

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 15/09/2022 4:38:07 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: VID519/2021
File Title: REX PATRICK v AUSTRALIAN INFORMATION COMMISSIONER
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 16/09/2022 10:07:13 AM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59
Rule 29.02(1)

Affidavit

No. VID519 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

REX PATRICK

Applicant

AUSTRALIAN INFORMATION COMMISSIONER

Respondent

Affidavit of: **Gurukugan Kuganathan**
Address: Level 38, Olderfleet, 477 Collins Street, Melbourne, VIC 3000
Occupation: Australian Legal Practitioner
Date: 15 September 2022

Contents

Document number	Details	Paragraph	Page
1	Affidavit of Gurukugan Kuganathan affirmed on 15 September 2022	[1] – [15]	1
2	Annexure “GK-1”, being a copy of the proposed amended concise statement in response to the further amended concise statement	[6]	5
3	Annexure “GK-2”, being a copy of a letter from Norton Rose Fulbright Australia to the solicitor for the applicant dated 24 August 2022	[7]	39
4	Annexure “GK-3”, being a copy of a letter from the solicitor for the applicant to Norton Rose Fulbright Australia dated 25 August 2022	[9]	42
5	Annexure “GK-4”, being a copy of a letter from Norton Rose Fulbright Australia to the solicitor for the applicant dated 26	[10]	46

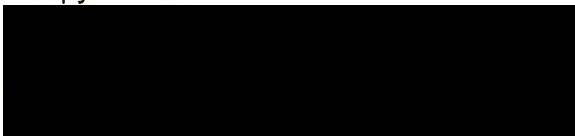
Filed on behalf of (name & role of party) Australian Information Commissioner (the Respondent)
 Prepared by (name of person/lawyer) Andrew Morrison Riordan
 Law firm (if applicable) Norton Rose Fulbright Australia
 Tel +61 3 8686 6680 Fax + 61 3 8686 6505
 Email andrew.riordan@nortonrosefulbright.com
Address for service Level 38, Olderfleet, 477 Collins Street, Melbourne, VIC 3000
 (include state and postcode)

Document number	Details	Paragraph	Page
	August 2022		
6	Annexure "GK-5", being a copy of a letter from Norton Rose Fulbright Australia to the solicitor for the applicant dated 8 September 2022	[11]	49
7	Annexure "GK-6", being a copy of a letter from the solicitor for the applicant to Norton Rose Fulbright Australia dated 13 September 2022	[12]	52
8	Annexure "GK-7", being a copy of the email from Norton Rose Fulbright Australia to the solicitor for the applicant dated 13 September 2022	[13]	55
9	Annexure "GK-8", being a copy of a letter from Norton Rose Fulbright Australia to the solicitor for the applicant dated 15 September 2022	[13]	59
10	Annexure "GK-9", being a copy of the proposed Notice of Objection to Competency	[15]	62

I **GURUKUGAN KUGANANTHAN**, of Level 38, Olderfleet, 477 Collins Street, Melbourne, VIC 3000, solicitor, sincerely declare and affirm:

1. I am a Senior Associate of Norton Rose Fulbright Australia (**NRFA**), the solicitor for the respondent, the Australian Information Commissioner in this proceeding. I work under the supervision of Andrew Riordan, a Partner of NRFA who is the responsible partner for this matter.
2. I am authorised to make this affidavit on behalf of the respondent. I am not authorised to waive privilege held by the respondent, and nothing in this affidavit should be construed as a waiver of the respondent's privilege.
3. I make this affidavit from my own knowledge unless otherwise stated.
4. I make this affidavit in support of an interlocutory application filed on behalf of the respondent (**Interlocutory Application**) which seeks orders that:
 - (a) Pursuant to r 16.53 of the *Federal Court Rules 2011* (Cth), the respondent be granted leave to file and serve an Amended Concise Statement in Response to the Further Amended Concise Statement dated 10 December 2021, in the form annexed as Annexure A to the Interlocutory Application.
 - (b) Pursuant to rule 1.39 of the *Federal Court Rules 2011* (Cth), the time by which the Respondent may file a notice of objection to competency under rule 31.05(1) be extended to the date of the determination of the Interlocutory Application.
 - (c) Such further or other orders as the Court may deem fit.

Amended concise statement in response to the further amended concise statement

5. As noted at paragraph 4(a) above, the respondent seeks the leave of the Court to amend its concise statement in response to the further amended concise statement dated 20 December 2021 (**Concise Response**).
 6. Now produced and shown to me and marked **GK-1** is a copy of the proposed amended Concise Response and accompanying Appendix A (**Amended Concise Response**). Amendments are shown by deletion of text in double strike-through, and additions of text in underline and blue text.
 7. The respondent's intention to seek leave to amend the Concise Statement was first raised in a letter from NRFA to the solicitor for the applicant dated 24 August 2022. Now produced and shown to me and marked **GK-2** is a copy of the letter.
 8. The proposed amendments to the Concise Response raise an issue regarding the competency of the application for review under s 7(1) of the *Administrative Decisions (Judicial Review) Act 1977* (Cth), make a number of corrections and updates to the Concise Statement in relation to the status of IC review applications and foreshadow the contentions made in the respondent's submissions regarding the discretionary refusal of relief.
 9. On 25 August 2022, NRFA received a letter from the applicant's solicitor which stated, amongst other things, that he did not have instructions to consent to the respondent's request for leave to amend the Concise Response. Now produced and shown to me and marked **GK-3** is a copy of the letter dated 25 August 2022.
 10. On 26 August 2022, NRFA sent a letter to the solicitor for the applicant which, amongst other matters, advised the applicant that the respondent would in due course seek the leave of the Court to amend the Concise Response. Now produced and shown to me and marked **GK-4** is a copy of the letter dated 26 August 2022.
 11. On 8 September 2022, NRFA sent a letter to the solicitor for the applicant which, amongst other matters, enclosed a copy of a proposed amended Concise Response. Now produced and shown to me and marked **GK-5** is a copy of the letter. The letter noted that NRFA, on behalf of the respondent, would be seeking the leave of the Court to file the amended Concise Response and requested the applicant's consent to the grant of leave.
 12. On 13 September 2022, the solicitor for the applicant sent a letter to NRFA which, amongst other matters, advised that the applicant does not consent to the granting of leave by the Court for the respondent to file an amended Concise Response. Now produced and shown to me and marked **GK-6** is a copy of the letter.
- 

13. On 13 September 2022, I sent an email to the solicitor for the applicant which confirmed the respondent's intention to make an interlocutory application seeking leave to file the amended Concise Response. Now produced and shown to me and marked **GK-7** is a copy of the email. A further letter was sent to the applicant's solicitors on 15 September 2022 which, amongst other matters, stated that the respondent would also seek an order to extend the time to file a Notice of Objection to Competency. Now produced and shown to me and marked **GK-8** is a copy of the letter.

Notice of Objection to Competency


14. In accordance with paragraph 2 of the Interlocutory Application, the respondent seeks an extension of time to file a Notice of Objection to Competency pursuant to rule 31.05(1) of the *Federal Court Rules 2011* (Cth). As explained in the letter to the applicant's solicitor dated 24 August 2022 (exhibit **GK-2**), the issue as to whether, in light of the status of the Information Commissioner reviews under Part VII of the *Freedom of Information Act 1982* (Cth) (**FOI Act**) that are the subject of this proceeding, there is a duty to make a decision under s 55K(1) of the FOI Act only became apparent to the respondent recently. In the circumstances, the respondent respectfully seeks an extension of time to file a Notice of Objection to Competency.

15. Now produced and shown to me and marked **GK-9** is a copy of the proposed Notice of Objection to Competency.

Affirmed by the deponent
at Melbourne
in Victoria
on 15 September 2022
Before me:

)
)
)
)
)


Signature of deponent


Signature of witness

KA WING KELVIN NG
Level 38, Olderfleet
477 Collins Street Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Annexure Certificate

No. VID519 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

REX PATRICK

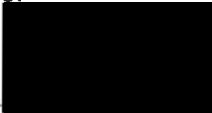
Applicant

AUSTRALIAN INFORMATION COMMISSIONER

Respondent

ANNEXURE "GK-1"

Before me:



Signature of person taking affidavit

Dated: 15 September 2022

KA WING KELVIN NG
Level 38, Olderfleet
477 Collins Street Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Proposed Amended Concise Statement in Response to Further Amended Concise Statement

No. VID519 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

~~Senator Rex Patrick~~
Applicant

Australian Information Commissioner
Respondent

A. Functions of the Information Commissioner

1. The Office of the Australian Information Commissioner (**OAIC**) is established by s 5(1) of the *Australian Information Commissioner Act 2010* (Cth) (**AIC Act**). At all material times until 13 August 2021, the OAIC consisted of the Information Commissioner, who was also appointed as the Privacy Commissioner, and staff engaged in accordance with s 23 of the AIC Act. In the 2021-22 Budget, the Government announced its intention to appoint a Freedom of Information Commissioner (**FOI Commissioner**). ~~Pending that appointment, a~~ An Acting FOI Commissioner was appointed on 13 August 2021; on 19 April 2022, the FOI Commissioner was appointed for an initial period of three months; that appointment is for a further three months or until a permanent FOI Commissioner is appointed (whichever is sooner). The Information Commissioner is the Agency Head of the OAIC for the purpose of the *Public Service Act 1999* (Cth).

2. Pursuant to s 10 of the AIC Act, the Information Commissioner has the information commissioner functions (as defined in s 7), the freedom of information functions (as defined in s 8) and the privacy functions (as defined in s 9). The FOI Commissioner has the freedom of information functions, and may also perform the privacy functions: s 11(1) and (2) of the AIC Act. The Privacy Commissioner has the privacy functions and may also perform the freedom of information functions: s 12(1) and (2) of the AIC Act.

Filed on behalf of (name & role of party)	Australian Information Commissioner (Respondent) Andrew Riordan of Norton Rose Fulbright Australia and Zoe Maud of counsel
Prepared by (name of person/lawyer)	Zoe Maud of counsel
Law firm (if applicable)	Norton Rose Fulbright Australia
Tel +61 3 8686 6680	Fax +61 3 8686 6505
Email	Andrew.Riordan@nortonrosefulbright.com
Address for service (include state and postcode)	Norton Rose Fulbright Australia Level 37, Olderfleet, 477 Collins Street Melbourne, Australia VIC 3000

3. The FOI ~~Regulatory Group~~ Branch assists the Information Commissioner and, ~~since 13 August 2024, the acting~~ FOI Commissioner, to perform the freedom of information functions, which includes reviewing decisions under Part VII of the *Freedom of Information Act 1982* (Cth) (the **FOI Act**), promoting awareness and understanding of the FOI Act, assisting agencies under s 8E of the FOI Act to publish information in accordance with the information publication scheme, providing information, advice, assistance and training to any person or agency, issuing guidelines under s 93A of the FOI Act, making reports to the Minister about proposals for legislative change to the FOI Act, monitoring, investigating and reporting on compliance by agencies with the FOI Act, undertaking investigations under Part VIIB of the FOI Act and collecting information and statistics from agencies and Ministers.
4. The Information Commissioner may delegate her powers, except those identified in s 25 of the AIC Act. The function under s 55K of the FOI Act must be exercised by the Information Commissioner, the FOI Commissioner or the Privacy Commissioner.

B. Process for reviewing decisions under Pt VII of FOI Act

5. Part VII of the FOI Act provides for the merits review by the Information Commissioner (**IC review**) of, amongst other things, an access refusal decision (s 54L) and an access grant decision (s 54M). The Information Commissioner may conduct an IC review in whatever way the Information Commissioner considers appropriate (s 55(2)(a)), and must use as little formality and technicality as possible (s 55(4)(a)). The Freedom of Information **Guidelines** published by the Information Commissioner pursuant to s 93A of the FOI Act, as amended from time to time, outlines the IC review process. Pursuant to s 55 of the FOI Act, the Information Commissioner has directions in relation to the procedures to be followed in IC reviews.
6. After receiving an application for IC review pursuant to s 54N of the FOI Act, the Information Commissioner notifies the relevant agency or minister of the application (s 54Z). The agency or minister must notify an affected third party where an application is made for review of a decision to refuse access to a document to which a consultation requirement applies (s 54P). The third party has the right to be a party to the IC review.
7. Key features of the IC review process include:
 - (a) Intake and triage of applications, including an initial assessment as to whether the application is validly made, contains the necessary information and was lodged within time, and whether the application is related to other applications by virtue of the subject matter, access refusal reason or the documents at issue.

- (b) In relation to an application for review of a 'deemed access refusal' decision, early intervention to obtain either a decision in relation to the FOI request or the documents at issue and submissions from the agency regarding the application.
- (c) Preliminary assessment of applications where a decision has been provided, including consideration of: (i) the complexity of the application, including the issues under review, the number of documents at issue, whether procedural steps may need to be undertaken in relation to third parties or as required by law in relation to applications involving claims of the cabinet exemption (s 34 of the FOI Act) or national security exemption (s 33 of the FOI Act); (ii) whether the application may be resolved through alternative dispute resolution methods; and (iii) whether an IC review should not be undertaken pursuant to s 54W of the FOI Act.
- (d) If the preliminary assessment results in a decision to proceed with the IC review, the relevant agency is requested to provide the documents and submissions.
- (e) Following review of the documents and/or submissions (which may include confidential submissions), a review adviser may: (i) form a preliminary view about the application and offer the agency an opportunity to provide further information or make a revised decision under s 55G of the FOI Act, or offer the applicant an opportunity to provide further information or to confirm whether they wish to proceed with the review; (ii) require the agency or minister to produce a document claimed to be exempt under s 55U of the FOI Act (where the claimed exemption relates to national security, Cabinet or Parliamentary Budget Office matters); (iii) seek evidence from the Inspector General of Intelligence and Security (**IGIS**) before deciding that a document is not exempt as required under s 55ZB of the FOI Act; (iv) seek further information from any person under s 55(2)(d) of the FOI Act; ~~or~~ (iv) prepare a draft decision for consideration by the Information Commissioner or Acting FOI Commissioner.

8. These steps in paragraph 7(a)-(c) above often result in the early resolution of IC reviews without requiring a decision under s 55K of the FOI Act. The significant majority of IC review applications are finalised without a decision under s 55K (in 2020-21, 95% of IC reviews were finalised without a decision under s 55K). The scope and complexity of an IC review may change as the review progresses, including because the number of documents at issue changes, there is a change in the exemptions claimed or the basis for a claimed exemption. Further procedural fairness requirements are often triggered during the course of an IC review as a result of receipt of new information or change in the scope of the review or the exemption(s) claimed. The duty to make a decision pursuant to s 55K(1) of the FOI Act does

not arise until the Information Commissioner is satisfied that the IC review process is complete.

