

NOTICE OF FILING

Details of Filing

Document Lodged: Notice of Objection to Competency - Form 68 - Rule 31.05(1)(a)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
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File Number: VID519/2021
File Title: REX PATRICK v AUSTRALIAN INFORMATION COMMISSIONER
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Registrar

Important Information

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 of the filing of the document is determined pursuant to the Court's Rules.



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

**Amended 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 second further amended originating application dated ~~40 December 2021~~ 30 September 2022 (**Amended OA**).

Grounds of objection

1. In relation to paragraphs 1 and 2 of the Amended OA:

(a) 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:

- (i) the statutory precondition to the existence of a duty under s 55K(1) of the FOI Act is not satisfied;
- (ii) 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

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(iii) a necessary precondition for an application for an order of review pursuant to s 7(1) of the ADJR Act is not satisfied.

(b) Section 55(4)(c) of the FOI Act does not create a duty to make a decision to which the ADJR Act applies, and accordingly to the extent that the applicant seeks an order of review in respect of the conduct of the IC reviews in Appendix A, a necessary precondition for an application for an order of review pursuant to s 7(1) of the ADJR Act is not satisfied.

2. In relation to paragraphs 3 and 4 of the Amended OA, the conduct in which the respondent is said to have engaged (or to be engaging) is not identified or discernible. To the extent that the applicant seeks an order of review in respect of conduct that was not engaged in, or is not being engaged in, for the purpose of making a decision to which the ADJR Act applies, a necessary precondition for an application for an order of review pursuant to s 6(1) of the ADJR Act is not satisfied.

Date: ~~20 September 2022~~ 17 October 2022



Signed by Norton Rose Fulbright
Solicitor for the Respondent