

s 47F

[Redacted] Senior Consultant  
Jackson McDonald

[Redacted]

s 47F

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Jackson McDonald

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\*\*\*\*\*

Three pages have been removed under s5(1)

**Mason, Timothy**

---

**From:** Ananijevski, Branko  
**Sent:** Tuesday, 25 October 2011 2:53 PM  
**To:** Coles, Anthony  
**Cc:** Inverarity, Tara; Winter, Josephine  
**Subject:** RE: Important - Sri Lanka - legal matters {SEC=IN-CONFIDENCE}

**Security Classification:**  
~~IN-CONFIDENCE~~

**IN-CONFIDENCE**

Hi Anthony

The lawyer (albeit not a principal) who signed the referral to the AFP is Lucien Richter, he may be able to assist in Rob Stary's absence.


 Cheers  
Branko

**From:** Coles, Anthony  
**Sent:** Tuesday, 25 October 2011 1:20 pm  
**To:** Sheehan, Tony; Leon, Renee  
**Cc:** Inverarity, Tara  
**Subject:** RE: Important - Sri Lanka - legal matters {SEC=IN-CONFIDENCE}

**IN-CONFIDENCE**

I have spoken to the lawyers in Melbourne. Rob Stary who is the principal lawyer involved, is on leave until 2/11. No one else there seems to know much. They have undertaken to have him call me back.

As per my earlier email we are now focussing on what can be done in the absence of the request for consent.

 Anthony Coles  
A/g First Assistant Secretary  
Criminal Justice Division  
02 6141 2770

**From:** Sheehan, Tony  
**Sent:** Tuesday, 25 October 2011 1:15 PM  
**To:** Leon, Renee; Coles, Anthony  
**Subject:** RE: Important - Sri Lanka - legal matters [SEC=IN-CONFIDENCE]

**IN-CONFIDENCE**

Renee

Anthony is trying to get from the lawyers in Melbourne a copy of the letter supposedly sent to the AG. Once we have that we'll talk to AGO and come back to you on next steps. AFP said last night after it was referred to them that they have no evidence to investigate and their comment was that they are 'evaluating' it. More soon.

Tony

**From:** Leon, Renee [mailto:Renee.Leon@pmc.gov.au]  
**Sent:** Tuesday, 25 October 2011 12:49 PM  
**To:** Sheehan, Tony; Coles, Anthony  
**Subject:** RE: Important - Sri Lanka - legal matters {~~SEC=IN-CONFIDENCE~~}

Noted thanks

Secretary's interest this morning is in the mechanics – what will happen and/or needs to happen today to give effect to the legal position re immunity?

Is it intended that the AG, on dealing with the brief that I understand is with him, will make a public statement about immunity?

Renee

**From:** Sheehan, Tony [mailto:Tony.Sheehan@ag.gov.au]  
**Sent:** Tuesday, 25 October 2011 12:45 PM  
**To:** Leon, Renee  
**Cc:** Anthony Coles  
**Subject:** Fw: Important - Sri Lanka - legal matters {~~SEC=IN-CONFIDENCE~~}  
**Importance:** High

Classification: ~~IN-CONFIDENCE~~

Renee

That went last night from Diana to all and sundry the update given at morning briefing over there to Margot, Terry et al. From now on we'll repeat you out of Anthony's office to be safe

Tony

---

**From:** Williams, Diana  
**To:** 'Verlin, Aaron' ; 'terry.crane@chogm2011.org' ; 'DAWSON Chris [PD05715]' ; 'John.O'SULLIVAN@police.wa.gov.au' ; 'margot.mccarthy@pmc.gov.au'  
**Cc:** Sheehan, Tony; Coles, Anthony; 'daniel.sloper@dfat.gov.au' ; 'tom.nicholls@pmc.gov.au' ; Bryant, James  
**Sent:** Mon Oct 24 21:28:18 2011  
**Subject:** Important - Sri Lanka - legal matters {~~SEC=IN-CONFIDENCE~~}


**~~IN-CONFIDENCE~~**

All, in confidence

The Federal Attorney-General's Department understands that a Sri-Lankan born Australian citizen has brought war crimes charges against the Sri Lankan President, Mahinda Rajapaksa in the Melbourne Magistrates Court. The Department has been contacted by various media outlets seeking comments on the Government's proposed response. The Department understands that the charges will be the subject of a story on tonight's Lateline program and are likely to be the subject of further discussion in tomorrow's media.