9. Section 54W of the FOI Act prescribes the circumstances in which the Information Commissioner may decide not to undertake an IC review, or not continue an IC review. The Guidelines have at all material times provided that: (a) it is intended that the Information Commissioner will resolve most applications; (b) circumstances in which the Information Commissioner may decide that it is desirable for the Administrative Appeals Tribunal (**AAT**) to consider the ICC reviewable decision include: (i) that the IC review is linked to ongoing proceedings before the AAT or a court; (ii) that there is an apparent inconsistency between earlier IC review decisions and AAT decisions; (iii) the IC review decision is likely to be taken on appeal to the AAT on a disputed issue of fact; (iv) the FOI request under review is of a level of complexity that would be more appropriately handled through the procedures of the AAT; (v) (since February 2021) there may be a perceived or actual conflict of interest in the Information Commissioner undertaking the review; or (vi) where consideration by the AAT would further the objects of the FOI Act, particularly in relation to the performance and exercise of functions and powers given by the FOI Act to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

C. Measures to increase efficiency of IC reviews

10. The number of IC reviews received annually by the OAIC has increased over time. Relevantly, in 2017-18 the OAIC received 801 applications, in 2018-19 the OAIC received 928 applications, in 2019-20 the OAIC received 1,066 applications, ~~and~~ in 2020-21 it received 1,224 applications, and in 2021-22 it received approximately 1,955 applications. In response to the increasing number of applications, the OAIC has implemented various measures to maximise the efficiency of the IC review process, including: (a) batching similar cases for efficiency; (b) categorisation of cases according to complexity to determine the appropriate review path and allocation to an appropriate review adviser; (c) improvements to case management database workflows to assist review advisers to more efficiently progress IC reviews, FOI complaints and extension of time applications; (d) implementation of a project to specifically address a large number of IC reviews which related to the adequacy of searches (this cohort of cases being identified as a result of batching); (e) implementation of a process to obtain initial information from an agency in relation to applications for IC review of deemed refusal decisions; and (f) introduction of online forms for extension of time applications by agencies, reducing the need for OAIC staff to manually enter such information.

11. The OAIC's focus on the efficient resolution of IC review applications has enabled the OAIC to increase the number of IC reviews finalised annually, relevantly as follows: 515 IC review applications finalised in 2016-17; 610 IC review applications finalised in 2017-18; 659 IC review applications finalised in 2018-19; 829 IC review applications finalised in 2019-20; 1018 IC review applications finalised in 2020-21; and ~~284~~ approximately 1,380 IC review applications finalised in ~~the first quarter of~~ 2021-22. Despite the measures implemented by the OAIC, due to the increasing number of applications, the number of IC review applications that remain outstanding at the end of each financial year is continuing to increase.

D. Applicant's IC review applications

12. The procedural history for each of the Applicant's relevant IC review applications is outlined in Appendix A to this Concise Response. The status of those IC review applications selected by the Applicant for determination as a separate question has been updated in Annexure Appendix A to this Concise Statement in Response (other than minor corrections in relation to MR19/00437 and MR21/00059). On 4 November 2021, in relation to each of the Applicant's outstanding IC review applications at that date, the OAIC notified the relevant Department that the particular IC review application is a subject of this proceeding. Subsequent to the filing the Amended Concise Statement and Amended Originating Application, a ~~A~~ decision was has made pursuant to s 55K of the FOI Act in relation to IC Review application MR20/00291 on 19 October 2021. A decision has been made pursuant to s 55K of the FOI Act in relation to MR20/00291, MR19/00010, MR20/00604, MR19/00437 and MR21/00059 (the status of these IC reviews has also been updated in Appendix A).
13. IC review applications ~~MR19/00010,~~ MR19/00437 and MR20/00054 involve claims that documents are exempt from access pursuant to s 33 of the FOI Act, on the basis that disclosure of the documents could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth. Before determining that a document is not an exempt document under s 33, or determining that an agency grant access to a document without deletions, the Information Commissioner must request the IGIS to give evidence on, inter alia, the damage that would, or could reasonably be expected to be caused, to the security, defence or international relations of the Commonwealth if access to the document were granted: s 55ZB(1) and (2) of the FOI Act.
14. IC review applications MR19/00437, MR20/00176 and MR20/00209 involve receipt by the Information Commissioner of documents having a security classification that prevents them being stored on the OAIC's electronic case management system and hard-copies must be received and stored by the OAIC in accordance with Annexures A to C of the Protective

Security Policy Framework published by the Attorney-General's Department. As a result of stay-at-home orders in effect in all or parts of Sydney at different times from March 2020 to 1 November 2021, there have been periods where OAIC staff have not been able to attend the OAIC office in Sydney to access documents relevant to the progress of the IC review applications identified above, which has impacted the progress of these applications. Changes in government restrictions since that time have allowed the OAIC office in Sydney to reopen on 6 December 2021 to fully vaccinated staff members and subject to any density quotient limits in force from time to time, with staff permitted to still work from home. Accordingly, attendance at that office since that time to date – including by relevant OAIC staff who are permitted to access the documents with the relevant security classification – has been on a limited basis. This has continued to impact on the progress of IC review applications involving such material. It is anticipated that restrictions on staff attending the OAIC's office in Sydney will continue to impact the progress of some applications until 1 December 2021 that impact will continue until February 2022, by which time it is expected that staff will be returning to the office on a more frequent basis.

15. In the course of progressing IC review application MR19/00010, issues ~~have~~ emerged that ~~have~~ required the Information Commissioner to afford one of the parties a further opportunity to make submissions in response to the new issue. In relation to each of the 23 IC review applications in Appendix A, there has been one or more extensions of time to provide documents or submissions granted by the Information Commissioner in response to a request by the agency.
16. Each of the 23 IC review applications in Appendix A has been ~~assigned to a review adviser~~ in-allocated to the Significant and Systemic Reviews team (the **SSR Team**) for case management, which manages complex IC review applications, including those involving claims of exemption pursuant to s 33 (documents affecting national security, defence or international relations) or s 34 of the FOI Act (cabinet documents). During the period from August 2019 to August 2022 ~~December 2018 to 1 November 2021~~ ~~20 December 2021~~, there has been between ~~3 to 5~~ 2 to 3 full-time equivalent review advisers allocated to the SSR Team, with ~~8~~ a number of review advisers leaving the SSR Team during that period, requiring reassignment of their reviews to other advisers. At any point in time, each review adviser will be managing approximately 20 to 30 IC reviews (although the precise number may vary depending on the complexity of the matters assigned to each review adviser), with more than 200 reviews waiting to be allocated to a review adviser. The progress of IC review applications ~~MR19/00010, MR19/00437, MR20/00054, MR20/00209, and MR20/00544 and MR21/00059~~ has been impacted by the need to allocate the review to a different review

adviser within the SSR Team following the resignation or transfer to another team within the OAIC of the review adviser that had been managing the review.

17. As at ~~1 November 2024~~ ~~20 December 2024~~ 5 September 2022, the Information Commissioner has not determined that she is satisfied that the interests of the administration of the FOI Act make it desirable that any of the ~~23-8~~ applications referred to in Annexure A subject to the ~~separate question~~ Concise Statement ~~Further Amended Originating Application~~ be considered by the AAT.

- 17A. Each of the IC review applications in Appendix A that has not yet been determined is the subject of an ongoing IC review in accordance with Div 6 of Pt VII of the FOI Act. Pursuant to s 55K(1) of the FOI Act, the Information Commissioner's duty to make a decision in writing arises only upon the Information Commissioner being satisfied that an IC review under Pt VII of the FOI Act has been undertaken, alternatively upon the Information Commissioner having in fact undertaken an IC review under Pt VII of the FOI Act. Therefore, the statutory precondition to the duty under s 55K of the FOI Act is not satisfied in relation to each of the extant IC review applications in Appendix A. Accordingly, in relation to each of the extant IC review applications in Appendix A, the Information Commissioner does not presently have a duty to make a decision to which the *Administrative Decisions (Judicial Review) Act 1977 (Cth) (ADJR Act)* applies. A necessary precondition for an application for an order of review pursuant to s 7(1) of the ADJR Act is therefore not satisfied.

Conclusion

18. Having regard to the circumstances:
- (a) by reason of the IC review in respect of each of the extant IC review applications in Appendix A being ongoing, there is presently no duty on the Information Commissioner to make a decision pursuant to s 55K(1) of the FOI Act. A necessary precondition for an application for an order of review pursuant to s 7(1) of the ADJR Act is therefore not satisfied and the application should be dismissed as incompetent;
 - (b) alternatively, if the application is competent, there has been no unreasonable delay in determination of the ~~23-8~~ IC review applications, and ~~t~~he application should be dismissed;
 - (c) even if the Court finds that the application is competent and there has been unreasonable delay in making a decision in relation to one or more of the relevant IC reviews, the Court should refuse relief in the exercise of its discretion.

Certificate of lawyer

I, Andrew Riordan, certify to the Court that, in relation to the Response to the Concise Statement filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~1 November 2021~~ ~~20 December 2021~~ September 2022

Signed by Andrew Riordan
Lawyer for the Respondent

Appendix A – Summary of Applicant’s IC Review applications

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
1.	MR19/00010	Senator Rex Patrick, Senator for South Australia DOD - Department of Defence	21-Dec-18	Application of: <ul style="list-style-type: none"> • s 47(1)(b) (Documents disclosing trade secrets or commercially valuable information) • s 47G (Public interest conditional exemptions-business affairs) • s 33(a)(ii) (Documents affecting national defence) 	<ul style="list-style-type: none"> • On 21 December 2018, the IC Review application was lodged by Applicant. • On 13 February 2019, the intake, triage and preliminary assessment process was completed. • On 26 February 2019: <ul style="list-style-type: none"> ○ the OAIC sent a notice to the Applicant advising that the IC Review process will commence and that allocation of the matter “may take up to 6 months”; ○ the OAIC sent a ‘Notice of IC review and request for documents’ under s 54Z of FOI Act (54Z Notice) to the Department requesting a response by 2 April 2019. • On 2 April 2019, the Department provided its response (54Z Response) to the OAIC on a confidential basis. • On 18 November 2019, after a review of the Department’s 54Z Response, the application was allocated to SSR Team. • On 24 December 2019: <ul style="list-style-type: none"> ○ the OAIC requested further submissions by 24 January 2020 in relation to confidentiality claims; ○ the OAIC emailed the Applicant providing an update regarding the matter. • On 29 April 2020, the Department provided a non-confidential submission and subsequently withdrew its confidential submission. • On 20 May 2020, the OAIC provided the Department’s submissions to the Applicant. • On 2 July 2020, the Applicant corresponded with the OAIC about claims made in the Department’s 54Z Response. • On 10 July 2020, the OAIC requested from the Inspector-General of Intelligence and Security (IGIS) evidence for the purposes of FOI Act, s 55ZB(2)(a)(i) [evidence of the damage that would, or could reasonably be expected to, be caused to the security of the Commonwealth if un-redacted access to a document were granted]. • On 19 October 2020, the IGIS sent its response to the OAIC. • On 26 October 2020, the OAIC advised the parties that a review was now able to proceed to a decision of the Information Commissioner under s 55K of the FOI Act and, treating the Applicant’s correspondence on 2 July 2020 as a submission, invited any final submissions to be provided by 29 October 2020. • After being granted extensions of time by the OAIC on 27 October, 19 November and 25 November 2020, the Department provided its final submissions to the OAIC on 3 December 2020. • On 19 March 2021, the application was re-allocated to a new review adviser due to changes in OAIC personnel. • On 1 September 2021, the OAIC provided the Applicant with the Department’s final submissions and requested his final submissions be provided by 15 September 2021. • After receiving an extension of time, the Applicant provided his submissions on 16 September 2021.

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
					<ul style="list-style-type: none"> • On 17 September 2021, the OAIC emailed the Applicant noting that in light of “recent developments in relation to the Future Submarine Project”, the OAIC was in the process of conducting further inquiries with the Department. On 20 September 2021, the OAIC requested from the Department further submissions be made by 11 October 2021. • On 12 October 2021, upon the Department’s application, OAIC granted an extension of time for it to provide its submissions by 13 October 2021. • After providing the Department’s further submissions to the Applicant on 19 October 2021, the OAIC requested further submissions by the Applicant by 2 November 2021. • <u>On 2 November 2021, the Applicant provided his final submissions to the OAIC.</u> • <u>On 4 November 2021, the OAIC advised the Department that the IC Review application is a subject of this proceeding.</u> • <u>On 2 December 2021, the solicitors for the OAIC notified the solicitors for the Applicant that the IC Review application is likely to be determined by the Commissioner before the end of January 2022.</u> • <u>On 7 December 2021, the OAIC notified the Department that the OAIC anticipates that the IC Review application will be finalised by the end of 2021.</u> • <u>On 23 December 2021, a decision was made pursuant to s 55K to affirm the decision under review.</u>
2.	MR19/00437	Senator Rex Patrick, Senator for South Australia DOD - Department of Defence	28-Jun-19	<p>Application of:</p> <ul style="list-style-type: none"> • s 22 (Access to edited copies with exempt or irrelevant matter deleted) • s 33(a)(i) (the security of the Commonwealth) • s 33(a)(ii) (the defence of the Commonwealth) • s 33(a)(iii) (the international relations of the Commonwealth) • s 34 (Cabinet documents) 	<ul style="list-style-type: none"> • On 28 June 2019, the IC Review application was lodged by the Applicant. • On 15 August 2019, the intake, triage and preliminary assessment process was completed. • On 23 August 2019: <ul style="list-style-type: none"> ○ the OAIC sent a notice to the Applicant advising that the IC Review process will commence, and advising that allocation of the matter “may take up to 6 months”; ○ the OAIC sent a ‘Notice of IC review and request for documents’ under s 54Z of FOI Act (54Z Notice) to the Department requesting a response by 13 September 2019. • Upon requests from the Department, the OAIC granted the Department extensions of time on 17 September, 2 October, 14 October and 28 October 2019 to submit its response (54Z Response) to the 54Z Notice. The deadline ultimately set was 12 November 2019. • On 12 November 2019, the Department provided its 54Z Response and indicated that it had made a revised decision under s 55G of the FOI Act on 7 August 2019. • On 22 November 2019, after being asked by the OAIC on 13 November whether he wished to withdraw the application or proceed in light of the Departments revised decision, the Applicant confirmed that he wished to proceed. • On 3 December 2019, the OAIC notified the Department that the Applicant wished to proceed, and the OAIC issued a notice under FOI Act, s 55U (‘production of national security, Cabinet or Parliamentary Budget Office documents’) (55U Notice) regarding its claims that certain documents were exempt from being accessed, requesting a response by 17 December 2019. The Department provided its response (55U Response) to the 55U Notice.

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
				<ul style="list-style-type: none"> • s 44C (Deliberative processes) • s 47C (Public interest considerations) 	<ul style="list-style-type: none"> • On 20 May 2020, the OAIC provided the Applicant with the Department's 54Z and 55U Responses and invited a response by 10 June 2020 (ultimately provided on 29 June 2020 after extensions of time were granted). • On 6 August 2020, the Department provided the OAIC and the Applicant with a revised decision under s 55G. • On 24 August 2020 the Applicant confirmed he wished to proceed with his review despite the Department's decision. • On 20 September 2020, the OAIC notified the Department that the Applicant wished to proceed with the IC Review. • Between November - December 2020, the OAIC corresponded with the Department to arrange the secure delivery of further material that was the subject of the Department's claims of exemptions. • On 19 March 2021, the application was re-allocated to a new review adviser due to changes in OAIC personnel. • On 4 May 2021, the OAIC requested evidence from IGIS for the purposes of FOI Act, s 55ZB(2)(a)(i) [evidence of the damage that would, or could reasonably be expected to, be caused to the security of the Commonwealth if un-redacted access to a document were granted]. • On 17 June 2021, the IGIS responded to the OAIC's request for evidence. • On 14 July 2021, the OAIC provided the Applicant and the Department with the IGIS' response, and required final submissions by 28 July 2021. • On 27 July 2021, the Applicant provided his final submissions to the OAIC, which included a submission to limit the scope of the FOI request. • Between 27 July and 25 August 2021, the OAIC corresponded with the Department regarding the changes to the scope of the Applicant's FOI request, and arranging the secure delivery of material subject to the Department's claims of exemptions to be stored at the OAIC's office. Due to ongoing government restrictions impacting on the ability for OAIC personnel to attend the office, that material is yet to be reviewed. • On 31 March 2022, a decision was made pursuant to s 55K to affirm the decision under review.
3.	MR20/00054	Senator Rex Patrick, Senator for South Australia DFAT - Department of Foreign Affairs and Trade	22-Jan-20	Application of: <ul style="list-style-type: none"> • s 22 (Access to edited copies with exempt or irrelevant matter deleted) • s 33 (Documents affecting national security, defence or 	<ul style="list-style-type: none"> • On 22 January 2020, the IC Review application was lodged by the Applicant. • On or around 25-14 February 2020, the intake, triage and preliminary assessment process was completed; it was assessed that the application should be referred to the SSR Team for case management in due course. • On 11 March 2020: <ul style="list-style-type: none"> ○ the OAIC sent a notice to the Applicant advising that the IC Review process will commence, and advising that allocation of the matter "may take up to 12 months"; ○ the OAIC sent a 'Notice of IC review and request for documents' (54Z Notice) to the Department requesting a response by 1 April 2020.

