

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 18/10/2021 10:32:28 AM AEDT 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:	SENATOR REX PATRICK v AUSTRALIAN INFORMATION COMMISSIONER
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 18/10/2021 10:32:34 AM AEDT

A handwritten signature in blue ink, reading "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. VD519 of 2021

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law & Human Rights

**Senator Rex Patrick**

Applicant

**Australian Information Commissioner**

Respondent

Affidavit of: **David Morris**

Address: 6 O'Connell Street, Sydney

Occupation: Chief Executive Officer

Date: 16 October 2021

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5	Exhibit <b>DM-4</b> , being copy of the final orders in relation to both proceedings commenced by EDO's client, IFAW in the AAT.	[17]	73-75

Filed on behalf of (name & role of party) \_\_\_\_\_

Prepared by (name of person/lawyer) \_\_\_\_\_

Law firm (if applicable) \_\_\_\_\_

Tel \_\_\_\_\_

Fax \_\_\_\_\_

Email \_\_\_\_\_

**Address for service**

(include state and postcode) \_\_\_\_\_

Document number	Details	Paragraph	Page
6	Exhibit “ <b>DM-5</b> ”, being an application made by EDO’s client, HSI on or around 19 September 2016, seeking merits review of a decision made by the OAIC.	[21]	76-132
7	Exhibit “ <b>DM-6</b> ”, being a copy of the final orders made by the AAT in relation to EDO’s client, HIS’s proceeding in the AAT.	[22]	133-134
8	Exhibit “ <b>DM-7</b> ”, being a copy of EDO’s submission on behalf of its client, Greenpeace Australia Pacific, to the OAIC dated 20 July 2017.	[23]	135-143
9	Exhibit “ <b>DM-8</b> ”, being a letter from the OAIC to EDO’s client, Greenpeace Australia Pacific, dated 6 September 2018.	[26]	144-147

On 16 October 2021 I, David Morris of 6 O’Connell Street, Sydney, sincerely declare and affirm that:

1. I am the Chief Executive Officer of the Environmental Defenders Office Ltd (**EDO**). I am also a qualified lawyer admitted to practice in the State of New South Wales. I have been the Chief Executive Officer of the EDO since October 2017.
2. The EDO is an accredited community legal centre and registered charity. The EDO has a public charitable purpose of ‘conserving, protecting, enhancing and/or promoting the natural environment or any part of it and including the natural surroundings of humans, whether affecting them as individuals or in social groupings by way of providing legal services – including assistance, advice, information, law reform commentary and policy analysis’.
3. I make this affidavit from my own knowledge and belief save where otherwise stated. Where I depose to matters based on information and belief, I believe those matters to be true.
4. I have read the Form 15 Originating Application and the Form NCF1 Concise Statement which bear the seal of the Court and were filed on behalf of the Applicant in this proceeding.
5. The EDO frequently uses Freedom of Information (**FOI**) laws to obtain information that assists our clients and the general public who are concerned about public interest environmental matters. FOI Applications made by our office occur in a wide variety of matters and for a broad range of clients, including nationally significant matters of environmental concern. Often, access to information on such matters is sought under the *Freedom of Information Act 1982* (Cth) (**FOI Act**).
6. My experience in these matters is that it is rare for applications for access to information made under the FOI Act to progress in a way I would regard as expeditious or reasonable.
7. Below, I set out three examples of matters in which EDO has acted for clients who have made applications for access to material under the FOI Act, and where the disclosure of the relevant material has been significantly delayed. The clients of EDO whose cases I refer to below consented to me affirming this affidavit in the proceeding. I provide this information to



the best of my knowledge and based on a recent review of these matters by lawyers employed by EDO.