S42(1)





John O'Sullivan the substance of the advice is provided in summary form at **Attachment D.**

S42(1)

Regards

Diana Williams  
Assistant Secretary, Security Coordination Branch  
Attorney-General's Department

 S47F(1)

Email: [diana.williams@ag.gov.au](mailto:diana.williams@ag.gov.au)

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## Ministers' Office Brief – Office of the Attorney-General

### Foreign States Immunities

#### Issue

The Attorney-General may be questioned about foreign states immunities attaching to foreign officials attending the Commonwealth Heads of Government meeting.

#### Talking points

- **The *Foreign States Immunities Act 1985 (Cth)* sets out the law and procedure relevant to proceedings in Australian courts against a foreign State.**
- **Subject to exceptions, the *Foreign States Immunities Act* grants foreign States immunity from the jurisdiction of Australian courts in proceedings in a court. It also grants foreign States immunity from enforcement of certain judgments, orders or awards.**
- **The *Foreign States Immunities Act* does not apply to criminal proceedings or an appeal.**
- **Where a foreign state claims immunity from jurisdiction before an Australian court, it is for the foreign state to assert its immunity.**
- **It is for the courts to determine whether persons named in a legal claim under the *Foreign States Immunities Act* are immune from jurisdiction.**

*[If asked: what will happen if someone seeks to serve documents under the Foreign States Immunities Act?]*

- Service of documents initiating legal proceedings against an official of a foreign State is only effective if carried out in accordance with the *Foreign States Immunities Act*.
- If plaintiffs present documents for service under the *Foreign States Immunities Act*, they will be processed under that Act in the normal manner.
- The Act requires plaintiffs to present the documents to my Department, which ensures that they meet the requirements of the Act, before forwarding them to the Department of Foreign Affairs and Trade for service through the diplomatic channel.

REDACTED

**Ng, Phillip**

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**From:** Reid, John  
**Sent:** Tuesday, 25 October 2011 3:30 PM  
**To:** Ng, Phillip  
**Subject:** Input to Sub [SEC=UNCLASSIFIED]

S42(1)

**UNCLASSIFIED**

TEXT STARTS



TEXT ENDS

)  
Cheers,  
JR

---

**John Reid**

Assistant Secretary  
International Law, Trade and Security Branch  
Office of International Law  
Attorney-General's Department

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F: +61 2 6141 4096

S47F(1)

E: [john.reid@ag.gov.au](mailto:john.reid@ag.gov.au)



**Mason, Timothy**

---

**From:** Reid, John  
**Sent:** Tuesday, 25 October 2011 3:36 PM  
**To:** Ng, Phillip; Campbell, Bill  
**Subject:** FW: Arunachalam Jegatheeswaran v Percy Mahendra Rajapaksa [SEC=UNCLASSIFIED]  
**Attachments:** DOC251011.pdf; DOC251011.pdf

**Importance:** High

**Security Classification:** UNCLASSIFIED

**UNCLASSIFIED**

**From:** Coles, Anthony  
**Sent:** Tuesday, 25 October 2011 3:34 pm  
**To:** Inverarity, Tara; Winter, Josephine  
**Cc:** Reid, John  
**Subject:** FW: Arunachalam Jegatheeswaran v Percy Mahendra Rajapaksa [SEC=UNCLASSIFIED]  
**Importance:** High

**UNCLASSIFIED**

Colleagues – as discussed

Anthony Coles  
A/g First Assistant Secretary  
Criminal Justice Division  
02 6141 2770

**From:** Marco Man [mailto:marcom@robertstary.com.au]  
**Sent:** Tuesday, 25 October 2011 3:25 PM  
**To:** Coles, Anthony  
**Cc:** Robert Stary; Lucien Richter  
**Subject:** Arunachalam Jegatheeswaran v Percy Mahendra Rajapaksa  
**Importance:** High

Dear Sir,

We refer to our conversation on even date and now attach for you again letters faxed to your office previously dated 20 October 2011 and letter dated 24 October 2011.

The original of the charge and statement along with cover letter dated 24 October 2011 will be posted to you by express registered post today.

Should you have any queries, please do not hesitate to contact me on 86228200.