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
				<p>international relations)</p> <ul style="list-style-type: none"> • 34 (Cabinet documents) • 47C (deliberative processes) • s 47E (Certain operations of agencies) • s 47G (Public interest conditional exemptions – business) 	<ul style="list-style-type: none"> • On 16 April and 5 June 2020 the Department requested extensions of time to respond to the 54Z Notice (54Z Response). The second revised deadline for the 54Z Response was 26 June 2020. • On 7 July and 27 August 2020 the Department corresponded with the OAIC regarding the timing of its 54Z Response. • In August 2020, a Senior Review Adviser within the SSR Team reviewed all of the Applicant's IC Review applications, including MR20/00054 to assess the next steps, and provided an update to the Deputy Commissioner and then-Principal Director (Freedom of Information). • On 28 September 2020, an Acting Director at the OAIC provided a further update in relation to the Applicant's IC review applications, including MR20/00054. • In October 2020, the OAIC corresponded with the Department regarding the status of this application and others. • On 13 October 2020, the Director of the SSR Team and a Review Adviser met with the Department's representatives, and the Department indicated that it would advise the OAIC by 20 October 2020 regarding how it intended to proceed in relation to MR20/00054. • On 19 November 2020: <ul style="list-style-type: none"> ○ the Department indicated that it would commence the process of revising its original decision under s 55G, and aiming to finalise that decision in January 2021; ○ the OAIC provided this information to the Applicant. • On 26 November 2020, a Review Adviser within the Intake and Early Resolution team provided an update to the Director of that team regarding ongoing delays by the Department with respect to responses to 54Z Notices from the Department in relation to a number of matters. • On 1 December 2020, the then-Principal Director (Freedom of Information) instructed staff to issue a notice under s 55U of the FOI Act to the Department requiring production of the relevant documents and submissions by 15 January 2021. • On 22 December 2020, the Applicant requested an update from the OAIC in relation to all of his IC review applications current at the time, including MR20/00054, and applications MR20/00424, MR20/00613 and MR20/00760. • On 12 January 2021, the OAIC provided an update to the Applicant in relation to a number of his IC review applications, including MR20/00054. • On 19 April 2021, the OAIC received a notice from the Applicant under the Civil Disputes Resolution Act 2011 (Cth). In response to that notice, on 28 April 2021 the Deputy Commissioner met with the Applicant in Canberra, and the then-Principal Director (Freedom of Information) joined the meeting by telephone. • On 16 August 2021, the application was allocated to a review adviser in the SSR Team. • On 17 August 2021, the OAIC contacted the Department regarding the fact it had not received it revised s 55G decision and requested a response by 31 August 2021. • Between 2 September and 1 October 2021, the OAIC and the Department corresponded regarding delays by the Department in finalising its revised decision under s 55G due to the lockdown in the ACT.

Case Number	Title	Date of lodgement	Issues under FOI Act	Status
				<ul style="list-style-type: none"> • On 7 October 2021, the OAIC advised the Applicant that the Department's processing of the revised decision had been impacted by the lockdown in the ACT. • After being asked by the OAIC to give a timeframe for providing its revised decision, the Department, on 27 October 2021, sought (and the OAIC agreed on 27 October 2021 to provide) an extension of time to provide its revised decision by 3 November 2021. • On 3 November 2021, the Department advised the OAIC that it expected to finalise its revised decision by 17 December 2021. • On 4 November 2021, the OAIC advised the Department that the IC Review application is a subject of this proceeding. • On 3 December 2021, the OAIC issued a Direction to the Department under FOI Act, s 55(2)(e)(ii) requesting information and a revised decision to be provided to the OAIC by 17 December 2021. • On 17 December 2021, the Department requested an extension of time to respond until 14 January 2022. • On 22 December 2021, the OAIC issued a s 55R notice to produce documents and give information to the Department, requiring a response by 14 January 2022. • On 14 January 2022, the Department issued a revised decision. • On 19 January 2022, the Review Adviser that was case managing this IC review application emailed the Applicant seeking an indication as to whether he intended to proceed with the IC review in light of the revised decision. • On 2 February 2022, the Applicant advised that he intended to proceed with the IC review and requested additional time to provide a further submission. • On 10 February 2022, a Review Adviser in the SSR Team spoke to the Applicant's representative about the possibility that the IC review might be referred to the Administrative Appeals Tribunal pursuant to s 54W(b) of the FOI Act. • On 15 February 2022, further submissions were received from the Applicant. • On 22 February 2022, the Assistant Commissioner (Freedom of Information) spoke with the Applicant's representative regarding the referral of the IC review application to the Administrative Appeals Tribunal. • On 9 March 2022, the Assistant Commissioner (Freedom of Information) spoke with the Applicant regarding the scope of the IC review. • On or around 14 March 2022, IC review MR20/00054 was allocated to a different Review Adviser in the SSR team. • On 15 and 17 March 2022, the Assistant Commissioner (Freedom of Information) had a number of telephone and email exchanges with representatives of the Applicant and the Department's representatives to clarify the scope of the IC Review and the documents at issue. • On 21 March 2022, the new Review Adviser emailed the Department requesting the documents in respect of which access had not been granted by 28 March 2022. • On 25 March 2022, the Department's submission received on 14 January 2022 were shared with the Applicant.

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
					<ul style="list-style-type: none"> • On 1 April 2022, the Department confirmed that the documents that had been requested would be provided on 5 April 2022. • On 5 April 2022, the OAIC received the documents in respect of which access had not been granted from the Department by Safehands courier delivery. • On 26 April 2022, further submissions were received from the Applicant in response to the Department's submissions. • On 22 June 2022, the OAIC was notified by the Applicant's representative that he would be the Applicant's contact person in relation to the Applicant's IC review applications until 30 June 2022. • On 25 July 2022, a notice was issued to the Department pursuant to s 55U of the FOI Act requiring production of unredacted versions of the documents provided on 5 April 2022. • On 9 August 2022: <ul style="list-style-type: none"> ○ Documents were provided to the OAIC by the Department in response to the s 55U notice. ○ The OAIC received a letter from the Acting Director of the Department's FOI and Privacy Law Section to clarify the exemptions claimed in relation to specific parts of certain documents relevant to the IC Review application.
4.	MR20/00176	Senator Rex Patrick, Senator for South Australia AWM - Australian War Memorial	21-Feb-20	<p>Application of:</p> <ul style="list-style-type: none"> • s 11B (Public interest exemptions- factors) • s 22 (Access to edited copies with exempt or irrelevant matter deleted) • s 47C (Deliberative processes) • s 47E (Certain operations of agencies) 	<ul style="list-style-type: none"> • On 21 February 2020, the IC Review application was lodged by the Applicant. • On 15 April 2020, the intake, triage and preliminary assessment process was completed. • On 16 April 2020: <ul style="list-style-type: none"> ○ the OAIC sent a notice to the Applicant advising that the IC Review process will commence; and ○ the OAIC sent a 'Notice of IC review and request for documents' under s 54Z of FOI Act (54Z Notice) to the AWM, requesting a response by 7 May 2020. • On 29 April 2020, the AWM sought to provide all information – including confidential submissions and classified documents (confidential documents) to be physically delivered to the OAIC – by 4 June 2020, citing staffing restrictions. The OAIC granted an extension of time on 6 May 2020 for the AWM to provide non-confidential documents and submissions by 18 May 2020, and the confidential information as soon as the AWM returned to normal working arrangements. • On 13 May 2020, following a request by the OAIC, the AWM explained to the OAIC why it wished to make confidential submissions. • On 18 May 2020, the AWM provided its open submissions to the OAIC as part of its response to the 54Z Notice (54Z Response). • On 5 June 2020, the AWM provided its confidential submissions to the OAIC as part of its 54Z Response. • Secure delivery by courier of the confidential documents to the OAIC's office had been arranged by the OAIC and AWM to take place on 10 June 2020. The AWM informed the OAIC on 11 June 2020 that delivery had not been effected by the courier.

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
					<ul style="list-style-type: none"> • In July 2020, the AWM corresponded with the OAIC to arrange another attempt at secure delivery of the confidential documents. • On 17 July 2020, the OAIC received the confidential documents. • On 22 December 2020, the Applicant requested an update on the matter from the OAIC and on 12 January 2021, the OAIC provided the relevant update.
5.	MR20/00209	Senator Rex Patrick, Senator for South Australia PMC - Department of the Prime Minister and Cabinet	4-Mar-20	Application of: <ul style="list-style-type: none"> • s 34(1) exemption (Cabinet Documents) • s 34(4) (Cabinet Documents) 	<ul style="list-style-type: none"> • On 4 March 2020, the IC Review application was lodged by the Applicant. • On 20 April 2020, the intake, triage and preliminary assessment process was completed. • On 11 May 2020: <ul style="list-style-type: none"> ○ the OAIC sent a notice to the Applicant advising that the IC Review process will commence, and advising that allocation of the matter "may take up to 12 months"; ○ the OAIC sent a 'Notice of IC review and request for documents' (54Z Notice) to the Department requesting a response by 1 June 2020. • On 13 May 2020, the Department requested, and was granted by the OAIC, an extension of time to provide its response to the 54Z Notice (54Z Response) by 3 June 2020. • On 4 June 2020, the Department provided its 54Z Response. This response was a joint response with respect to this matter and other related matters (joint submissions). • Following review of the Department's 54Z Response, on 13 September 2020, the OAIC allocated the matter to the SSR Team. • On 18 September 2020, the Department provided non-confidential (related open submissions) and confidential submissions for a related matter. • On 9 November 2020, the OAIC requested from the Department responses to a number of questions regarding the matter and the other related matters; on 19 November 2020, the OAIC requested the responses to those questions by 25 November 2020; • On 26 November 2020, the Department requested, and was granted by the OAIC, an extension of time to respond to the questions by 30 November 2020. • On 1 December 2020, the Department provided its responses to the relevant questions to the OAIC. • On 22 December 2020, the Applicant requested an update on the matter; on 12 January 2021, the OAIC provided the relevant update. • On 2 February 2021, the OAIC corresponded with the Department regarding proposed next steps in this matter and the related matters, including the provision of the joint submissions and the related open submissions to each of the applicants of the related matters. The OAIC raised a number of queries regarding these matters, including the application of the exemption under FOI Act, s 34 claimed by the Department. • After being granted an extension of time, the Department responded to the OAIC's queries on or about 15 February 2021. • On 4 May 2021, the application was re-allocated to a new review adviser due to changes in OAIC personnel.

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
					<ul style="list-style-type: none"> On 14 July 2021, OAIC sent to the Applicant the Department's joint submissions and the related open submissions, and requested the Applicant's submissions by 28 July 2021. On 28 July 2021, the Applicant provided his submissions to the OAIC. On 21 September 2021, the OAIC corresponded with the Department about the OAIC obtaining access to the confidential to progress the matter (as the OAIC had been unable to access the confidential submissions due to stay-at-home restrictions).
6.	MR20/00291	Senator Rex Patrick, Senator for South Australia Department of Agriculture, Water and the Environment	19-Mar-20	Application of: <ul style="list-style-type: none"> s 47B (Public interest conditional exemptions— Commonwealth-State relations etc.) s 47C (Public interest conditional exemptions— deliberative processes) 	<ul style="list-style-type: none"> On 15 October 2021, a decision on this application was made under s 55K of the FOI Act. On 19 October 2021, notification of the decision was issued to the parties, and the matter was finalised.
7.	MR20/00424	Senator Rex Patrick, Senator for South Australia Department of Industry, Science, Energy and Resources	24-Apr-20	Application of <ul style="list-style-type: none"> s 22 (Access to edited copies with exempt or irrelevant material deleted) s 47C (Public interest conditional exemptions – deliberative processes) s 34(1)(a) (Cabinet documents) 	<ul style="list-style-type: none"> On 21 April 2020, the Applicant lodged an IC Review application; on 22-24 April 2020, the Applicant lodged a revised IC Review application. On or about 28 April 2020, the intake, triage and preliminary assessment process was completed; <u>it was assessed that the application should be referred to the SSR Team for case management in due course.</u> On 27 May 2020: <ul style="list-style-type: none"> the OAIC sent a notice to the Applicant advising that the IC Review process will commence and that allocation of the matter "may take up to 12 months"; the OAIC sent a 'Notice of IC review and request for documents' to the Department under s 54Z of FOI Act (54Z Notice) requesting a response by 17 June 2020. The OAIC granted extensions of time on 22 June, 3 July and 30 July 2020 for the Department to submit its response to the 54Z Notice (54Z Response) (with the deadline for the response extended to 3 August 2020). On 17 July 2020, when seeking an extension of the time, the Department advised the OAIC that consideration was being given to vary its decision under FOI Act, s 55G of the FOI Act. On 13 August 2020, the Department advised the OAIC that it would be providing its 54Z Response "shortly". On 20 August 2020, the OAIC requested an update from the Department regarding when it would be providing its submissions. On 24 August 2020, the Department provided its 54Z Response to the OAIC.

