanks Kenneth.

Anthony Coles
First Assistant Secretary Integrity, Security and Assurance Division | Chief Audit Executive
Chief Operating Officer Group
Department of Home Affairs
P: [s. 22\(1\)\(a\)\(ii\)](#) | [s. 22\(1\)\(i\)](#) M: [s. 22\(1\)\(a\)\(ii\)](#)
E: [s. 22\(1\)\(a\)\(ii\)](#) [@homeaffairs.gov.au](mailto:s.22(1)(a)(ii)@homeaffairs.gov.au)

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s. 42(1), s. 47C(1), s. 47E(c)

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From: [Anthony COLES](#)
To: [Eagle, Kenneth](#)
Cc: [Dawson, Bridie](#); [Melissa KAY](#)
Subject: Re: Draft contract with Alan Robertson SC and next steps[SEC=OFFICIAL:Sensitive]
Date: Tuesday, 25 June 2024 7:00:20 PM

OFFICIAL: Sensitive

Thanks Kenneth - who will attend the initial meeting for AGD?

Anthony

Sent by Email+

OFFICIAL: Sensitive

s. 42(1), s. 47C(1), s. 47E(c)

OFFICIAL: Sensitive
Legal Privilege

From: Anthony COLES [S. 22\(1\)\(a\)\(ii\)](#) @homeaffairs.gov.au>
Sent: Tuesday, 25 June 2024 11:04 AM
To: Eagle, Kenneth [S. 22\(1\)\(a\)\(ii\)](#) @ag.gov.au>
Cc: Dawson, Bridie [S. 22\(1\)\(a\)\(ii\)](#) @ag.gov.au>; Melissa KAY [S. 22\(1\)\(a\)\(ii\)](#) @homeaffairs.gov.au>
Subject: RE: Draft contract with Alan Robertson SC and next steps [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

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Thanks Kenneth.

Anthony Coles

First Assistant Secretary Integrity, Security and Assurance Division | Chief Audit Executive

Chief Operating Officer Group

Department of Home Affairs

P: s. 22(1)(a)(i) s. 22(1)(a) M: s. 22(1)(a)(ii)

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s. 42(1), s. 47C(1), s. 47E(c)

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From: [Anthony COLES](#)
 To: [Eagle, Kenneth](#)
 Cc: [Dawson, Bridie](#); [Melissa KAY](#)
 Subject: RE: Draft contract with Alan Robertson SC and next steps [SEC=OFFICIAL:Sensitive]
 Date: Wednesday, 26 June 2024 9:39:00 AM

OFFICIAL: Sensitive

Thanks Kenneth

Mel Kay and I will be the HA attendees.

We are both free on 3/7 at 10am.

Anthony Coles
 First Assistant Secretary Integrity, Security and Assurance Division | Chief Audit Executive
 Chief Operating Officer Group
 Department of Home Affairs
 P: s. 22(1)(a)(ii) | M: s. 22(1)(a)(ii)
 E: s. 22(1)(a)(ii)@homeaffairs.gov.au

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s. 22(1)(a)(ii)

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From: "Anthony COLES" s. 22(1)(a)(ii)@homeaffairs.gov.au>
 Date: Tuesday 25 June 2024 at 7:00:23 PM
 To: "Eagle, Kenneth" s. 22(1)(a)(ii)@ag.gov.au>
 Cc: "Dawson, Bridie" s. 22(1)(a)(ii)@ag.gov.au>, "Melissa KAY" s. 22(1)(a)(ii)@homeaffairs.gov.au>
 Subject: Re: Draft contract with Alan Robertson SC and next steps[SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks Kenneth - who will attend the initial meeting for AGD?

Anthony

Sent by Email+

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s. 42(1), s. 47C(1), s. 47E(c)

s. 42(1), s. 47C(1), s. 47E(c)

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From: Anthony COLES [s. 22\(1\)\(a\)\(ii\)@homeaffairs.gov.au](mailto:s.22(1)(a)(ii)@homeaffairs.gov.au)

Sent: Tuesday, 25 June 2024 11:04 AM

To: Eagle, Kenneth [s. 22\(1\)\(a\)\(ii\)@ag.gov.au](mailto:s.22(1)(a)(ii)@ag.gov.au)

Cc: Dawson, Bridie [s. 22\(1\)\(a\)\(ii\)@ag.gov.au](mailto:s.22(1)(a)(ii)@ag.gov.au); Melissa KAY [s. 22\(1\)\(a\)\(ii\)@homeaffairs.gov.au](mailto:s.22(1)(a)(ii)@homeaffairs.gov.au)

Subject: RE: Draft contract with Alan Robertson SC and next steps [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

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Thanks Kenneth.

Anthony Coles

First Assistant Secretary Integrity, Security and Assurance Division | Chief Audit Executive

Chief Operating Officer Group

Department of Home Affairs

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s. 22(1)(a)(ii)

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From: [Anthony COLES](#)
To: [Dawson, Bridie](#)
Cc: [Office of the CPSO](#)
Subject: RE: Meeting with Ashurst [SEC=OFFICIAL]
Date: Friday, 28 June 2024 12:00:00 PM

OFFICIAL

OK thanks

Anthony Coles

First Assistant Secretary Integrity, Security and Assurance Division | Chief Audit Executive

Chief Operating Officer Group

Department of Home Affairs

P: [s. 22\(1\)\(a\)\(ii\)](#) | M: [s. 22\(1\)\(a\)\(ii\)](#)

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From: [Anthony COLES](#)
To: S. 47F(1); S. 22(1)(a)(ii) [@ag.gov.au](#); S. 22(1)(a)(ii) [@ag.gov.au](#); [Melissa KAY](#)
Cc: S. 47F(1); S. 47F(1); S. 47F(1)
Subject: RE: Preliminary Inquiry - revised draft terms of reference and Ashurst contact details [ASH-AUS_ONPREM.FID30317237]
 [SEC=OFFICIAL]
Date: Thursday, 4 July 2024 1:54:00 PM
Attachments: [image002.png](#)

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Hi S. 47F(1),

The revised document is fine by us.