**I. FOI Application to the National Offshore Petroleum Safety and Environmental Management Authority on behalf of the International Fund for Animal Welfare**

8. From around 2014, EDO acted for the International Fund for Animal Welfare (**IFAW**) in relation to a proposal by Bight Petroleum Pty Ltd's (**Bight**) to conduct the Lightning 3D Marine Seismic Survey (**Lightning 3DMSS**) in an offshore area of the Great Australian Bight. Bight submitted an Environment Plan (**EP**) in relation to the Lightning 3DMSS for assessment by the National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**). On 6 June 2014, NOPSEMA accepted the EP for the Lightning 3DMSS. The result was that the Lightning 3DMSS could proceed subject to compliance with the terms of the EP.
9. On 27 June 2014, EDO made an application under the FOI Act to NOPSEMA on behalf of IFAW, seeking (among other things) the EP for the Lightning 3DMSS and NOPSEMA's assessment of the EP under the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2014* (Cth).
10. On 28 November 2014, NOPSEMA granted IFAW's FOI Act application in part but refused access to or redacted parts of certain documents. It also reserved its decision in relation to other documents sought by IFAW's application (**28 November Decision**).
11. On 10 December 2014, IFAW applied for review by the Office of the Australian Information Commissioner (**OAIC**) of the 28 November Decision.
12. On 24 December 2014, NOPSEMA made its decision in relation to the remaining documents sought under IFAW's FOI Act application (**24 December Decision**).
13. On 21 January 2015, IFAW applied for review by the OAIC of the 24 December Decision.
14. On 23 February 2015 and 5 March 2015 respectively, the OAIC wrote to IFAW and notified it that the OAIC did not intend to undertake the requested reviews by IFAW in relation to the 28 November Decision and the 24 December Decision.
15. On 26 March 2015 and 1 April 2015 respectively, the OAIC gave written notice to IFAW of its decision under s 54W(b) to not undertake reviews of the 28 November Decision and the 24 December Decision. A copy of the OAIC's correspondence to IFAW of 26 March 2015 is annexed to this affidavit and marked "**DM-1**". A copy of the OAIC's correspondence to IFAW of 1 April 2015 is annexed to this affidavit and marked "**DM-2**".
16. On 23 April 2015, EDO applied to the Administrative Appeals Tribunal (**AAT**) on behalf of IFAW for merits review of OAIC's decisions of 26 March 2015 and 1 April 2015 to not undertake reviews of the 28 November Decision and the 24 December Decision and also of the 28 November Decision and the 24 December Decision themselves. Separate reviews were initiated in relation to the 28 November Decision and the 24 December Decision. A copy of those applications for AAT review is annexed to this affidavit and marked "**DM-3**".



17. On 5 January 2016, both AAT reviews were resolved by agreement. NOPSEMA agreed to release much of the disputed information originally sought by IFAW 18 months earlier. A copy of the final orders in relation to both proceedings is annexed to this affidavit and marked “**DM-4**”.

## **II. FOI Application to the Commonwealth Department of the Environment on behalf of Humane Society International Inc.**

18. The background to this matter is set out in paragraphs [2] – [9] of a decision of the OAIC under s 55L of the FOI Act dated 1 September 2016 and given published as *Humane Society Inc and Department of the Environment* [2016] AICmr 57 (1 September 2016) (**HSI OAIC Decision**). A copy of the HSI OAIC Decision is available at p 9 of annexure “DM-5”, which I explain below.
19. EDO’s client in the matter was Humane Society International Inc (**HSI**). As will be apparent from the summary referred to at [18] above, HSI made an application under the FOI Act to the Commonwealth Department of the Environment (**Department**) for disclosure of documents.
20. On 11 September 2015, HSI applied for external review of the Department’s decision in relation to that application. That application was not decided by the OAIC until 1 September 2016.
21. On or around 19 September 2016, HSI made an application to the AAT, seeking merits review of the HSI OAIC Decision. A copy of that application is annexed to this affidavit and marked “**DM-5**”.
22. Some three years after the initial FOI application was lodged, the matter was resolved by agreement. The Department agreed to release most of the information and on 27 February 2018, the AAT issued a decision under s 42C of the *Administrative Appeals Tribunal Act 1975* (Cth), recording that agreement and releasing the information. A copy of the final orders made by the AAT in the proceeding is annexed to this affidavit and marked “**DM-6**”.