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
					<ul style="list-style-type: none"> • On 25 August 2020, after a review of the Department's 54Z Response, the application was allocated to the SSR Team. • On 28 September 2020, an Acting Director at the OAIC provided a further update in relation to the Applicant's IC review applications, including MR20/00424. • On 12 January 2021, the OAIC provided an update to the Applicant in relation to a number of his IC review applications, including MR20/00424. • On 4 November 2021, the OAIC advised the Department that the IC Review application is a subject of this proceeding • On 21 December 2021, the Director of the SSR Team emailed the Department in relation to two IC reviews, including MR20/00424, regarding some material that was claimed to be exempt under s 34 and may not yet have been provided to the OAIC, and the use of an online platform for sending and receiving protected material for IC reviews. • On 13 January 2022, the Director of the SSR Team emailed the Department seeking an update regarding use of the OAIC's online platform for delivery of documents where the Cabinet exemption was claimed. • On 22 June 2022, the OAIC was notified by the Applicant's representative that he would be the Applicant's contact person in relation to the Applicant's IC review applications until 30 June 2022. • On 15 July 2022, the Department emailed the OAIC requesting a status update for particular IC review applications (including MR20/00424, and applications MR20/00760 and MR20/00863). • On 28 July 2022, the Director of the SSR team responded indicating that the OAIC had received new contact details for the Applicant but that the OAIC had not been advised that the Applicant has withdrawn any of the specific IC review applications. • On 29 July 2022, the OAIC issued a s 55U notice to the Department, requesting a response by 12 August 2022. • On 3 August 2022, a telephone call occurred between a Review Adviser and an Officer of the Department, in which the Officer informed the Review Adviser that, given that the Department's submissions were from 2020, consideration was being given to whether things had changed and whether some material could be released to the Applicant. The Review Adviser consulted with the Director of the SSR Team, and subsequently the Review Adviser, in a further telephone conversation with the Officer of the Department, advised that the OAIC would agree to a date for a revised decision. • On 3 August 2022, an Officer of the Department emailed the Review Adviser to advise that the Department would notify the OAIC, by 2 September 2022, of the outcome of consultations that the Department would undertake. • On 4 August 2022, the Review Adviser informed an Officer of the Department that the OAIC agreed to the Department advising it by 2 September 2022 of the Department's proposed consultations. • On 2 September 2022: <ul style="list-style-type: none"> ○ The Department advised the OAIC that it had finalised consultations with the Department and was undertaking further consultations with the Australian Radioactive

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
					<p>Waste Agency. The Department sought a further 30 days to respond to the OAIC's queries.</p> <ul style="list-style-type: none"> ○ The OAIC advised the Department that the OAIC would consider the request and respond in due course. ○ The Review Adviser attempted to telephone the Officer of the Department in addition to an alternative Department contact, however was unable to make contact. <ul style="list-style-type: none"> • On 5 September 2022, the Review Adviser telephoned the Officer of the Department, and left a voicemail, requesting that the Officer call back in relation to this IC review. • On the same date, the Review Adviser sent an email to the Department, requesting that the Department provide the OAIC with the documents at issue as soon as possible and provide any submissions and/or revised decision by 19 September 2022.
8.	MR20/00544	Senator Rex Patrick, Senator for South Australia Attorney-General	4-Jun-20	<p>Application of:</p> <ul style="list-style-type: none"> • s 34 (Cabinet Documents) • s 42 (Legal Professional Privilege) 	<ul style="list-style-type: none"> • On 4 June 2020, the IC Review application was lodged by the Applicant • On 1 July 2020, the then-Principal Director (Freedom of Information) asked the then-Assistant Director of the SSR team to assist with assessing particular IC review applications lodged by different applicants, including identifying any additional matters that related to the Community Sport Infrastructure Grant program. • On or around 7 August 2020, the intake, triage and preliminary assessment process was completed; it was assessed that the application should be referred to the SSR Team for case management in due course. • On 12 August 2020: <ul style="list-style-type: none"> ○ the OAIC sent a notice to the Applicant advising that the IC Review process will commence and that allocation of the matter "may take up to 12 months"; ○ the OAIC sent a 'Notice of IC review and request for documents' under FOI Act s 547 (54Z Notice) to the office of the Attorney General (AGO) requesting a response by 2 September 2020. • In August 2020, a Senior Review Adviser within the SSR Team reviewed all of the Applicant's IC Review applications, including MR20/00544 to assess the next steps, and provided an update to the Deputy Commissioner and then-Principal Director (Freedom of Information). • On 20 August 2020, the OAIC requested that the Applicant provide his submissions by 21 September 2020. • On 20 September 2020, the Applicant provided his submissions to the OAIC. • After being granted extensions of time on 2 September and 24 September 2020, AGO provided its confidential 54Z Response submissions on 9 October 2020. • On 22 September 2020, the Senior Review Adviser in the SSR Team emailed the Applicant's office and the AGO advising that she was the appointed Review Adviser in relation to MR20/00544, and that she was reviewing the file and would provide an update on progress shortly. • On 28 September 2020, an Acting Director at the OAIC provided a further update in relation to the Applicant's IC review applications, including MR20/00544.

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
					<ul style="list-style-type: none"> • On 13 October 2020, the then-Principal Director (Freedom of Information) attended a SSR team meeting, which involved a discussion with the Review Adviser managing the application and the Director of the SSR team to consider the response that the AGO provided on 9 October 2020, and the OAIC requested a copy of the AGO's non-confidential submissions be provided by 20 October 2020. • After being granted an extension of time on 27 October 2020, the AGO provided a non-confidential copy of its original submissions and additional (non-confidential) submissions regarding the FOI Act, s 42 exemption (legal professional privilege) on 30 October 2020. • On 2 November 2020, the OAIC provided the AGO's submissions to the Applicant and requested "any final new" submissions by 20 November 2020; the Applicant provided his final submissions on 8 November 2020. • Between 9 November – 23 December 2020, the OAIC provided the Applicant's final submissions to the AGO, the AGO confirmed that it did not seek to make further submissions (and the OAIC informed the Applicant accordingly). • <u>On 12 January 2021, the OAIC provided an update to the Applicant in relation to a number of his IC review applications, including MR20/00544.</u> • <u>On 19 March 2021, an email was sent to the Applicant's representatives advising that various IC review applications, including MR20/00544, had been reallocated to a new Review Adviser.</u> • On 4 May 2021, the application was re-allocated to a new review adviser due to changes in OAIC personnel. • On 18 August 2021, the OAIC corresponded with the AGO requesting confirmation by 1 September 2021 as to whether the new Attorney-General (the Hon M Cash) was in possession of the single document identified within the scope of the FOI request; on 2 September 2021, the AGO advised the OAIC that the new Attorney-General was not in possession of the relevant document. • <u>On 13 September 2021, the then-Principal Director (Freedom of Information) met with the Review Adviser and the Director of the SSR Team to discuss various IC Reviews being managed by the Review Adviser at the time, including MR20/00544. On 14 September 2021, the then-Principal Director (Freedom of Information) received an email from the Review Adviser in relation to MR20/00544, which outlined the Review Adviser's analysis of the issue that had arisen for MR20/00544 in light of the appointment of a new Attorney-General; on the same day, the then-Principal Director (Freedom of Information) replied and indicated agreement with the proposed next steps.</u> • <u>On 16 September 2021, the Director of the SSR Team reallocated application MR20/00544 to a new Assistant Review Adviser.</u> • <u>On 22 September 2021, the Applicant spoke to the Assistant Review Adviser managing the application at the time about the options for the handling of this matter, in light of the appointment of a new Attorney-General.</u> • On 24 September 2021, the OAIC requested from the AGO submissions as to whether the Attorney-General was in possession of the relevant material that is the subject of the IC Review; the submissions were due on 30 September 2021.

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
					<ul style="list-style-type: none"> • After being granted an extension of time on 28 September 2021, the AGO provided its submissions on 7 October 2021. • On 19 October 2021, the then-Principal Director (Freedom of Information) met with the Acting FOI Commissioner, the Assistant Review Adviser and the Director of the SSR Team to discuss the matter and to consider potential next steps. • On 20 October 2021, the OAIC provided the AGO's submissions to the Applicant and requested submissions in reply by 3 November 2021. • On 21 October 2021, after reviewing AGO's submissions, the OAIC requested further information from the AGO. The information was due on 4 November 2021. • On 21 October 2021, the OAIC requested advice from the National Archives of Australia (NAA) regarding access to archived Ministerial documents. • On 2 November 2021, the Applicant provided his submissions in reply. • On 4 November 2021, the OAIC advised the Department that the IC Review application is a subject of this proceeding. • On 8 November 2021, the AGO responded to the OAIC's request for information. • Between 15 November 2021 and 10 December 2021, the OAIC engaged with the NAA in relation to the NAA's processes. • On 10 December 2021, the OAIC issued a direction to the NAA under FOI Act s 55(2)(d) requesting further information. The response is due on 23 December 2021. • On 10 December 2021, the OAIC advised the Applicant and the AGO of the direction to NAA. • On 24 December 2021, the NAA responded to the direction. • On 7 January 2022, the Applicant made further submissions in relation to MR20/00544. • On 17 January 2022, the OAIC issued a preliminary view to the AGO and requested a response by 31 January 2022. • On 10 February 2022, the AGO confirmed that it did not propose to make a submission in response to the preliminary view. • On 1 March 2022, the OAIC issued a letter to the Applicant outlining the submissions of the parties in relation to the issues that had emerged following the appointment of a new Attorney-General in March 2021, requesting an indication by 15 March 2022 as to whether the Applicant wished to proceed with the application for IC review. • On 15 March 2022, the Applicant made submissions. • On 16 March 2022, the Review Adviser advised the Applicant that the submissions had been placed on the file. • On 13 May 2022, the OAIC wrote to the AGO requesting further information about its searches to find the document requested by the Applicant, and requesting that information by 20 May 2022. • On 22 June 2022, the OAIC was notified by the Applicant's representative that he would be the Applicant's contact person in relation to the Applicant's IC review applications until 30 June 2022. • On 20 July 2022:

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
					<ul style="list-style-type: none"> ○ the OAIC sent a letter to the Director of the FOI and Privacy Section within the Attorney-General's Department in relation to a number of current IC reviews in which the Attorney-General is a respondent, including MR20/00544, requesting a response by 3 August 2022; and ○ the OAIC sent a letter to the Applicant, advising him of the further enquiries that had been made to the AGO. • On 21 July 2022, the Applicant sent an email to the OAIC expressing frustration and summarising and attaching his previous submissions. • On 27 July 2022, the OAIC provided the Applicant's submissions of 21 July 2022 to the AGO, along with copies of the Applicant's submissions dated 2 November 2021 and 15 March 2022 referred to in the 21 July submissions. • On 3 August 2022, the OAIC received a letter from the Assistant Secretary of the Attorney-General's Department, in response to the letter from the FOI Commissioner dated 20 July 2022 advising that: <ul style="list-style-type: none"> ○ Enquiries had been made with staff of the Attorney-General's Office and the Attorney General's Office had been unable to locate any documents the subject of the IC review applications. ○ The Department had not located any record of receiving a transfer of documents from the office of the former Attorney-General following the May 2022 election, nor any record that documents from the former Attorney-General's office were transferred to the National Archives of Australia.
9.	MR20/00604	Senator Rex Patrick Senator for South Australia Department of Industry, Science, Energy and Resources	24-Jun-20	<p>Application of:</p> <ul style="list-style-type: none"> • s 22 (Access to edited copies with exempt or irrelevant matter deleted) • s 45 (Documents containing material obtained in confidence) • s 47(1)(b) (Documents disclosing commercially valuable information) • s 47G (Business Information) 	<ul style="list-style-type: none"> • On 25 June 2020, the IC Review application was lodged by the Applicant. • On 20 July 2020, the intake, triage and preliminary assessment process was completed. • On 22 July 2020, <ul style="list-style-type: none"> ○ the OAIC sent a notice to the Applicant advising that the IC Review process would commence and that allocation of the matter "may take up to 12 months"; ○ the OAIC sent a 'Notice of IC review and request for documents' under FOI Act s 54Z (54Z Notice) to the Department requesting a response by 12 August 2020. • After being granted an extension of time on 12 August 2020, the Department provided its response to the 54Z Notice (54Z Response) to the OAIC on 31 August 2020. • On 25 September 2020, the OAIC issued a notice to the Department under FOI Act, s 55T ('Information gathering powers—production of exempt documents generally') (55T Notice). • On 12 October 2020, Department responded to the 55T Notice (55T Response). • On 12 October 2020, after a review of the Department's 54Z Response and 55T Response, the application was allocated to SSR Team. • On 12 January 2021, the OAIC provided an update regarding the matter to the Applicant. • On 25 August 2021, the application was allocated to a review adviser within the SSR Team. • On 27 August 2021, the OAIC requested from the Department further submissions be submitted by 10 September 2021.

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
					<ul style="list-style-type: none"> On 14 September 2021, the OAIC granted the Department an extension of time to provide its submissions to 5 October 2021 (on the basis that further third-party consultation was required by the Department). On 28 March 2022, a decision was made pursuant to s 55K to affirm the decision under review.
10.	MR20/00610	Senator Rex Patrick, Senator for South Australia DOT - Department of the Treasury	25-Jun-20	Application of: <ul style="list-style-type: none"> s 45 (Material obtained in confidence) s 47C (Deliberative processes] s 47E(d) (Certain Operations of Agencies) 	<ul style="list-style-type: none"> On 26 June 2020, the IC Application was lodged by the Applicant and the Applicant subsequently sent a copy of the original decision to the OAIC upon the OAIC's request. On 29 July 2020, the intake, triage and preliminary assessment process was completed. On 3 August 2020, <ul style="list-style-type: none"> the OAIC sent a notice to the Applicant advising that the IC Review process would commence and that allocation of the matter "may take up to 12 months"; the OAIC sent a 'Notice of IC review and request for documents' under FOI Act s 54Z (54Z Notice) to the Department requesting information by 24 August 2020. On 26 August 2020, the Department provided its response to the 54Z Notice (54Z Response) on 26 August 2020. On 28 August 2020, after a review of the Department's 54Z Response, the application was allocated to the SSR Team. The Department provided further material to the OAIC on 30 October 2020. On 12 January 2021, the OAIC provided an update regarding the matter to the Applicant.
11.	MR20/00612	Senator Rex Patrick, Senator for South Australia DOT - Department of the Treasury	26-Jun-20	Application of: <ul style="list-style-type: none"> s 34(1) (Cabinet documents – general rules) s 34(3) (Cabinet decisions or deliberations) 	<ul style="list-style-type: none"> On 26 June 2020, the IC Review application was lodged by the Applicant. The Application referred to two FOI requests made to the Department. On 29 June 2020, the OAIC advised the Applicant that the IC Review Application would be split into two separate matters (to address each of the FOI requests) with individual matter references (MR20/00612 and MR20/00615). On 29 July 2020, the intake, triage and preliminary assessment process was completed. On 4 August 2020: <ul style="list-style-type: none"> the OAIC sent a notice to the Applicant advising that the IC Review process would commence and that allocation of the matter "may take up to 6 months"; the OAIC sent a 'Notice of IC review and request for documents' under FOI Act s 54Z (54Z Notice) to the Department requesting a response by 25 August 2020. On 20 August 2020, the OAIC confirmed with the Applicant that his submissions were due on 14 September 2020. On 31 August 2020, the OAIC granted an extension of time for the Department to provide its response to the 54Z Notice (54Z Response) for this application and related applications