Kind regards,

 S47F(1)

Personal Assistant to Principal

# ROBERT STARY

Ph: 03 8622 8200 Fax: 03 9670 8923  
Ground Floor  
333 Queen St, Melbourne, 3000

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Personal Assistant to Principal

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Ground Floor  
333 Queen St, Melbourne, 3000

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The Honourable Robert McClelland  
Attorney General  
Commonwealth of Australia  
BY FACSIMILE: (02) 6273 4102

20.10.2011

Dear Attorney,

**Arunachalam Jegatheeswaran v Percy Mahendra Rajapaksa**

We act on behalf of Mr Jegatheeswaran. Our client has sought to lay an indictment against Mr Rajapaksa in relation to three counts of crimes against humanity.

Please find enclosed our clients statement in support of that indictment. We note pursuant to section 268.121 (1) of the Commonwealth Criminal Code that those proceedings cannot commence without your written permission. Pursuant to sub section (3), charges can be filed pending that permission and we have sought to do so.

You will note that our client is an Australian Citizen who was working in Tamil Field Hospitals in North East Sri Lanka during that later stages of the Civil War in that country.

Our client remains available to be interviewed by Australian Federal Police and/or officials from your department.

The accused is likely to attend the Commonwealth heads of government meeting on 28 October 2011 in Perth. That may well provide an opportunity for the Australian Federal Police to conduct their enquiries at that time.

Please contact this office should you have any queries in the meantime.

Yours faithfully,



Robert Stary  
ROBERT STARY LAWYERS



ALSO AT FOOTSCRAY, SUNSHINE, RINGWOOD AND GEELONG

**FOR URGENT AFTER HOURS ASSISTANCE PLEASE CALL 0407 410 821**

FOI-10

## **Australia**

**Can a private individual initiate a criminal prosecution for international crimes which leads to the arrest of a suspect?**

Yes. Section 13 of the Crimes Act 1914 protects the right of a person to bring a private prosecution and is expressly preserved under section 10(2) of the DPP Act

**Are there procedural requirements for prosecuting international crimes?**

Yes, section 268.121 of the Criminal Code Act 1995 provides that war crimes, crime against humanity and genocide can only be commenced with the Attorney-General's written consent. However, pursuant to s268.122 a person may be arrested, charged, remanded in custody, or released on bail, in connection with an international crime before the necessary consent has been given.

**Jurisdictional requirements for prosecuting international crimes**

Absolute universality ~ ss 268.117 and 15.4 of the Criminal Code Act 1995.

Four pages removed under s33(a)(iii)  
Five pages removed under s47F

REDACTED

The Honourable Robert McClelland  
Attorney General  
Commonwealth of Australia  
By Facsimile: (02) 6273 4102

24 October 2011

Dear Attorney,

**Arunachalam Jegatheeswaran v Percy Mahendra Rajapaksa**

We act on behalf of Mr Jegatheeswaran. Our client has laid an indictment against Mr Rajapaksa in relation to counts of crimes against humanity and war crimes.

Please find attached a copy of the charges issued by the Melbourne Magistrates Court. An original of the charges will be forwarded to your office shortly. We note pursuant to section 268.121(1) of the Commonwealth Criminal Code Act that those proceedings cannot commence without your written permission and must ultimately be conducted by you. Pursuant to subsection (3), however, the charges were able to be laid pending your written permission.

We request that, pursuant to section 268.121 of the Commonwealth Criminal Code, you now assume carriage of this matter.

These are bona fide charges, brought soberly. Mr Jegatheeswaran remains available to be interviewed by the Australian Federal Police and/or officials from your department.

Please contact this office should you have any queries about this matter.

Yours faithfully



Lucien Richter  
Lawyer



ALSO AT FOOTSCRAY, SUNSHINE, RINGWOOD AND GEELONG

**FOR URGENT AFTER HOURS ASSISTANCE PLEASE CALL 0407 410 821**

FOI-13

Mason, Timothy

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From: Ng, Phillip  
Sent: Tuesday, 25 October 2011 3:43 PM  
To: Coles, Anthony  
Cc: Reid, John  
Subject: Wording regarding foreign state immunity [SEC=UNCLASSIFIED]

Security Classification: UNCLASSIFIED

**UNCLASSIFIED**

Dear Anthony

Further to your conversation with John, please see below relevant talking points regarding foreign states claiming and asserting immunity.