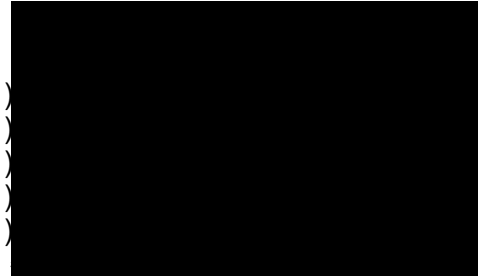
## **III. FOI Application to NOPSEMA on behalf of Greenpeace Australia Pacific**

23. The background to this matter is set out in paragraphs [3] – [9] of EDO’s submission to the OAIC dated 20 July 2017, a copy of which is annexed to this affidavit and marked “**DM-7**”.
24. As will be apparent from paragraphs [3] – [9] of DM-7, on 30 August 2016, Greenpeace Australia Pacific (**Greenpeace**) made an application under the FOI Act for disclosure of documents in the possession of NOPSEMA.
25. On 19 January 2017, Greenpeace applied to the OAIC for review of NOPSEMA’s decision concerning its FOI application.



26. On 6 September 2018, NOPSEMA made a new decision and granted access to the documents. This was notified to Greenpeace in a letter from the OAIC dated 6 September 2018. A copy of that letter is annexed to this affidavit and marked "DM-8".

Sworn / Affirmed by the deponent  
at Sydney  
in NSW  
on 16 October 2021  
Before me:



re of witness

Jessica Trappel

Qualification: Solicitor

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## Certificate of Exhibit DM-1

No. VID519 of 2021

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law & Human Rights

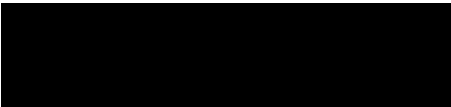
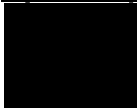
**Senator Rex Patrick**

Applicant

**Australian Information Commissioner**

Respondent

This and the following 3 pages form Exhibit DM-1 to the Affidavit of David Morris affirmed on 16 October 2021 before me.

  
nature of witness

me:

*Jessica Trappel*

Qualification: Solicitor



Our reference: MR14/00436  
Agency reference: FO64:A393668

Mr Matthew Collis  
International Fund For Animal Welfare

Via email: [mcollis@ifaw.org](mailto:mcollis@ifaw.org)

Dear Mr Collis,

### **Application for review of an FOI decision – International Fund For Animal Welfare**

I refer to your application for Information Commissioner review (IC review) of a decision made by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) under the *Freedom of Information Act 1982* (Cth) (the Act) on 24 December 2014.

I wrote to you on 23 February 2015 indicating my intention not to undertake an IC review as I considered it desirable for the IC reviewable decision to be considered by the Tribunal. You were invited to provide a response by 9 March 2015.

In your telephone conversation with the OAIC on 11 March 2015, you indicated that you intended to apply to the Tribunal for a review of this matter.

### **Discretion not to undertake an IC review**

As a delegate of the Information Commissioner under s 54W(b) of the Act, having considered the circumstances of this application, I have decided to exercise my discretion to decide not to undertake an IC review on the basis that it is desirable that the IC reviewable decision be considered by the Tribunal.

Given the complexity of this matter relative to the current capacity of the OAIC, it is unlikely to be resolved in a reasonable time period through the IC review process. I have reached this view because of:

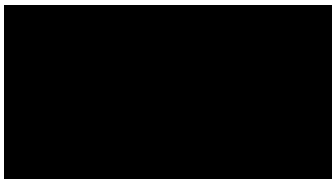
- the technical complexity of the documents in issue and the likelihood that a variety of exemptions may apply to them; and
- it appears unlikely that this matter will be either resolved informally or finalised by way of decision by the OAIC within a reasonable time period.