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
					<p>MR20/00613 and MR20/00615 by 8 September 2020. The OAIC also requested that the Department indicate in its submissions whether it would have objections to the matter (and the two other matters: MR20/00613 and MR20/00615) being finalised under s 54W(b) of the FOI Act to enable the Applicant to seek review in the Administrative Appeals Tribunal.</p> <ul style="list-style-type: none"> • The Department provided its 54Z Response on September 8 2020. • Upon review of the 54Z Response, on 10 September 2020, the application was allocated to the SSR Team. • On 14 September 2020, the Applicant provided his submissions to the OAIC. • On 12 January 2021, the OAIC provided an update regarding the matter to the Applicant.
12.	MR20/00613	Senator Rex Patrick, Senator for South Australia DOT - Department of the Treasury	26-Jun-20	<p>Application of:</p> <ul style="list-style-type: none"> • s 34(1) (Cabinet documents – general rules) • s 34(3) (Cabinet decisions or deliberations) 	<ul style="list-style-type: none"> • This application has been case-managed with applications MR20/00612 and MR20/00615. • On 26 June 2020, the IC Review application was lodged by the Applicant. • On <u>or around 29-28 July 2020</u>, the intake, triage and preliminary assessment process was completed; <u>it was assessed that the application should be referred to the SSR Team for case management in due course.</u> • On 3 August 2020: <ul style="list-style-type: none"> ◦ the OAIC sent a notice to the Applicant advising that the IC Review process would commence and that allocation of the matter “may take up to 12 months”; ◦ the OAIC sent a ‘Notice of IC review and request for documents’ under FOI Act s 54Z (54Z Notice) to the Department requesting its response by 24 August 2020. • On 20 August 2020, the OAIC confirmed with the Applicant that his submissions were due on 31 August 2020. • <u>On 31 August 2020, the Applicant provided his submissions.</u> • After being granted two extensions of time on 31 August and 17 September 2020, the Department provided its response to 54Z Notice (54Z Response) on 29 September 2020. • In October 2020, after a review of the Department’s 54Z Response, the application was subsequently referred allocated to the SSR Team. • On 12 January 2021, the OAIC provided an update regarding the matter to the Applicant. • <u>On 4 November 2021, the OAIC advised the Department that the IC Review application is a subject of this proceeding.</u> • <u>On 21 December 2021, the OAIC emailed the Department about providing claimed exempt material in relation to 3 IC reviews (including MR20/00613) using the OAIC’s secure online platform. On 22 December 2021, the Department indicated that its IT Security team would complete a risk assessment of the secure platform by 28 January 2022.</u> • <u>On 6 April 2022, after the OAIC received confirmation that the Department could use the online file transfer platform, a Review Adviser emailed the Department indicating that the OAIC would issue a notice pursuant to s 55U of the FOI Act for production of the documents relevant to MR20/00613.</u> • <u>On 7 April 2022, the Department provided a contact for the proposed s 55U notice, and requested that the OAIC accompany the s 55U notice with materials relating to the use of the</u>

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
					<p>online file transfer platform. On 20 April 2022, the OAIC provided the materials requested to the Department.</p> <ul style="list-style-type: none"> • On 31 May 2022, a notice pursuant to s 55U of the FOI Act was issued to the Department of Treasury, requesting the claimed exempt material by 22 June 2022. • On 3 June 2022, the Deputy General Counsel for the Department sent an email to the OAIC which stated that the Department of Prime Minister and Cabinet had advised that Cabinet documents could not be provided through the online file transfer platform. • On 22 June 2022, the OAIC was notified by the Applicant's representative that he would be the Applicant's contact person in relation to the Applicant's IC review applications until 30 June 2022. • On 24 June 2022, the OAIC accepted Safehands delivery of the documents in response to the s 55U notice.
13.	MR20/00615	Senator Rex Patrick, Senator for South Australia DOT - Department of the Treasury	26-Jun-20	<p>Application of</p> <ul style="list-style-type: none"> • s 34(1) (Cabinet documents – general rules) • s 34(3) (Cabinet decisions or deliberations) 	<ul style="list-style-type: none"> • On 26 June 2020, the IC Review application was lodged by the Applicant. • On 29 July 2020, the intake, triage and preliminary assessment process was completed. • On 4 August 2020: <ul style="list-style-type: none"> ◦ the OAIC sent a notice to the Applicant advising that the IC Review process would commence and that allocation of the matter "may take up to 12 months" and requesting information by 25 August 2020; ◦ the OAIC sent a 'Notice of IC review and request for documents' under FOI Act s 54Z (54Z Notice) to the Department requesting a response by 25 August 2020. • On 20 August 2020, the OAIC confirmed with the Applicant that his submissions were due on 7 September 2020. • On 31 August 2020, the OAIC granted an extension of time for the Department to provide its response to the 54Z Notice (54Z Response) for this application and related applications MR20/00613 and MR20/00615 by 8 September 2020. The OAIC also requested that the Department indicate in its submissions whether it would have objections to the matter (and the two other matters: MR20/00613 and MR20/00615) being finalised under s 54W(b) of the FOI Act to enable the Applicant to seek review in the Administrative Appeals Tribunal. • The Applicant provided his submissions to the OAIC on 7 September 2020. • The Department provided its 54Z Response on 8 September 2020. • On 10 September 2020, after a review of the Department's 54Z Response, the application was allocated to the SSR Team. • On 12 January 2021, the OAIC provided an update regarding the matter to the Applicant.
14.	MR20/00760	Senator Rex Patrick, Senator for South Australia Department of Industry, Science,	6-Aug-20	<p>Application of:</p> <ul style="list-style-type: none"> • s 22 (Access to edited copies with exempt or irrelevant matter deleted) 	<ul style="list-style-type: none"> • On 6 August 2020, the IC Review application was lodged by the Applicant. • On or around 20 18 November 2020, the intake, triage and preliminary assessment process was completed; it was assessed that the application should be referred to the SSR Team for case management in due course.

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
		Energy and Resources		<ul style="list-style-type: none"> • s 45 (Documents containing material obtained in confidence) • s 47(1)(b) (Documents disclosing commercially valuable information) 	<ul style="list-style-type: none"> • On 23 December: <ul style="list-style-type: none"> ◦ the OAIC sent a notice to the Applicant advising that the IC Review process would commence and that allocation of the matter “may take up to 12 months”; ◦ the OAIC sent a 'Notice of IC review and request for documents' under FOI Act s 54Z (54Z Notice) to the Department requesting a response by 15 January 2021. • On 8 January 2021, a response was received from the Applicant's representative to the OAIC's email of 23 December 2020, stating that the Applicant also sought review of the s 47(1)(b) exemption claimed by the Department. • On 12 January 2021, the OAIC provided an update to the Applicant regarding the matter. • On 7 April 2021, the Department requested extensions of time to provide its material to the OAIC for multiple IC Review applications; with respect to MR20/00760, the Department sought an extension of time to provide its response to the 54Z Notice (54Z Response) by 16 June 2020. • On 15 April 2021, the OAIC sent an email to the Department requesting further submissions by 29 April 2021 in relation to the request for an extension of time, or that the Department prioritise its response. • On 16 April 2021, the Department notified the OAIC that it would provide further submissions in support of the extension of time request by 29 April 2021 and separately notified the OAIC that it had sent notification to a third-party under FOI Act, s 54P ('IC review applications—requirement to notify affected third parties'). • In response to a request by the OAIC, the Department made submissions on 20 April 2021 in support of its application for an extension of time. • On 16 June 2021, the Department requested a further extension of time. • After being granted an extension of time on 24 June 2021, the Department provided its 54Z Response to the OAIC on 2 July 2021. After the OAIC had difficulties accessing some of the material sent by the Department on 2 July, the Department subsequently sent that material to the OAIC on 29 July 2021. • On 30 July 2021, after a review of the Department's 54Z Response, the application was allocated to the SSR Team. • On 4 November 2021, the OAIC advised the Department that the IC Review application is a subject of this proceeding. • On 22 June 2022, the OAIC was notified by the Applicant's representative that he would be the Applicant's contact person in relation to the Applicant's IC review applications until 30 June 2022. • On 15 July 2022, the Department emailed the OAIC requesting a status update for particular IC review applications (including MR20/00424, and applications MR20/00760 and MR20/00863). • On 28 July 2022, the Director of the SSR Team responded indicating that the OAIC had received new contact details for the Applicant but that the OAIC had not been advised that the Applicant has withdrawn any of the specific IC review applications.

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
15.	MR20/00863	Senator Rex Patrick, Senator for South Australia DIIS - Department of Industry, Innovation and Science Department of Industry, Science, Energy and Resources	14-Sep-20	<p>Application of:</p> <ul style="list-style-type: none"> s 22 (Access to edited copies with exempt or irrelevant matter deleted) s 42 (Documents subject to legal professional privilege) s 47F (Public interest conditional exemptions—personal privacy) 	<ul style="list-style-type: none"> On 14 September 2020, the IC Review Application was lodged by the Applicant in respect of a deemed refusal decision by the Department. Between 15 September 2020, the OIAC made preliminary enquiries with the parties and sent a s 54V Notice to the Department pursuant to s 54V requesting relevant information, explanations and a statement of reasons by 23 September 2020. On 16 September 2020, the OIAC made preliminary enquiries with the parties and sent a s 54V Notice to the Department pursuant to s 54V requesting relevant information, explanations and a statement of reasons by 23 September 2020. On 17 September 2020, the Department emailed the OIAC and stated that due to limited resources within the FOI team and a very large increase in requests over the last few months, the Applicant's request had been delayed multiple times. After the OIAC made preliminary enquiries with the Department on 16 September 2020 (pursuant to FOI Act, s 54V) requiring an explanation with regards to the present status of the FOI request, on 28 September 2020, the Department provided to the OIAC its decision on the Applicant's FOI request. After the OIAC provided the Department's substantive decision to the Applicant on 30 September 2020 and requested confirmation as to whether the Applicant wished to proceed with the IC Review application, the Applicant confirmed on 1 October 2020 that he wished to proceed with the IC Review; the OIAC informed the Department of this on 2 October 2020. On or around 18-17 18-17 November 2020, the intake, triage and preliminary assessment process was completed; it was assessed that the application should be referred to the SSR Team for case management in due course. On 7 January 2021, <ul style="list-style-type: none"> the OIAC sent a notice to the Applicant advising that the IC Review process would commence and that allocation of the matter "may take up to 12 months"; the OIAC sent a 'Notice of IC review and request for documents' under FOI Act s 54Z (54Z Notice) to the Department requesting a response by 21 January 2021. Having been granted an extension on 15 April 2021 to provide its response to the 54Z Notice (54Z Response) by 31 May 2021, the Department provided its submissions to the OIAC, with the Department on 1 June 2021 and a corrected version on 11 June 2021. On 23 June 2021, after a review of the Department's 54Z Response, the application was allocated to the SSR Team. On 26 August 2021, the IC review application was allocated to a Review Adviser within the SSR Team. On 27 August 2021, the OIAC provided the Department's submissions to the Applicant and requested the Applicant to advise whether he wished to proceed with the IC Review and if so, to provide submissions by 10 September 2021. On 30 August 2021, the Applicant advised that he wished to proceed with the IC Review and, on 10 September 2021, provided his submissions to the OIAC. On 14 September 2021, the OIAC provided the Applicant's submissions to the Department and invited it to consider whether it would be appropriate to issue a revised decision under FOI Act, s 55G; the OIAC requested a response by 28 September 2021.

Case Number	Title	Date of lodgement	Issues under FOI Act	Status
				<ul style="list-style-type: none"> • On 28 September 2021, the Department provided the OAIC with submissions in response to the Applicant's 10 September 2021 submissions. • On or around 3 November 2021, the IC Review application was re-allocated to an Assistant Review Adviser within the SSR Team. • On 4 November 2021, the OAIC advised the Department that the IC Review application is a subject of this proceeding. • On 5 November 2021, the OAIC requested from the Department an electronic copy of the documents at issue and any further submissions in support of any exemptions claimed over the material, to be provided by 19 November 2021. • On 16 November 2021, the Department responded to the OAIC and sought clarification regarding the applicant's submissions. • On 17 November 2021, the OAIC spoke with the Department regarding the clarification sought and confirmed the due date of the provision of material by 19 November 2021. • After receiving an extension of time by the OAIC on 23 November 2021, the Department provided the OAIC with the documents at issue on 2 December 2021. • On 7 December 2021, the OAIC requested further information from the Department by 14 December 2021. • On 9 December 2021, the Department requested an extension to 22 December 2021, which the OAIC granted on 9 December 2021. • On 22 December 2021, the further material was provided by the Department. • On 22 February 2022, the Assistant Review Adviser sent an email to the Department which requested further submissions, by 8 March 2022, as to the basis on which it had deleted various parts of three of the documents responsive to the FOI request pursuant to s 22 of the FOI Act. • After receiving extensions of time by the OAIC on 7 March and 22 March 2022, the Department emailed the OAIC on 31 March 2022 and stated words to the effect that it proposed to make a revised decision under s 55G of the FOI Act, to release in full two documents the subject of the review with only redactions of a nature that had been agreed by the Applicant, and made submissions in relation to one other document the subject of the review. • On 12 April 2022, the OAIC emailed the Applicant outlining the Department's proposal. • On 18 April 2022, the Applicant made a counter-proposal. • On 20 April 2022, the OAIC emailed the Department setting out the Applicant's counter-proposal, and requested an update from the Department by 4 May 2022. • On 20 April 2022, the Department requested an extension of time until 11 May 2022, which was approved that day. • On 21 April 2022, the matter was reallocated to a new Review Adviser due to changes in OAIC personnel. • On 27 April 2022, the Department requested a further extension of time until 3 June 2022. • On 18 May 2022, the Department sent an email to the OAIC following up on its request for a further extension until 3 June 2022.

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
					<ul style="list-style-type: none"> On 20 May 2022, the OAIC sent an email to the Department which stated that the extension was approved, and requested that the Department provide a copy of its revised decision and submissions to the Applicant by that date. On 8 June 2022, the Department's revised decision was provided to the OAIC and the Applicant. On 9 June 2022, the OAIC was informed by the Applicant's representative that the Applicant was satisfied with the decision with respect to one document and that the Applicant wished to remove that document from the scope of the IC Review. On 22 June 2022, the OAIC was notified by the Applicant's representative that he would be the Applicant's contact person in relation to the Applicant's IC review applications until 30 June 2022. On 22 June 2022, the OAIC emailed the Department indicating in effect that that the Applicant had advised that he wished to proceed with his IC Review application in relation to the remaining documents.
16.	MR20/00922	Senator Rex Patrick, Senator for South Australia DOH - Department of Health	24-Sep-20	<ul style="list-style-type: none"> Application of s 47B (Public interest conditional exemptions – Commonwealth-State relations) 	<ul style="list-style-type: none"> On 24 September 2020, the IC Review Application was lodged with the OAIC; on 1 October 2020, the Applicant provided the OAIC with a copy of the Department's decision. On or around 19 October 2020, the intake, triage and preliminary assessment process was completed; it was assessed that that application should be referred to the SSR Team for case management in due course. On 26 October 2020: <ul style="list-style-type: none"> the OAIC sent a notice to the Applicant advising that the IC Review process would commence and that allocation of the matter "may take up to 12 months"; the OAIC sent a 'Notice of IC review and request for documents' under FOI Act s 54Z (54Z Notice) to the Department requesting a response by 16 November 2020. On 5 November 2020, the Department provided the OAIC with its response to the 54Z Notice (54Z Response). On 6 November 2020, after a review of the Department's 54Z Response, the application was allocated to the SSR Team. On 4 November 2021, the OAIC advised the Department that the IC Review application is a subject of this proceeding. On 22 June 2022, the OAIC was notified by the Applicant's representative that he would be the Applicant's contact person in relation to the Applicant's IC review applications until 30 June 2022.
17.	MR20/00923	Senator Rex Patrick, Senator for South Australia DIIS - Department of Industry,	25-Sep-20	Application of: <ul style="list-style-type: none"> s 34(3) (Exemptions – disclosure of deliberation/ decision of Cabinet) 	<ul style="list-style-type: none"> On 25 September 2020, the IC Review application was lodged by the Applicant. On 11 February 2021, the intake, triage and preliminary assessment process was completed. On 1 May 2021:

