

**IN THE FEDERAL COURT OF AUSTRALIA (FCA)
VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
GENERAL DIVISION** **No: VID969/2010**

NOTICE OF FILING

This document was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 13/11/2012.

DETAILS OF FILING

Document Lodged: Expert Report(s)
File Number: VID969/2010
File Title: DANIEL HAILE-MICHAEL & ORS v NICK KONSTANTINIDIS & ORS
District Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



★ **Dated:** 13/11/2012

Registrar *David Soden*

Note

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Second Report of Professor Chris Cunneen

Professor Chris Cunneen, Professor of Justice and Social Inclusion, The Cairns Institute, James Cook University.

Conjoint Professor, Law Faculty, UNSW. Adjunct Professor, Sydney Law School, University of Sydney. Adjunct Professor, Institute of Criminology, University of Victoria, Wellington, NZ.

10 November 2012

BACKGROUND

1. This report addresses issues raised in the Second Report of Professor Gordon. My Second Report relates to the following Proceeding: **Daniel Haile-Michael & Ors v Nick Konstantinides & Ors, Federal Court of Australia Proceeding No. VID 969 of 2010.**
2. I have previously provided a report in relation to the Proceeding and this is a second report which provides an opinion on matters raised in the Second Report of Professor Gordon. The relevant background context and information for this report, such as my original letter of instructions and my own background and qualifications, are dealt with in that first report. In this report I use the same terms as those in the first report and assume that these terms are familiar to someone reading this second report. I have not been provided with any new information for the purposes of this second report other than Professor Gordon's Second Report and the list of documents and information provided to me is in my first report.
3. I was provided with the guidelines for expert witnesses providing evidence in the Federal Court. I have read, understood and complied with these guidelines in the preparation of this report.

OPINION ON MATTERS RAISED IN PROFESSOR GORDON'S SECOND REPORT.

4. Professor Gordon was requested to undertake further statistical analysis in relation to four questions, identified in his Second Report at Paras 5, 10, 14 and 16 respectively.
5. I have considered Professor Gordon's response to Questions One and Two and conclude that they offer no further insight into the existence of racial profiling. I also note there is no information in these two responses that would contradict the conclusion in my First Report that there is evidence of racial profiling of African/ Middle Eastern (LEAP) specified males.

6. Professor Gordon was subsequently advised that a response to Question Three was not required (Gordon Second Report, para 15). Therefore it is not relevant to my considerations.
7. The Fourth Question for Professor Gordon's analysis was: "File 5: Distribution of all 'involvement types' by individual ID numbers for African/ Middle Eastern (LEAP) males and males of 'other' ethnic appearance, and statistical significance."
8. Professor Gordon's conclusion is that "the percentage of involvements that were "OFFENDER" was lower in the African/Middle Eastern (LEAP) group than in the "Other" group. The result of this test was a P-value of 0.0003, which is strongly statistically significant" (Gordon Second Report, para 18).
9. The data provided in Table 3 of Professor Gordon's Second Report also shows that the percentage of involvements was higher in the African/Middle Eastern (LEAP) group than in the "Other" group in categories of 'assist enquiry', 'caution' and 'intent to summons'.
10. In Para 62 of my First Report I concluded on the basis of the statistical evidence (in File 5) that police contact with African/ Middle Eastern (LEAP) males classified as offenders is likely to involve individuals with less offences than male offenders of other ethnic backgrounds. On this basis it is reasonable to infer that African/ Middle Eastern (LEAP) male offenders are involved in fewer offences than male offenders of other ethnic backgrounds.
11. The additional analysis by Professor Gordon in his Second Report strengthens the conclusion that the type of involvements recorded in File 5 relating to African/ Middle Eastern (LEAP) group are less serious than those involving the 'other ethnic background' group. The categories of 'assist enquiry', 'caution' and 'intent to summons' all imply less serious matters than the category of 'offender'. Further, the difference in the percentage of involvement in these categories is statistically significant between the two groups.
12. The conclusions drawn in my Second Report strengthen the reasoning and conclusion presented in my First Report. There is evidence of racial profiling of African/ Middle Eastern (LEAP) specified males for the reasons previously specified (Para 72 of my First Report).
13. I have made all the inquiries that I believe are desirable and appropriate and that no matters of significance that I regard as relevant have, to my knowledge, been withheld from the Court.

Professor Chris Cunneen
10 November 2012