In coming to this conclusion the views of NOPSEMA were sought. The agency did not respond to the Office's intention to exercise discretion not to undertake an IC review of this matter under s 54W(b) of the Act.

An application for review of the relevant IC reviewable decision may be made to the Tribunal under s 57A within 28 days of this notice.

As such, your application is now considered finalised by this office.

Yours sincerely,



Karen Toohey  
Assistant Commissioner  
Dispute Resolution branch

26 March 2015

## **Summary of filing fees for FOI matters before the Administrative Appeals Tribunal**

No fee is payable if the FOI decision concerns a document relating to a decision that is specified in Schedule 3 to the AAT Regulations 1976: reg 19(2)(b) of the AAT Regulations 1976. Schedule 3 sets out decisions in relation to which no fee is payable to apply to the AAT for a review. They include decisions under the following legislation:

- family assistance law
- *Military Rehabilitation and Compensation Act 2004*
- *National Disability Insurance Act 2013*
- *Safety, Rehabilitation and Compensation Act 1988*
- social security law
- *Veterans' Entitlements Act 1986*.

The standard fee of \$861 is otherwise payable unless the person is eligible to pay a reduced fee of \$100.

A reduced fee is payable if the applicant:

- has been granted legal aid for the application to which the fee relates;
- holds a health care card, a pensioner concession card, a Commonwealth seniors health card or any other card issued by the Department of Social Services or the Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions;
- is in prison or lawfully detained in a public institution;
- is under 18 years of age; or
- is receiving youth allowance, Austudy or ABSTUDY.

A reduced fee is also payable if the AAT decides that paying the full fee would cause the person financial hardship. A [form](#) to apply for financial hardship is available on the AAT website.

Further information on filing fees is available from the AAT's website at <http://www.aat.gov.au/FormsAndFees/Fees.htm>

## Certificate of Exhibit DM-2

No. VID519 of 2021

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law & Human Rights

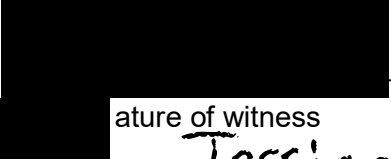
**Senator Rex Patrick**

Applicant

**Australian Information Commissioner**

Respondent

This and the following 3 pages form Exhibit DM-2 to the Affidavit of David Morris affirmed on 16 October 2021 before me.



Signature of witness

Name:

Qualification: Solicitor

*Jessica Trappel*



Our reference: MR15/00061  
Agency reference: FO64

Mr Matthew Collis  
International Fund For Animal Welfare

Via email: [mcollis@ifaw.org](mailto:mcollis@ifaw.org)

Dear Mr Collis

## **Application for review of an FOI decision – International Fund for Animal Welfare**

I refer to your application for Information Commissioner review (IC review) of a decision made by the National Offshore Petroleum Safety and Environmental Management Authority under the *Freedom of Information Act 1982* (Cth) (the Act) on 24 December 2014.

I wrote to you on 5 March 2015 indicating my intention not to undertake an IC review as I considered it desirable for the IC reviewable decision to be considered by the Administrative Appeals Tribunal. You were invited to provide a response by 13 March 2015.

In your telephone conversation with the OAIC on 11 March 2015, you indicated that you intended to apply to the Tribunal for a review of this matter.

### **Discretion not to undertake an IC review**

As a delegate of the Information Commissioner under s 54W(b) of the Act, having considered the circumstances of this application, I have decided to exercise my discretion to decide not to undertake an IC review on the basis that it is desirable that the IC reviewable decision be considered by the Tribunal.

Given the complexity of this matter relative to the current capacity of the OAIC, it is unlikely to be resolved in a reasonable time period through the IC review process. I have reached this view because of:

- the technical complexity of the documents in issue and the likelihood that a variety of exemptions may apply to them; and
- it appears unlikely that this matter will be either resolved informally or finalised by way of decision by the OAIC within a reasonable time period.