- **The *Foreign States Immunities Act 1985 (Cth)* sets out the law and procedure relevant to proceedings in Australian courts against a foreign State.**
- **Subject to exceptions, the *Foreign States Immunities Act* grants foreign States immunity from the jurisdiction of Australian courts in proceedings in a court. It also grants foreign States immunity from enforcement of certain judgments, orders or awards.**
- **Where a foreign state claims immunity from jurisdiction before an Australian court, it is for the foreign state to assert its immunity.**

If you need anything further please let me know.

Kind regards

Phillip Ng  
Legal Officer  
Office of International Law  
Attorney-General's Department

Tel + 61 2 6141 3254 | Fax + 61 2 6141 3486  
[Phillip.Ng@ag.gov.au](mailto:Phillip.Ng@ag.gov.au) | [www.ag.gov.au](http://www.ag.gov.au)

**Mason, Timothy**

---

**From:** Ng Phillip  
**Sent:** Tuesday, 25 October 2011 3:51 PM  
**To:** Ananijevski, Branko  
**Cc:** Reid, John; Coles, Anthony, Campbell, Bill  
**Subject:** RE: CHOGM - President of Sri Lanka - Private & Confidential - URGENT - OIL comments [SEC=IN-CONFIDENCE]  
**Attachments:** Sub - OIL comments - 25 October 2011.DOC  
**Importance:** High  
**Security Classification:** ~~IN-CONFIDENCE~~

**~~IN-CONFIDENCE~~**

Branko,

Please see attached a revised version of the submission marked to show OIL's proposed amendments, which has been approved by John Reid

If you wish to discuss please feel free to telephone John (x3554) or myself.

Kind regards

Phillip Ng  
Legal Officer  
Office of International Law  
Attorney-General's Department

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[Phillip.Ng@ag.gov.au](mailto:Phillip.Ng@ag.gov.au) | [www.ag.gov.au](http://www.ag.gov.au)

**From:** Ananijevski, Branko  
**Sent:** Tuesday, 25 October 2011 2:47 PM  
**To:** Reid, John; Ng, Phillip  
**Cc:** Winter, Josephine; Inverarity, Tara; Coles, Anthony  
**Subject:** RE: CHOGM - President of Sri Lanka - Private & Confidential - URGENT - fyi [SEC=IN-CONFIDENCE]

**~~IN-CONFIDENCE~~**

Hi John

Given we are waiting on AGS advice and have not yet received the request to which the brief refers, it can be safely put aside until the more pressing matters are dealt with

Cheers  
Branko

Branko Ananijevski  
Legal Officer  
Criminal Law Reform Section  
Criminal Law & Law Enforcement Branch



Attorney-General's Department  
3 - 5 National Circuit | Barton ACT 2600  
T: 02 6141 3108 | E: [branko.ananijevski@ag.gov.au](mailto:branko.ananijevski@ag.gov.au) | W: [www.ag.gov.au](http://www.ag.gov.au)

**From:** Reid, John  
**Sent:** Tuesday, 25 October 2011 1:34 PM  
**To:** Ananijevski, Branko; Ng, Phillip  
**Cc:** Winter, Josephine; Inverarity, Tara; Coles, Anthony  
**Subject:** RE: CHOGM - President of Sri Lanka - Private & Confidential - URGENT - fyi [SEC=IN-CONFIDENCE]

**~~IN-CONFIDENCE~~**

Branko,  
Given the current developments, and my discussions with Anthony, can I assume that this brief is now on the backburner? (We have other more pressing issues to attend to in relation to this matter and are unlikely to get around to this sub in the next couple of hours.)

Cheers,  
John

---

**John Reid**  
Assistant Secretary  
International Law, Trade and Security Branch  
Office of International Law  
Attorney-General's Department

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F: +61 2 6141 4096

S47F(1)

E: [john.reid@ag.gov.au](mailto:john.reid@ag.gov.au)

**From:** Ananijevski, Branko  
**Sent:** Tuesday, 25 October 2011 11:30 am  
**To:** Reid, John; Ng, Phillip  
**Cc:** Winter, Josephine; Inverarity, Tara  
**Subject:** RE: CHOGM - President of Sri Lanka - Private & Confidential - URGENT - fyi [SEC=IN-CONFIDENCE]  
**Importance:** High

**~~IN-CONFIDENCE~~**

Hi John and Phillip

As per below, please find attached a draft submission recommending the AG refuse consent to prosecute for your comment.

Feel free to give me a call if you wish to discuss.