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
		Innovation and Science		<ul style="list-style-type: none"> • s 42 (Documents subject to legal professional privilege) • s 47C (Public interest conditional exemptions—deliberative processes) 	<ul style="list-style-type: none"> ○ the OAIC sent a notice to the Applicant advising that the IC Review process would commence and that allocation of the matter “may take up to 12 months”; ○ the OAIC sent a ‘Notice of IC review and request for documents’ under FOI Act s 54Z (54Z Notice) to the Department requesting a response by 24 May 2021. • After obtaining an extension of time, the Department provided its response to the 54Z Notice (54Z Response) on 28 May 2021. • On 28 May 2021, the Department provided its 54Z Response and indicated to the OAIC that it would make a section 55G decision. • Since 28 May 2021, the OAIC and the Department have exchanged correspondence regarding the Department’s consideration of making a revised decision under FOI Act, s 55G (including the Department requesting multiple extensions of time from the OAIC to provide a revised decision due to delays in consultation with another Department).
18.	MR20/01189	Senator Rex Patrick, Senator for South Australia PMC - Department of the Prime Minister and Cabinet	30-Nov-20	<p>Application of:</p> <ul style="list-style-type: none"> • s 34(3) (Exemptions – disclosure of deliberation/ decision of Cabinet) • s 47E(d) (Public interest conditional exemption – certain operations of agencies: substantial adverse effect on the proper and efficient conduct of the operations of an agency) 	<ul style="list-style-type: none"> • On 30 November 2020 the IC Review application was lodged by the Applicant. • On 5 March 2021, the intake, triage and preliminary assessment process was completed; <u>it was assessed that the application should be referred to the SSR Team for case management in due course.</u> • On 3 May 2021: <ul style="list-style-type: none"> ○ the OAIC sent a notice to the Applicant advising that the IC Review process would commence and that allocation of the matter “may take up to 12 months”; ○ the OAIC sent a ‘Notice of IC review and request for documents’ under FOI Act s 54Z (54Z Notice) to the Department requesting a response by 24 May 2021. • On 1 June 2021, the Department provided its response to the 54Z Notice (54Z Response). • On 2 June 2021, after a review of the Department’s 54Z Response, the application was allocated to the SSR Team and allocated to a review adviser within the SSR Team on 25-26 August 2021. • <u>On 26 August 2021, a meeting took place between the Acting FOI Commissioner, the Principal Director (FOI Commissioner), the Director of the SSR Team and a Review Adviser from that team at which the next steps in relation to this IC Review were discussed. At the meeting, it was decided that a s 55U notice would be issued to the Department requesting production of the material claimed to be exempt pursuant to s 34 of the FOI Act and, before the notice was issued, arrangements should be made with DPMC in relation to the method for delivery of the documents to the OAIC.</u> • <u>On 4 November 2021, the OAIC advised the Department that the IC Review application is a subject of this proceeding.</u> • <u>In late 2021, the OAIC sought approval from the Department to use a secure online platform for the sharing of protected documents with the OAIC.</u> • <u>In November and December 2021 January and February 2022, the OAIC has been in discussion engaged with the Department as to whether or not the documents the subject of the claimed exemption can be provided electronically to the OAIC, or whether safe-hand delivery is required. —These discussions are ongoing as at 20 December 2021.</u>

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
					<ul style="list-style-type: none"> • In March 2022, the OAIC was informed that the online platform could not be used for Cabinet documents. • On 22 June 2022, the OAIC was notified by the Applicant's representative that he would be the Applicant's contact person in relation to the Applicant's IC review applications until 30 June 2022. • On 25 July 2022, the OAIC sent a notice to the Department under s 55U of the FOI Act requiring production of a marked up and unredacted copy of the documents that are claimed to be exempt under s 34 of the FOI Act. • On 4 August 2022: <ul style="list-style-type: none"> ○ The OAIC received an email from an officer in the FOI and Privacy Section of the Department, requesting a one-day extension, until 9 August 2022, to provide the documents in response to the s 55U notice issued on 25 July 2022. ○ The Review Adviser confirmed via email that a one-day extension had been granted. • On 9 August 2022, the OAIC accepted delivery of the documents provided in response to the s 55U notice, via Safehands delivery. • On 12 August 2022, the IC Review application was re-allocated to a new review adviser due to changes in OAIC personnel.
19.	MR21/00059	Senator Rex Patrick, Senator for South Australia PMC - Department of the Prime Minister and Cabinet	21-Jan-21	<ul style="list-style-type: none"> • Application of s 34(3) (Exemptions – disclosure of deliberation/ decision of Cabinet) 	<p>The OAIC Resolve record identifies that the FOI request that is the subject of this Application, is similar to FOI request for application MR20/00394. The Department has confirmed that the submissions made in respect of MR20/00394 should apply to this Application.</p> <ul style="list-style-type: none"> • On 21 January 2021, the IC Review application was lodged by the Applicant. • On 11 February 2021, the intake, triage and preliminary assessment process was completed. • On 16 July 2021: <ul style="list-style-type: none"> ○ the OAIC sent a notice to the Applicant advising that the IC Review process would commence and that allocation of the matter "may take up to 12 months"; ○ the OAIC sent a 'Notice of IC review and request for documents' under FOI Act s 54Z (54Z Notice) to the Department requesting a response by 6 August 2021. In that notice, the OAIC noted that the subject of this IC Review application is the same document sought in a separate IC Review application (which does not involve the Applicant) (Separate Application). The OAIC requested the Department confirm if they wish to rely on their submissions in the Separate Application. • On 9 August 2021, the Department confirmed with the OAIC that the Department's position was that the submissions made in respect of the Separate Application should apply to this application. • After the OAIC followed up with the Department seeking its response to address outstanding matters from the 54Z Notice (54Z Response), the Department provided its 54Z Response on 27 September 2021. • On 31 March 2022, a decision was made pursuant to s 55K to affirm the decision under review.

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
20.	MR21/00144	Senator Rex Patrick , Senator for South Australia DOD - Department of Defence	15 February 2021	Application of: <ul style="list-style-type: none"> • s 22 (Access to edited copies with exempt or irrelevant matter deleted) • s 47C (Public interest conditional exemptions—deliberative processes) • s 47E(d) (Public interest conditional exemptions-certain operations of agencies) 	<ul style="list-style-type: none"> • On 15 February 2021, the IC Review application was lodged by the Applicant. • On 22 March 2021, the intake, triage and preliminary assessment process was completed. • On 18 August 2021: <ul style="list-style-type: none"> ○ the OAIC sent a notice to the Applicant advising that the IC Review process will commence and that allocation of the matter “may take up to 12 months” and requested a response to the matters raised in the notice by 8 September 2021; and ○ the OAIC sent a 'Notice of IC review and request for documents' (54Z Notice) to the Department requesting a response by 8 September 2021. • On 30 August 2021, the Applicant corresponded with the OAIC regarding the timetable for submissions in cases MR21/00144, MR21/00340 and MR21/00422 (proposing that submissions for MR21/00144 be due on 6 September 2021). On 31 August 2021, the OAIC indicated to the Applicant that it agreed with the proposed deadlines. On 6 September 2021, the Applicant provided his submissions to the OAIC. • On or about 15 September 2021, after being granted an extension of time by the OAIC to provide its response to the 54Z Notice, the Department provided its response to the OAIC.
21.	MR21/00340	Senator Rex Patrick , Senator for South Australia PMC - Department of the Prime Minister and Cabinet	13-Apr-21	<ul style="list-style-type: none"> • Application of s 47C (Public interest conditional exemptions—deliberative processes) 	<ul style="list-style-type: none"> • On 13 April 2021, the IC Review application was lodged by the Applicant. • On or around 16 April 2021, the Department issued to the Applicant its substantive decision on the Applicant's FOI request. • On 19 April 2021, the OAIC indicated to the Applicant that it understood that the Department had provided the Applicant with the substantive decision on his FOI request and asked the Applicant to confirm if he intended to proceed with the IC Review of the Department's decision and requested a response by 26 April 2021. • On 27 April 2021, the Applicant provided the OAIC with a copy of the Department's decision and requested an IC Review the Department's decision. • On 12 May 2021, the intake, triage and preliminary assessment process was completed. • On 18 August 2021: <ul style="list-style-type: none"> ○ the OAIC sent a notice to the Applicant advising that the IC Review process will commence and that allocation of the matter “may take up to 12 months” and requested a response to the matters raised in the notice by 8 September 2021; and; ○ the OAIC sent a 'Notice of IC review and request for documents' (54Z Notice) to the Department requesting a response by 8 September 2021. • On 30 August 2021, the Applicant corresponded with the OAIC regarding the timetable for submissions in cases MR21/00144, MR21/00340 and MR21/00422 (proposing that submissions for MR21/00340 be due on 13 September 2021). On 31 August 2021, the OAIC indicated to the Applicant that it agreed with the proposed deadlines. • On 13 September 2021, after being granted an extension of time by the OAIC on 30 August 2021, the Applicant provided his submissions.

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
					<ul style="list-style-type: none"> The OAIC granted extensions of time to the Department to provide its response to the 54Z Notice on 13 September, 27 September and 30 September 2021. The deadline ultimately set was 28 October 2021. On 30 September 2021, the OAIC issued to the Department a notice pursuant to FOI Act, s 55T ('Information gathering powers—production of exempt documents generally').
22.	MR21/00422	Senator Rex Patrick, Senator for South Australia DOH - Department of Health	7-May-21	Application of: <ul style="list-style-type: none"> s 22 (Access to edited copies with exempt or irrelevant matter deleted) s 47C (Public interest conditional exemptions – deliberative processes) s 47E (Public interest conditional exemptions – certain operations of agencies – adverse effect on the management or assessment of personnel) s 47F (Public interest conditional exemptions – personal privacy) s 47G (Public interest conditional exemptions – business) 	<ul style="list-style-type: none"> On 7 May 2021, the IC Review application was lodged by the Applicant. On 12 May 2021, the intake, triage and preliminary assessment process was completed. On 18 August 2021: <ul style="list-style-type: none"> the OAIC sent a notice to the Applicant advising that the IC Review process will commence and that allocation of the matter "may take up to 12 months" and requested a response to the matters raised in the notice by 8 September 2021; the OAIC sent a "Notice of IC review and request for documents" under s 54Z of FOI Act (54Z Notice) to the Department requesting a response by 8 September 2021. On 30 August 2021, the Applicant corresponded with the OAIC regarding the timetable for submissions in cases MR21/00144, MR21/00340 and MR21/00422 (proposing that submissions for MR21/00422 be due on 20 September 2021). On 31 August 2021, the OAIC indicated to the Applicant that it agreed with the proposed deadlines. On 31 August 2021, the OAIC granted the Department an extension of time for it to provide its response to the 54Z Notice (54Z Response) by 22 September 2021. The Applicant filed his submissions on 21 September 2021. On 13 September 2021, the Department requested the OAIC provide the Applicant's submission and for the OAIC to advise of a new date for the Department to provide its 54Z Response. On 24 September 2021, the OAIC provided the Applicant's submissions to the Department and requested the Department provide its 54Z Response by 15 October 2021. The Department submitted its 54Z Response on 12 October 2021. On 14 October 2021, after a review of the Department's 54Z Response, the application was allocated to SSR Team.
23.	MR21/00551	Senator Rex Patrick, Senator for South Australia DOH	21-Jun-21	Application of: <ul style="list-style-type: none"> s 45 (Public interest conditional exemptions – 	<ul style="list-style-type: none"> On 21 June 2021, the IC Review application was lodged by the Applicant. On 29 July 2021, the intake, triage and preliminary assessment process was completed. On 18 August 2021:

	Case Number	Title	Date of lodgement	Issues under FOI Act	Status
		- Department of Health		<p>documents containing material obtained in confidence)</p> <ul style="list-style-type: none"> • s 47 (Exemptions – documents containing trade secrets of commercially valuable information) • s 47C (Public interest conditional exemptions – deliberative processes) • s 47E (Public interest conditional exemptions – certain operations of agencies) • s 47F (Public interest conditional exemption – personal privacy) • s 47G (Public interest conditional exemptions – business) 	<ul style="list-style-type: none"> ○ the OAIC sent a notice to the Applicant advising that the IC Review process will commence and that the matter was awaiting further consideration by a review adviser which could take “up to 12 months”; and ○ the OAIC sent a 'Notice to IRC review and request for documents' under s 54Z of FOI Act (54Z Notice) to the Department requesting a response by 8 September 2021. • On 31 August 2021, the OAIC granted an extension of time for the Department to submit its response to the 54Z Notice (54Z Response) by 22 September 2021 (rather than 8 September 2021). • On 13 September 2021, the Department requested the OAIC provide the Applicant's submission and for the OAIC to advise of a new date for the Department to provide its 54Z Response.

Annexure Certificate

No. VID519 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

REX PATRICK

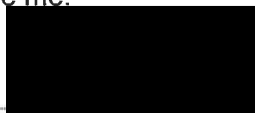
Applicant

AUSTRALIAN INFORMATION COMMISSIONER

Respondent

ANNEXURE "GK-2"

Before me:



Signature of person taking affidavit

Dated: 15 September 2022

KA WING KELVIN NG
Level 38, Olderfleet
477 Collins Street Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)



24 August 2022

Email: fverlato@ozemail.com.au
fverlato@mahonys.net.au

Attention: Mr Flavio Verlato
Flavio Verlato Barrister & Solicitor
PO Box 2149
Glynde SA 5070

Norton Rose Fulbright Australia
ABN 32 720 868 049
Level 38, Olderfleet
477 Collins Street
MELBOURNE VIC 3000
AUSTRALIA

Tel +61 3 8686 6000
Fax +61 3 8686 6505
GPO Box 4592, Melbourne VIC 3001
DX 445 Melbourne
nortonrosefulbright.com

Direct line
+61 3 8686 6680

Email
andrew.riordan@nortonrosefulbright.com

Your reference: 22PBPatrick
Our reference: 4045403

Dear Colleagues

VID519/2021 - Senator Patrick v Australian Information Commissioner

1. We refer to the above proceeding and to our client's concise statement in response to the further amended concise statement dated 20 December 2021 (**Concise Response**).
2. In the course of preparing for the hearing of this matter, it has become apparent that there is an issue as to whether, in light of the evidence recently filed on behalf of our client, our client is presently subject to a duty for the purpose of s 7 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**ADJR Act**) to make a decision in relation to any of the eight remaining Information Commissioner (**IC**) reviews that are the subject of the separate question.
3. As you are aware, section 7(1) of the ADJR Act enables a person to seek an order for review in respect of a failure to make a decision where a decision-maker has a duty to make a decision to which the ADJR Act applies.
4. Section 55K(1) of the *Freedom of Information Act 1982* (Cth) (**FOI Act**) provides that: "After undertaking an IC review, the Information Commissioner must make a decision in writing...". The evidence filed on behalf of our client indicates that, in relation to each of the eight IC reviews that remain the subject of the separate question, the IC review process is ongoing. In light of that evidence, it will be contended on behalf of our client that section 55K(1) does not presently impose a duty on our client to make a decision in relation to any of the eight matters.
5. Our client intends to seek leave to amend her Concise Response to add a new paragraph 17A, as follows:

17A. *Each of the IC review applications in Appendix A that has not yet been determined is the subject of an ongoing IC review in accordance with Div 6 of Pt VII of the FOI Act. Pursuant to s 55K(1) of the FOI Act, the Information Commissioner's duty to make a decision in writing arises only after the Information Commissioner has undertaken an IC review. As a result of the IC review process being ongoing, the statutory precondition to the duty under s 55K of the FOI Act is not satisfied in relation to each*

APAC-#302643827-v3

24 August 2022


 ^NORTON ROSE FULBRIGHT

of the extant IC review applications in Appendix A. Accordingly, in relation to each of the extant IC review applications in Appendix A, the Information Commissioner does not presently have a duty to make a decision to which the Administrative Decisions (Judicial Review) Act 1977 (Cth) (**ADJR Act**) applies. A necessary precondition for an application for an order of review pursuant to s 7(1) of the ADJR Act is therefore not satisfied.