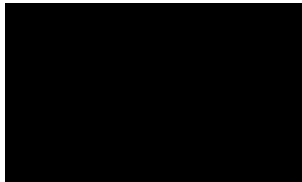


In coming to this conclusion the views of the parties were sought. The agency did not object to the office exercising its discretion not to undertake an IC review of this matter under s 54W(b) of the Act.

An application for review of the relevant IC reviewable decision may be made to the Tribunal under s 57A within 28 days of this notice. A schedule of fees that may apply is attached.

As such, your application is now considered finalised by this office.

Yours sincerely,



Karen Toohey  
Assistant Commissioner  
Dispute Resolution branch

1 April 2015

## Summary of filing fees for FOI matters before the Administrative Appeals Tribunal

No fee is payable if the FOI decision concerns a document relating to a decision that is specified in Schedule 3 to the AAT Regulations 1976: reg 19(2)(b) of the AAT Regulations 1976. Schedule 3 sets out decisions in relation to which no fee is payable to apply to the AAT for a review. They include decisions under the following legislation:

- family assistance law
- *Military Rehabilitation and Compensation Act 2004*
- *National Disability Insurance Act 2013*
- *Safety, Rehabilitation and Compensation Act 1988*
- social security law
- *Veterans' Entitlements Act 1986*.

The standard fee of \$861 is otherwise payable unless the person is eligible to pay a reduced fee of \$100.

A reduced fee is payable if the applicant:

- has been granted legal aid for the application to which the fee relates;
- holds a health care card, a pensioner concession card, a Commonwealth seniors health card or any other card issued by the Department of Social Services or the Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions;
- is in prison or lawfully detained in a public institution;
- is under 18 years of age; or
- is receiving youth allowance, Austudy or ABSTUDY.

A reduced fee is also payable if the AAT decides that paying the full fee would cause the person financial hardship. A [form](#) to apply for financial hardship is available on the AAT website.

Further information on filing fees is available from the AAT's website at <http://www.aat.gov.au/FormsAndFees/Fees.htm>

## Certificate of Exhibit DM-3

No. VID519 of 2021

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law & Human Rights

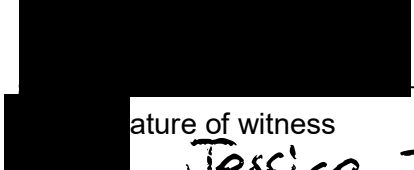
**Senator Rex Patrick**

Applicant

**Australian Information Commissioner**

Respondent

This and the following 58 pages form Exhibit DM-3 to the Affidavit of David Morris affirmed on 16 October 2021 before me.



Signature of witness

Name:

Jessica Trappel

Qualification: Solicitor



# ADMINISTRATIVE APPEALS TRIBUNAL OR SMALL TAXATION CLAIMS TRIBUNAL

## APPLICATION FOR REVIEW OF DECISION

This form can be used to lodge an application to the Commonwealth Administrative Appeals Tribunal (AAT) or to the Small Taxation Claims Tribunal (STCT). Please read the attached information sheet before filling out this form.

### APPLICANT

Title: Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Other N/A

Full name

First name: N/A

Last name: International Fund for Animal Welfare

Gender

Male ☐

Female ☐

Date of birth

N/A

Telephone  
(business)

+61 2 9288 4900

Telephone  
(home)

N/A

Your address

6 Belmore Street  
Surry Hills  
Sydney NSW 2010

Your  
representative's  
name, address and  
telephone number  
(if you have one)

(If you have a representative, please put their name (with firm or company name, if any), address and telephone number in this box.)

EDO NSW  
Level 5, 263 Clarence Street  
Sydney NSW 2000 AUSTRALIA  
E: edonsw@edonsw.org.au  
T: + 61 2 9262 6989

Interpreter

Do you require the assistance of an Interpreter? Yes ☐ No ☒

If yes, for which language?

Disability

If you have a disability and need assistance, please indicate whether:

Visual ☐

Hearing ☐

Wheelchair user ☐

Other, please specify .....