Thanks

Anthony

Anthony Coles

First Assistant Secretary Integrity, Security and Assurance Division | Chief Audit Executive

Chief Operating Officer Group

Department of Home Affairs

P: S. 22(1)(a)(ii) S. 22(1)(a) M: S. 22(1)(a)(ii)

E: S. 22(1)(a)(ii) [@homeaffairs.gov.au](#)

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s. 42(1), s. 47C(1), s. 47E(c)

From: [Anthony COLES](#)
To: [Clare SHARP](#); [Dawson, Bridie](#)
Cc: [Eagle, Kenneth](#); [Melissa KAY](#); [General Counsel Executive Support](#); [Patrick HALLINAN](#)
Subject: RE: Robertson Report: Letters to INSLM and APS Commissioner [SEC=OFFICIAL:Sensitive]
Date: Wednesday, 4 September 2024 12:10:00 PM

OFFICIAL: Sensitive

Hi Bridie,

Pat Hallinan (who has taken over from Mel) and I are the best POCs on costs/invoices.

Kind regards,

Anthony

Anthony Coles

First Assistant Secretary Integrity, Security and Assurance Division | Chief Audit Executive

Chief Operating Officer Group

Department of Home Affairs

P: [s. 22\(1\)\(a\)\(ii\)](#) | M: [s. 22\(1\)\(a\)\(ii\)](#)

E: [s. 22\(1\)\(a\)\(ii\)](#) [@homeaffairs.gov.au](mailto:s.22(1)(a)(ii)@homeaffairs.gov.au)

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s. 42(1), s. 47C(1), s. 47E(c)

From: [Anthony COLES](#)
To: [Sharp, Scott](#)
Cc: [Patrick HALLINAN](#); [ISA Executive Support](#)
Subject: RE: Robertson review Benbrika matter [SEC=OFFICIAL:Sensitive]
Date: Thursday, 14 November 2024 1:34:00 PM
Attachments: [image001.png](#)

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Hi Scott,

Yes, I believe a 50/50 split was the basis of the agreement between our two secretaries, but I'll confirm that and come back to you re details for invoicing.

Anthony Coles

First Assistant Secretary Integrity, Security and Assurance Division | Chief Audit Executive

Chief Operating Officer Group

Department of Home Affairs

P: [s. 22\(1\)\(a\)\(ii\)](#) | M: [s. 22\(1\)\(a\)\(ii\)](#)

E: [s. 22\(1\)\(a\)\(ii\)](#) [@homeaffairs.gov.au](mailto:s.22(1)(a)(ii)@homeaffairs.gov.au)

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From: Sharp, Scott [s. 22\(1\)\(a\)\(ii\)](#) p@ag.gov.au>
Sent: Thursday, 14 November 2024 10:05 AM
To: Anthony COLES [s. 22\(1\)\(a\)\(ii\)](#) [@homeaffairs.gov.au](mailto:s.22(1)(a)(ii)@homeaffairs.gov.au)>
Subject: re: Robertson review Benbrika matter [SEC=OFFICIAL:Sensitive]

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Morning Anthony,

I understand that you were the Home Affairs coordination point with regard to the recent review Alan Robertson undertook in relation to the Benbrika matter.

Now that the review is complete, I've been looped in to square up the books with my CFO hat on.

I understand that there was no formal MOU or agreement prepared in relation to the review but that it was agreed our department and yours would split the costs 50:50.

Total costs incurred for the review are as follows:

Item	Total (ex gst)
Reviewer – Mr Alan Robertson	111,849.25
Legal Counsel – Ashurst	67,468.82

Could you please confirm this is consistent with your understanding and I'll arrange for an invoice to be issued for \$89,659 for your attention or whomever is more appropriate.

Happy to chat

Cheers

Scott

Scott Sharp

Chief Financial Officer

T: s. 22(1)(a)(ii) | **M:** s. 22(1)(a)(ii)

s. 22(1)(a)(ii) [@ag.gov.au](mailto:s.22(1)(a)(ii)@ag.gov.au)

Executive Assistant: s. 22(1)(a)(ii) [@ag.gov.au](mailto:s.22(1)(a)(ii)@ag.gov.au)

cid:image004.png@01D59571.1E4466E0



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From: [Anthony COLES](#)
To: [Sharp, Scott](#)
Cc: [Patrick HALLINAN](#); [ISA Executive Support](#)
Subject: RE: Robertson review Benbrika matter [SEC=OFFICIAL:Sensitive]
Date: Friday, 15 November 2024 4:55:00 PM
Attachments: [image001.png](#)

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Hi Scott,

Please attention the invoice to me.

Regards,

Anthony Coles

First Assistant Secretary Integrity, Security and Assurance Division | Chief Audit Executive

Chief Operating Officer Group

Department of Home Affairs

P: [s. 22\(1\)\(a\)\(ii\)](#) | M: [s. 22\(1\)\(a\)\(ii\)](#)

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