6. In addition, our client will seek to amend paragraph 18 of the Concise Response as follows:

18. *Having regard to the circumstances:*

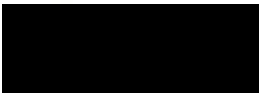
(a) by reason of the IC review in respect of each of the extant IC review applications in Appendix A being ongoing, there is presently no duty on the Information Commissioner to make a decision pursuant to s 55K(1) of the FOI Act. A necessary precondition for an application for an order of review pursuant to s 7(1) of the ADJR Act is therefore not satisfied and the application should be dismissed as incompetent;

(b) alternatively, if the application is competent, there has been no unreasonable delay in determination of the 23 IC review applications, and ~~the~~ the application should be dismissed.

7. In addition to the above, our client proposes to seek leave to amend the Concise Response to reflect the position in relation to each of the eight IC review applications addressed in the evidence filed recently on our client's behalf. We expect to be in a position to provide your client with the proposed amended Concise Response tomorrow, 25 August 2022 and will seek your client's consent to its filing.

8. We appreciate that your client may not be in a position to address the competency argument outlined above in his submissions that are due to be filed on 26 August 2022. We see no difficulty with that issue being addressed in reply, at which point your client will have had an opportunity to consider our client's submissions in relation to the issue.

Yours sincerely



Andrew Riordan
Partner
Norton Rose Fulbright Australia

Annexure Certificate

No. VID519 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

REX PATRICK


Applicant

AUSTRALIAN INFORMATION COMMISSIONER

Respondent

ANNEXURE "GK-3"

Before me:



Signature of person taking affidavit

Dated: 15 September 2022

KA WING KELVIN NG
Level 38, Olderfleet
477 Collins Street Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Flavio Verlato

Barrister & Solicitor
A.B.N. 96 273 157 215

Also consulting in Mount Gambier

PO Box 2149
Glynde SA 5070
Mobile: 0417 852 676
EMAIL: fverlato@ozemail.com.au
fverlato@mahonys.net.au

25 August 2022

My Ref: 22PBPatrick
Your Ref: 4045403

EMAIL: guru.kuganathan@nortonrosefulbright.com

Norton Rose Fulbright
GPO Box 4592
Melbourne VIC 3001

Dear Colleagues

RE: VID519/2021 - Office of Senator Rex Patrick v Australian Information Commissioner

We continue to act for the Applicant in the above proceeding.

We refer to your letter of 24 August 2022, sent by email at 4.57pm, wherein you indicate your client's intention to amend its Concise Statement in response to the further amended concise statement dated 20 December 2021.

We note you intend to amend to oppose our client's application on the basis of s 7(1)(a) of the *Administrative Decisions (Judicial Review) Act 1977 (Cth) (ADJR Act)* where previously your client only opposed the application on the basis that there had been no unreasonable delay within the meaning of s 7 of the ADJR Act.

For the sake of clarity, we set out the terms of s 7 of the ADJR Act:

(1) *Where:*

- (a) *a person has a duty to make a decision to which this Act applies;*
- (b) *there is no law that prescribes a period within which the person is required to make that decision; and*
- (c) *the person has failed to make that decision;*

a person who is aggrieved by the failure of the first-mentioned person to make the decision may apply to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) for an order of review in respect of the failure to make the decision on the ground that there has been unreasonable delay in making the decision.

At no time prior to 24 August 2022 has the Respondent raised any question in relation to whether she has a relevant duty for the purposes of s 7(1) of the ADJR Act despite:

IMPORTANT

This e-mail is a confidential communication to the person named above. It may be subject to legal professional privilege or otherwise protected under applicable laws. The use of this transmission or the information and data comprising it by any person other than the named addressee is prohibited. If you have received this transmission but you are not the named addressee would you please telephone us on 8365 4500 and make arrangements for its secure return.

- (a) The Applicant having filed the proceeding under s 7 of the ADJR Act on 9 September 2021, some 12 months ago.
- (b) Applicant's Concise Statement filed on 9 September 2021 referring at paragraph 11 to a duty arising under the relevant provision of the *Freedom of Information Act 1982* (Cth) (**FOI Act**), and at paragraph 12 to s 7(1) of the ADJR Act being the provision under which the application is brought.
- (c) The parties filed written submissions for the interlocutory hearing held on 26 November 2021 which included consideration of the merits of the proceeding.

We also note that this new matter has been raised by the Respondent in the context of:

- (a) The Applicant currently working on its reply evidence and submissions in the matter which are due to be filed tomorrow, 26 August 2022.
- (b) The Respondent seeking the Applicant's consent for two separate extensions of time to file evidence, and on both occasions seeking a response from the Applicant to the new timetable within a matter of hours of the request.
- (c) The Respondent's evidence having been due on 18 July 2022 eventually being filed on 5 and 6 August 2022.
- (d) The Respondent filing amended evidence on 22 August 2022 (without leave) to provide previous material which was incorrectly redacted in the material filed on 6 August 2022.

We also note that this is not the first time the Respondent has raised a matter it considered to be of some importance at the eleventh hour and at a time when the Applicant and his pro bono legal team were trying to focus on preparing for imminent filing or hearing dates. We specifically refer to the letter sent at 5.36pm on 24 November 2021 taking issue with the

Applicant's estimate of the Respondent's costs (which had been provided to the Respondent in the affidavit of Ms Majury filed on 18 October 2021), and raising a further matter which the Respondent required a response to by 4pm on 25 November 2021, the day prior to the interlocutory hearing.

Suffice to say we are concerned that the Respondent now sees fit to seek a late amendment to raise the issue for the first time in the proceeding.

In the circumstances, we do not have instructions to consent to the Respondent's request for leave to make the amendment. Such an amendment is not "as of right" (*Aon Risk Services v Australian National University* (2009) 239 CLR 175) and leave is wholly within the discretion of the court applying its case management principles.

Given the matters raised on 22 August, and now the matter raised on 24 August and the considerable time which the Applicant and his lawyers have had to spend dealing with those issues when material is due to be filed tomorrow, we seek your consent to an extension of time to Wednesday 31 August 2022 for the Applicant to file his evidence in reply and submissions.

Counsel for the Applicant is listed in another matter on Monday 29 August which she will be preparing for over the coming weekend. In the circumstances, we consider an extension to Wednesday 31 August to be appropriate.

Further, it has become apparent from the evidence filed by the Respondent that the Respondent may be intending to argue that some or all of the delays in processing the "separate question" applications are the result of resourcing issues. We request confirmation of whether that is the case and, if so, we reserve the right to include responsive material in reply as to the effect of delay on the Applicant's right to information under the FOI Act. Given the submissions and evidence in reply are due to be filed by 4pm on 26 August, we seek your response by **10am on 26 August 2022**.

Thank you for receiving this correspondence and for the reply

Kindest Regards



FLAVIO VERLATO

Liability limited by a scheme approved under the Professional Standards Legislation.

cc: andrew.riordan@nortonrosefulbright.com

ENC:

Annexure Certificate

No. VID519 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

REX PATRICK

Applicant

AUSTRALIAN INFORMATION COMMISSIONER

Respondent

ANNEXURE "GK-4"

Before me:



Signature of person taking affidavit

Dated: 15 September 2022

KA WING KELVIN NG
Level 38, Olderfleet
477 Collins Street Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

26 August 2022

Email: fverlato@ozemail.com.au
fverlato@mahonys.net.au

Attention: Mr Flavio Verlato
Flavio Verlato Barrister & Solicitor
PO Box 2149
Glynde SA 5070

Norton Rose Fulbright Australia
ABN 32 720 868 049
Level 38, Olderfleet
477 Collins Street
MELBOURNE VIC 3000
AUSTRALIA

Tel +61 3 8686 6000
Fax +61 3 8686 6505
GPO Box 4592, Melbourne VIC 3001
DX 445 Melbourne
nortonrosefulbright.com

Direct line
+61 3 8686 6680

Email
andrew.riordan@nortonrosefulbright.com

Your reference:	Our reference:
22PBPatrick	4045403

Dear Colleagues

VID519/2021 - Senator Patrick v Australian Information Commissioner

1. We refer to the above proceeding, to your letter dated 25 August 2022 (**Your Letter**) in response to our letter dated 24 August 2022 (**Our Letter**).

Request for extension of time to 31 August 2022

2. We refer to your client's request for an extension of time to file his submissions and any evidence in reply from 26 August 2022 to 31 August 2022. Our client has carefully considered the matters raised in Your Letter as being the reasons for seeking that extension.
3. It is not clear to us as to why an extension of time is required to file your client's submissions on the basis of the matters outlined in Our Letter. Our client sought to bring the matters in Our Letter – which go to the competency of your client's application – to your attention well in advance of filing her submissions due on 7 September 2022 to enable you to have sufficient time to consider those issues. As noted in paragraph 8 of Our Letter, we see no difficulty with that argument being addressed by way of reply.
4. It is also not clear to us as to why the fact that a re-affirmed affidavit of Ms Rocelle Dowsett was filed on 22 August 2022 provides a basis for seeking this extension. As apparent in paragraph 6A of that affidavit, the affidavit sought to address relatively minor matters in the text of the original affidavit filed on 6 August 2022 and to rectify a software issue which impacted the redactions to some of the documents comprising the exhibit to the affidavit. Save for those matters, the affidavit material filed on behalf of our client has remained the same since it was filed and served on 5 and 6 August 2022.
5. Our client accordingly does not consider the matters raised in Your Letter to provide sufficient reasons for our client to consent to the extension. Nonetheless, if your client does require an extension of time to file his submissions and any reply evidence by 31 August 2022 for other reasons, we invite you to outline those reasons. Subject to considering those reasons, our client would be prepared to consent to that request for an extension on the basis that:

APAC-#302669854-v1

26 August 2022

 NORTON ROSE FULBRIGHT

- (a) our client receives a commensurate extension to file her submissions (that is, the time for filing those submissions be extended to 4pm on 12 September 2022); and
- (b) the above being the only consequential amendment to the current timetable (noting that there is currently only 1 business day between your client filing any reply submissions and the start of the hearing on 26 September 2022).

Proposed amended concise statement in response

- 6. We acknowledge that you do not have instructions to consent to our client's request for leave for her to amend her concise statement in response to the further amended concise statement dated 20 December 2021 (**concise response**).
- 7. Notwithstanding that, it is our client's position that the question regarding the competency of your client's application (as outlined in Our Letter) will still need to be addressed for the purposes of the hearing commencing on 26 September 2022.
- 8. For the sake of ensuring that our client's concise response accurately reflects her position on this issue, we will in due course seek the leave of the Court to amend the concise response accordingly.

Further evidence by your client

- 9. Lastly, we refer to your client's request for confirmation that our client may be intending to argue that some or all of the delays in processing the "separate question" applications are the result of resourcing issues.
- 10. It will be our client's contention that the small number of staff available in the SSR team (as described in the affidavit of Ms Dowsett) has impacted on the OAIC's ability to process the increasing volume of IC review applications.
- 11. While it is a matter for your client as to what further evidence he wishes to adduce, it is not presently clear to us why he seeks to adduce evidence on the impact to his right to information under the FOI Act when those matters have already seemingly been addressed in his affidavit affirmed on 10 June 2022 (see, for example, paragraphs 7 to 22 of that affidavit). Nonetheless, our client expects that any further evidence to be adduced will be filed by way of evidence in reply as provided for under the current timetabling orders.
- 12. Our client otherwise reserves her rights.

Yours sincerely



Andrew Riordan
Partner
Norton Rose Fulbright Australia

Annexure Certificate

No. VID519 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

REX PATRICK

Applicant

AUSTRALIAN INFORMATION COMMISSIONER

Respondent

ANNEXURE "GK-5"

Before me:



Signature of person taking affidavit

Dated: 15 September 2022

KA WING KELVIN NG
Level 38, Olderfleet
477 Collins Street Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)



8 September 2022

Email: fverlato@ozemail.com.au
fverlato@mahonys.net.au

Attention: Mr Flavio Verlato
Flavio Verlato Barrister & Solicitor
PO Box 2149
Glynde SA 5070

Norton Rose Fulbright Australia
ABN 32 720 868 049
Level 38, Olderfleet
477 Collins Street
MELBOURNE VIC 3000
AUSTRALIA

Tel +61 3 8686 6000
Fax +61 3 8686 6505
GPO Box 4592, Melbourne VIC 3001
DX 445 Melbourne
nortonrosefulbright.com

Direct line
+61 3 8686 6680

Email
andrew.riordan@nortonrosefulbright.com

Your reference:	Our reference:
22PBPatrick	4045403

Dear Colleagues

VID519/2021 - Senator Patrick v Australian Information Commissioner

1. We refer to the above proceeding. Please find **enclosed** by way of service, the following documents which have been filed with the Court today on behalf of the Respondent:
 - written outline of submissions;
 - list of authorities; and
 - supplementary affidavit of R A Dowsett, affirmed on 8 September 2022 (**Supplementary Affidavit**).
2. As foreshadowed in our letter dated 26 August 2022, we **enclose** a Proposed Amended Concise Statement in Response (with accompanying Appendix A). On behalf of the Respondent, we will be seeking the leave of the Court to file the documents and seek your client's consent to such leave being granted. Please let us know whether your client consents to leave being granted by **4.00pm on Monday, 12 September 2022**.

Supplementary Affidavit

3. Since the filing of the affidavit of R A Dowsett on 22 August 2022 (**First Affidavit**), the status of some IC review applications that are the subject of the separate question¹, has evolved. Accordingly, the primary purpose of the Supplementary Affidavit (as reflected in Part A of the Supplementary Affidavit) is to assist the parties to provide the Court with updated information regarding the progress of the eight remaining IC reviews that are the subject of the separate question, for the purpose of the hearing. Part B of the Supplementary Affidavit briefly addresses two additional matters.

¹ Per the orders made by Justice Wheelehan on 8 December 2021.
APAC-#302807273-v1

8 September 2022

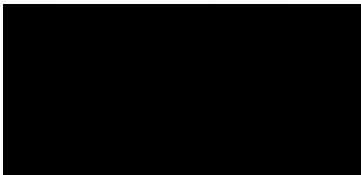
 NORTON ROSE FULBRIGHT

Amended Concise Statement in Response to Further Amended Concise Statement

4. As foreshadowed in our correspondence to you dated 26 August 2022, we will be seeking the leave of the Court, on behalf of the Respondent, to file an Amended Concise Statement in Response (with accompanying Appendix A), in the form enclosed with this letter. The amendments have been implemented in Court mark up with:
 - (a) deletions of text made with double strike-through and in black text; and
 - (b) additions of text in underline and in blue text.

5. The amendments address the matters identified in our 24 August 2022 letter, including:
 - (a) to address the question regarding the competency of your client's application; and
 - (b) to reflect the current position in relation to each of the eight IC review applications addressed in the First Affidavit and Supplementary Affidavit.