**DECISION**

You do not have to answer this question if you can attach a copy of the decision. If you don't have a copy, please describe the decision briefly:

Decisions are attached:

1. Original access decision by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) dated 28 November 2014 made pursuant to s23 of the Freedom of Information Act 1982 (Cth) (FOI Act);
2. Decision not to deal with external review application dated 26 March 2015 made by the Office of the Australian Information Commissioner under s54W of the FOI Act

Date the decision was made

28 November 2014 (NOPSEMA)  
26 March 2015 (OAIC)

Decision reference

Please refer to the attached Information for Applicants sheet

MR1400436

Date you received notice of the decision

26 March 2015

Who made the decision, if known:

Department or other body:

National Offshore Petroleum Safety and Environmental Management Authority

Address:

Level 8 Alluvion  
58 Mounts Bay Road  
Perth WA 6000

**REASONS FOR APPLICATION**

What are your reasons for seeking review of this decision? Please read the Information for Applicants sheet.

International Fund for Animal Welfare (IFAW) wishes to appeal the partial refusal of access to documents by the National Offshore Petroleum Safety and Environmental Management Authority in application MR1400436, made 28 November 2014.

Discretion not to review this decision was exercised by the Office of the Australian Information Commission on 26 March 2015, under section 54W(b) of the Freedom of Information Act 1982 (Cth) (The Act). Section 57A of the Act entitles the Tribunal to review these decisions if the application is lodged within 28 days of the notice being given.

Further, section 27A (1) of the Administrative Appeals Tribunal Act 1976 (Cth) entitles affected persons to seek review at the AAT. IFAW's interests have been affected by this decision as it is the access applicant for the information requested.

As notice of this decision was made on 26 March 2015, this application has been made in within the 28 day deadline.

**SMALL TAXATION CLAIMS TRIBUNAL (STCT) MATTERS**

(only answer this question if you want a tax decision reviewed in the STCT)

Please read the Information for Applicants sheet for details about the STCT and the Taxation Appeals Division of the AAT before you answer.

Is the amount of tax in dispute less than \$5,000? Yes ☐ No ☐

If yes, and you want your application dealt with in the STCT, please state the amount of tax in dispute.

\$.....

If the amount of tax in dispute is over \$5,000, or you do not state the amount of tax in dispute, your application will be dealt with in the Taxation Appeals Division of the AAT.

Signature

Date

23/4/2015



## Guide to Form 1: APPLICATION FOR REVIEW OF DECISION

Use the *APPLICATION FOR REVIEW OF DECISION* form if you want the Administrative Appeals Tribunal (AAT) to review a decision. The AAT can review a wide range of decisions made under Commonwealth laws by the Australian Government and some non-government bodies. The AAT can also review decisions of the Norfolk Island Government.

### COMPLETING THE FORM

Read this guide and the form carefully and answer all of the questions. If you need more space to answer a question, continue your answer on another sheet of paper and attach it to the form.

Ask the AAT if you need help filling out this form or if you need further information. When you have filled out the form, you can bring it to the AAT in person or send it to us by post, email or fax.

### APPLICANT

#### *Contact details*

The form asks you to give us your address and phone numbers. If you want us to contact you by email or fax, please give us those details as well.

#### *Representative*

You can represent yourself at the AAT or you can be represented by any person you choose. If you tell us that you have a representative, we will send letters and other documents about your case to your representative, instead of sending them to you.

#### *Interpreter*

If you need an interpreter, we will arrange for a qualified interpreter to assist you. Please let us know if you speak a particular dialect.

#### *Disability*

If you have a disability and need assistance, we will try to make appropriate arrangements for you. Our offices have portable hearing loops and are wheelchair accessible.

### DECISION

If you can, attach a copy of the decision you want us to review. If you can't, describe the decision briefly. For example: 'The SSAT decided that I cannot receive disability support pension'.