Thanks  
Branko

**Branko Ananijevski**

Legal Officer  
Criminal Law Reform Section  
Criminal Law & Law Enforcement Branch  
Attorney-General's Department  
3 - 5 National Circuit | Barton ACT 2600  
T: 02 6141 3108 | E: [branko.ananijevski@ag.gov.au](mailto:branko.ananijevski@ag.gov.au) | W: [www.ag.gov.au](http://www.ag.gov.au)

**From:** Inverarity, Tara  
**Sent:** Tuesday, 25 October 2011 9:11 AM  
**To:** Reid, John  
**Cc:** Ananijevski, Branko; Winter, Josephine; Ng, Phillip  
**Subject:** RE: CHOGM - President of Sri Lanka - Private & Confidential - URGENT - fyi [SEC=UNCLASSIFIED]

**UNCLASSIFIED**

Thanks John.

The documents haven't arrived with us yet – we're just working off the Lateline ones so that the sub is ready to go when the originals arrive in the Department.

Tara

**From:** Reid, John  
**Sent:** Tuesday, 25 October 2011 9:07 am  
**To:** Inverarity, Tara  
**Cc:** Ananijevski, Branko; Winter, Josephine; Ng, Phillip  
**Subject:** RE: CHOGM - President of Sri Lanka - Private & Confidential - URGENT - fyi [SEC=UNCLASSIFIED]

**UNCLASSIFIED**

Thanks Tara.

If you can't get me, the action officer here is Phillip Ng (3254).

Has the request to grant consent arrived?

Cheers,  
John

---

**John Reid**

Assistant Secretary  
International Law, Trade and Security Branch  
Office of International Law  
Attorney-General's Department

T: +61 2 6141 3554  
F: +61 2 6141 4096

[REDACTED]  
E: john.reid@ag.gov.au

S47F(1)

**From:** Inverarity, Tara  
**Sent:** Tuesday, 25 October 2011 9:03 am  
**To:** Reid, John  
**Cc:** Ananijevski, Branko; Winter, Josephine  
**Subject:** FW: CHOGM - President of Sri Lanka - Private & Confidential - URGENT - fyi  
[SEC=UNCLASSIFIED]

**UNCLASSIFIED**

Hi John

S42(1)

[REDACTED]

I think we have enough information from OIL to do a first cut of the submission which we will aim to get to you for comment by lunch time today. Grateful if you could let me know if there is an action officer in OIL that we should consult with in the first instance.

Happy to discuss. I'm on x2842 and the action officer is Branko Ananijevski on x3108 if you can't get me on the phone.

Cheers  
Tara

**From:** Coles, Anthony  
**Sent:** Tuesday, 25 October 2011 8:23 am  
**To:** Sheehan, Tony; Williams, Diana; Wilkins, Roger  
**Cc:** Reid, John; Campbell, Bill; Barnes, Jennifer; Clifton, Jacob; McMullan, Kathryn; Inverarity, Tara; Winter, Josephine  
**Subject:** FW: CHOGM - President of Sri Lanka - Private & Confidential - URGENT - fyi  
[SEC=UNCLASSIFIED]

**UNCLASSIFIED**

Colleagues,

OIL (John Reid) is considering points 8 & 9 below. We will provide further advice asap.

Jacob – I assume you still have not seen the request for consent under 268.121 that Mr Stary purports to have made?

Anthony Coles  
A/g First Assistant Secretary  
Criminal Justice Division  
02 6141 2770

**From:** Anderson, Iain  
**Sent:** Monday, 24 October 2011 11:12 PM  
**To:** Coles, Anthony; Sheehan, Tony  
**Subject:** Fw: CHOGM - President of Sri Lanka - Private & Confidential - URGENT - fyi  
[SEC=UNCLASSIFIED]

Classification: UNCLASSIFIED

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**From:** John Reynolds  
**To:** Clifton, Jacob; Whelan, John  
**Cc:** Attorney Correspondence; kevin.rudd@dfat.gov.au ; Anderson, Iain; Jennings, Mark; dominic.trindade@dfat.gov.au ; aaron.verlin@chogm2011.org ; Rob McKenzie ; Thisara Samarasinghe  
**Sent:** Mon Oct 24 22:03:03 2011  
**Subject:** CHOGM - President of Sri Lanka - Private & Confidential - URGENT  
Dear Mr Clifton and Mr Whelan,

S33(a)(iii), S33(b)