Yours sincerely



Andrew Riordan
Partner
Norton Rose Fulbright Australia

Annexure Certificate

No. VID519 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

REX PATRICK

Applicant

AUSTRALIAN INFORMATION COMMISSIONER

Respondent

ANNEXURE "GK-6"

Before me:



Signature of person taking affidavit

Dated: 15 September 2022

KA WING KELVIN NG
Level 38, Olderfleet
477 Collins Street Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Flavio Verlato

Barrister & Solicitor
A.B.N. 96 273 157 215

Also consulting in Mount Gambier

PO Box 2149
Glynde SA 5070
Mobile: 0417 852 676
EMAIL: fverlato@ozemail.com.au
fverlato@mahonys.net.au

13 September 2022

My Ref: 22PBPatrick

Your Ref: 4045403

EMAIL: andrew.riordan@nortonrosefulbright.com
guru.kugananthan@nortonrosefulbright.com

Norton Rose Fulbright
GPO Box 4592
Melbourne VIC 3001

Dear Colleagues

RE: VID519/2021 - Rex Patrick v Australian Information Commissioner

We refer to your various recent correspondence and provide the following responses and additional comments.

Leave to amend the Respondent's Further Amended Concise Statement

The Applicant does not consent to the grant of leave to amend the Respondent's Further Amended Concise Statement. The Applicant takes issue with the following proposed amendments:

- (a) Proposed amendments to paragraph 8
- (b) the date proposed to be amended in paragraph 17
- (c) proposed paragraph 17A
- (d) proposed paragraph 18(a) (and consequentially the first part of paragraph 18(b))
- (e) proposed paragraph 18(c)

The Applicant would not oppose the grant of leave for the remaining proposed amendments.

Leave to file further affidavits

We note that a supplementary affidavit of Ms Dowsett affirmed 8 September 2022 was filed with the court without leave. The Applicant does not consent to leave being granted to file this further material.

Cross examination of witnesses

The Applicant intends to cross examine Ms Hampton and Ms Dowsett.

Production of documents

Finally, we refer to the affidavit of Ms Dowsett affirmed 22 August 2022 and specifically exhibit **RES.00054**. The final page of the document (page 14 in the PDF document) refers to

IMPORTANT

This e-mail is a confidential communication to the person named above. It may be subject to legal professional privilege or otherwise protected under applicable laws. The use of this transmission or the information and data comprising it by any person other than the named addressee is prohibited. If you have received this transmission but you are not the named addressee would you please telephone us on 8365 4500 and make arrangements for its secure return.

a number of documents which do not appear in the remainder of the exhibit, including the following:

- (a) RE: MR20/00054 – Patrick and DFAT – 8 July 2022 6:20pm
- (b) RE: MR20/00054 – Patrick and DFAT [SEC=OFFICIAL] – 11 July 2022 12:26pm
- (c) MR20/00054 Intention to undertake / not undertake IC review – 15 July 9:32am
- (d) RE: MR20/00054 – Rex Patrick and Department of Foreign Affairs and Trade [SEC=OFFICIAL] 14 July 2022 5:12pm
- (e) RE: MR20/00054 – Rex Patrick and Department of Foreign Affairs and Trade [SEC=OFFICIAL] 14 July 2022 4:52pm

We request discovery and production of the five documents referred to above. Please produce the documents by 4pm on Thursday 15 September 2022.

We reserve the right to seek further discovery in relation to other parts of the exhibited material and will notify you accordingly.

Communication with the court

Unless we hear from you within the next 2 hours, we intend to email the court the following:

Dear Associate,

We refer to the Respondent's email to the court at 10pm on Thursday 8 September 2022, the attachments thereto and to the Supplementary Affidavit of Ms Dowsett filed by the Respondent on the same day. We note that in its email to the court the Respondent set a date for response by the Applicant of Monday 12 September 2022. Counsel for the Applicant was unavailable due to personal reasons for the whole of Friday 9 September and Monday 12 September.

We have now had an opportunity to respond to the Respondent on a number of issues, including the question of leave to file an amended Concise Statement, and the filing of supplementary affidavit material in the absence of an order providing for such filing. The Applicant opposes the grant of leave for both the amendment to the concise statement and the filing of further affidavit material.

The Respondent was notified of the text of this email and is also copied in.

Should you intend to approach the court to bring the question of leave on for a Case Management Conference, please advise the court that the Applicant's counsel commences a 2 day hearing at 10am tomorrow and is travelling to Echuca on Friday for a case related site visit. Consequently, her earliest availability would be for an online hearing on Friday in the late afternoon. Ms Acreman is available at any time on Monday or Tuesday of next week.

Thank you for receiving this correspondence.

Kindest Regards

FLAVIO VERLATO

Annexure Certificate

No. VID519 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

REX PATRICK

Applicant

AUSTRALIAN INFORMATION COMMISSIONER

Respondent

ANNEXURE "GK-7"

Before me:



Signature of person taking affidavit

Dated: 15 September 2022

KA WING KELVIN NG
Level 38, Olderfleet
477 Collins Street Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

From: Guru Kuganathan
Sent: Tuesday, 13 September 2022 4:52 PM
To: Mahony's Lawyers - Flavio Verlato; fverlato@ozemail.com.au
Cc: Andrew Riordan; Tess Waldron
Subject: RE: Rex Ptrick v Australian Information Commissioner VID519-2021 (4045403)[NRF-APAC.FID3008722]
Attachments: 2209013 - Letter to NRF.pdf
Categories: Filed
Database: APAC
E-mail ID: 95272432
Matter Number: 4045403

Dear Colleagues,

Thank you for your letter. With respect to the proposed communication to the Court, we have considered the matters in your letter and we intend to make an application for our client to have leave to file an amended concise statement in response.

Accordingly, we request that the proposed communication embedded in your letter is not sent to the Court, as we will communicate with the Court about the proposed application and also inform the Court that your client opposes the grant of leave for both the amendment to the concise statement in response and the filing of further affidavit material.

Kind regards,

Guru Kuganathan | Senior Associate
Norton Rose Fulbright Australia
Level 38, Oldfleet, 477 Collins Street, Melbourne, Australia
Tel +61 3 8686 6449 | Mob +61 400 998 556 | Fax +61 3 8686 6505
guru.kuganathan@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

Law around the world
nortonrosefulbright.com

For your health and safety, we ask visitors to Norton Rose Fulbright Australian offices to adhere to the following protocols prior to entry to our offices: [click here](#).

From: Guru Kuganathan
Sent: Tuesday, 13 September 2022 4:32 PM
To: Mahony's Lawyers - Flavio Verlato <fverlato@mahonys.net.au>; fverlato@ozemail.com.au
Cc: Andrew Riordan <andrew.riordan@nortonrosefulbright.com>; Tess Waldron <tess.waldron@nortonrosefulbright.com>
Subject: RE: Rex Ptrick v Australian Information Commissioner VID519-2021 (4045403)[NRF-APAC.FID3008722]
Importance: High

Dear Colleagues,

We refer to your proposed communication to the Court embedded in your letter **attached**.

We do not consent to you providing that proposed communication to the Court and we will provide a more substantive response shortly.

Kind regards,

Guru Kuganathan | Senior Associate
 Norton Rose Fulbright Australia
 Level 38, Olderfleet, 477 Collins Street, Melbourne, Australia
 Tel +61 3 8686 6449 | Mob +61 400 998 556 | Fax +61 3 8686 6505
guru.kuganathan@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

Law around the world
nortonrosefulbright.com

For your health and safety, we ask visitors to Norton Rose Fulbright Australian offices to adhere to the following protocols prior to entry to our offices: [click here](#).

From: Mahony's Lawyers - Flavio Verlato <fverlato@mahonys.net.au>
Sent: Tuesday, 13 September 2022 2:51 PM
To: Andrew Riordan <andrew.riordan@nortonrosefulbright.com>; Guru Kuganathan <guru.kuganathan@nortonrosefulbright.com>
Cc: Tess Waldron <tess.waldron@nortonrosefulbright.com>
Subject: Rex Ptrick v Australian Information Commissioner VID519-2021 (4045403)[NRF-APAC.FID2997534]
Importance: High

[External Email – Use Caution]

Dear Colleagues,
 Referring to previous correspondence, please receive the letter attached.

Kind Regards,

Flavio Verlato
 Consultant, Mount Gambier and Campbelltown Offices



WOODVILLE | SALISBURY | CAMPBELLTOWN | MOUNT GAMBIER

38 Bay Road Mount Gambier SA 5290
 Mount Gambier T: 08 8723 4499
 3/633 Lower North East Road Campbelltown SA 5074
 Campbelltown T: 08 8345 8111
 E: fverlato@mahonys.net.au
 W: www.mahonys.net.au



CAUTION - This email (including any attachments) may contain confidential and/or legally privileged information and is intended only to be read or used by the addressee. If you are not the intended addressee, any use, distribution, disclosure or copying of this email is strictly prohibited. Confidentiality and legal privilege attached to this email (including any attachments) are not waived or lost by reason of its mistaken delivery to you. If you have received this email in error, please delete it and notify us immediately by telephone or email.

Message protected by MailGuard: e-mail anti-virus, anti-spam and content filtering.
<https://www.mailguard.com.au/mg>

Annexure Certificate

No. VID519 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

REX PATRICK

Applicant

AUSTRALIAN INFORMATION COMMISSIONER

Respondent

ANNEXURE "GK-8"

Before me:



Signature of person taking affidavit

Dated: 15 September 2022

KA WING KELVIN NG
Level 38, Oldfleet
477 Collins Street Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)



15 September 2022

Email: fverlato@ozemail.com.au
fverlato@mahonys.net.au

Attention: Mr Flavio Verlato
Flavio Verlato Barrister & Solicitor
PO Box 2149
Glynde SA 5070

Norton Rose Fulbright Australia
ABN 32 720 868 049
Level 38, Olderfleet
477 Collins Street
MELBOURNE VIC 3000
AUSTRALIA

Tel +61 3 8686 6000
Fax +61 3 8686 6505
GPO Box 4592, Melbourne VIC 3001
DX 445 Melbourne
nortonrosefulbright.com

Direct line
+61 3 8686 6680

Email
andrew.riordan@nortonrosefulbright.com

Your reference:	Our reference:
22PBPatrick	4045403

Dear Colleagues

VID519/2021 - Senator Patrick v Australian Information Commissioner

1. We refer to your letter dated 13 September 2022 (**Your Letter**).

Interlocutory application

2. Further to our email sent on 13 September 2022 at 4.22pm AEST as an initial response to Your Letter, we wish to advise that our client will be making an interlocutory application seeking orders that:
 - (a) The Respondent be granted leave to file and serve an amended concise statement in response in the form enclosed with this minute.
 - (b) Pursuant to rule 1.39 of the *Federal Court Rules 2011* (Cth), the time by which the Respondent may file a notice of objection to competency under rule 31.05(1) be extended to the date of the determination of the application.
3. We expect to file and serve that interlocutory application within the next business day.
4. We will seek to have the hearing of the interlocutory application listed as early as reasonably practicable on a date convenient to his Honour and will inform the Court of your counsel's availability, as set out in Your Letter. We will provide you with notice of our proposed communication to the Court before issuing that communication.

Supplementary affidavit of Rocelle Dowsett affirmed 8 September 2022

5. At the hearing of the separate question, the respondent will seek to tender the supplementary affidavit of Rocelle Dowsett affirmed 8 September 2022. We understand from Your Letter that your client intends to object to the tender of that affidavit. We consider the appropriate time to address your client's objection to that evidence is at the point when it is sought to be tendered by the respondent, and we do not propose to seek any orders in relation to the supplementary affidavit in the interlocutory application.

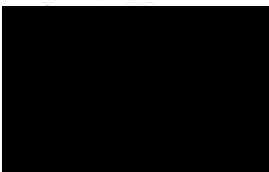
15 September 2022

 NORTON ROSE FULBRIGHT

Request for “discovery and production” of documents

6. We refer to the request for “discovery and production” of five documents listed in Your Letter and to the statement that *“We reserve the right to seek further discovery in relation to other parts of the exhibited material and will notify you accordingly.”* As you are aware, no orders for discovery have been made in this proceeding. Accordingly, neither party to the proceeding is subject to any obligations to give discovery.
7. If your client seeks discovery of information from our client, then that is a matter that ought to be addressed with the Court through an appropriate application, rather than by way of correspondence.
8. However, given the confined nature of your client’s request for the five documents on this occasion, our client is prepared to provide those documents to you – please find them enclosed. Consistent with the approach adopted for the documents exhibited to the affidavits of Ms Dowsett filed on 6 August 2022 and 8 September 2022, the documents have been redacted so as not to disclose information that is privileged, confidential or personal, or because the redacted information relates to reviews being undertaken by the Information Commissioner that are not the subject of this proceeding.
9. We are otherwise instructed that these documents comprise internal communications between staff of the Office of the Australian Information Commissioner concerning IC review application MR20/00054. We also note the following:
 - (a) For document (c) (“MR20/00054 Intention to undertake / not undertake IC review 15-Jul-2022 9:32 AM”), we are instructed that the version of the document enclosed is the version that can be currently accessed by our client on the Resolve database that corresponds with that entry. Due to a function in that document, the date of the attachment is automatically updated when opened, and so the copy of the document we have provided is dated 14 September 2022.
 - (b) We have also enclosed a copy of the attachment to document (d) (“RE: MR20/00054 - Rex Patrick and Department of Foreign Affairs and Trade [SEC=OFFICIAL] 14-Jul-2022 5:12 PM”), being a document titled “s 55U Notice - 613.docx”. Again, due to a function in that attachment, the date of the attachment is automatically updated when opened, and so the copy of the attachment we have provided is dated 14 September 2022.
10. Our client otherwise reserves her rights with respect to any further requests of this kind made by your client.

Yours sincerely



Andrew Riordan
Partner
Norton Rose Fulbright Australia

Annexure Certificate

No. VID519 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

REX PATRICK

Applicant

AUSTRALIAN INFORMATION COMMISSIONER

Respondent

ANNEXURE "GK-9"

Before me:



Signature of person taking affidavit

Dated: 15 September 2022

KA WING KELVIN NG
Level 38, ~~Olderfleet~~
477 Collins ~~Street~~ Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Form 68
 Rules 31.05(1)(a); 31.24(1)(a); 33.30(1)(a)

Notice of objection to competency

No. VID519 of 2021

Federal Court of Australia
 District Registry: Victoria
 Division: General

Rex Patrick

Applicant

Australian Information Commissioner

Respondent

The Respondent objects to the competency of the amended originating application dated 10 December 2021 (**Amended OA**).

Grounds of objection

1. In respect of each of the Information Commissioner reviews (**IC reviews**) in Appendix A to the Amended OA, to the extent that the respondent has not formed the state of satisfaction that the IC review has been undertaken under Part VII of the *Freedom of Information Act 1982* (Cth) (**FOI Act**), alternatively to the extent that the respondent is in fact continuing to undertake an IC review under Part VII of the FOI Act:
 - (a) the statutory precondition to the existence of a duty under s 55K(1) of the FOI Act is not satisfied;
 - (b) the respondent does not have a duty to make a decision to which the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**ADJR Act**) applies; and
 - (c) a necessary precondition for an application for an order of review pursuant to s 7(1) of the ADJR Act is not satisfied.

Filed on behalf of (name & role of party)	Australian Information Commissioner (the Respondent)		
	Andrew Morrison Riordan of Norton Rose Fulbright and Zoe Maud of counsel		
Prepared by (name of person/lawyer)	Maud of counsel		
Law firm (if applicable)	Norton Rose Fulbright Australia		
Tel	+61 3 8686 6680	Fax	+61 3 8686 6505
Email	andrew.riordan@nortonrosefulbright.com		
Address for service (include state and postcode)	Level 38, Olderfleet, 477 Collins Street, Melbourne, VIC 3000		

Date:

Signed by Norton Rose Fulbright
Solicitor for the Respondent