#### *Date the decision was made and date you received notice of the decision*

There are time limits for lodging an application for review of a decision. The time limit is usually 28 days after you receive the decision. For some types of decisions, it is longer. The time limit is usually stated in the information given to you about your review rights.

The form asks you to tell us when the decision was made and when you received the decision. We need this information to check whether the application has been lodged within the time limit.

If the time limit has expired, you can apply for an extension of time to make your application. We can extend most, but not all, time limits. You can use the following form – *Application for an Extension of Time for Lodging Application for Review of Decision*. It is available on our website.

#### *Decision reference*

You will usually find a reference number for the decision somewhere on the decision itself. By giving us this number, the relevant decision can be identified quickly.

#### *Who made the decision*

If you don't attach a copy of the decision to the form, you need to tell us the name and address of the department or organisation that made the decision.

## REASONS FOR APPLICATION

You must tell us briefly why you want to have the decision reviewed. For example, you may think the decision is wrong and a different decision should be made. You may think that information you provided was not taken into account or the law was not applied correctly.

We cannot start the review if you do not answer this question.

## TAX DECISIONS

Tax decisions are reviewed in our Taxation Appeals Division and in the Small Taxation Claims Tribunal (STCT).

You can choose to have your application reviewed in the STCT if the amount of tax in dispute is less than \$5,000.

There are some differences between the Taxation Appeals Division and the STCT.

- The application fee for the STCT is lower than the fee for the Taxation Appeals Division.
- The STCT's procedures are designed to finalise a review more quickly.
- Hearings in the STCT are held in public unless we order that a hearing should be held in private. Hearings in the Taxation Appeals Division will be held in private if you ask for a private hearing.

If you want to have your decision reviewed in the STCT, complete the STCT section of the form. You must write in the amount of tax that is in dispute in your case.

If the amount of tax in dispute is \$5,000 or more, or you do not complete the STCT section of the form, the decision will be reviewed in the Taxation Appeals Division.

## OTHER INFORMATION ABOUT APPLYING TO THE AAT

### APPLICATION FEE

There is no fee when you apply to us for review of some kinds of decisions. For example: applications about Commonwealth workers' compensation, decisions under the National Disability Insurance Scheme, social security or family assistance payments or veterans' pension decisions.

For other kinds of decisions, a fee must be paid when you lodge your application. The full application fee is \$861. The lower fee for the STCT is \$85.

You might be eligible to pay a reduced fee of \$100 instead of a full application fee. For example:

- you hold a health care card or Commonwealth seniors health card
- you are able to show that you can't afford to pay the full fee.

If you have paid a full application fee and the application is resolved in your favour, most of it will be refunded. There is no refund if you paid the reduced application fee or if the decision was reviewed in the STCT.

For more information about fees, including when there is no fee and whether you might be eligible to pay a reduced fee, go to the AAT website or contact your local AAT office.

#### *How to pay a fee*

You can pay a fee in cash or by cheque, money order, EFTPOS or credit card. We accept payment by American Express, Diners Club, MasterCard and Visa.

All payment types are accepted over the counter at our offices. Credit card payments can also be made by phone.

## **APPLYING TO SUSPEND A DECISION**

In general, a decision continues to operate while we are reviewing it. In some cases, we can order that the decision be suspended while the review is taking place.

If you want to ask us to suspend the operation of the decision, you must complete a *Request for stay order* form and send it to us. The form is available on our website.

## **STEPS IN A REVIEW**

In most cases, we use alternative dispute resolution (ADR) to help the parties – you and the department or organisation that made the decision you want reviewed – try to reach agreement about how the case should be resolved. Many cases are resolved at this stage. ADR processes are held in private.

If agreement cannot be reached, we will hold a hearing and make a decision. Hearings are usually open to the public.

Our procedures and the time needed to complete the review vary from case to case. We aim to have cases finalised within 12 months.

## **WHAT DO WE DO WITH INFORMATION GIVEN TO US?**

We collect information from you to process your application and to carry out the review under the *Administrative Appeals Tribunal Act 1975*.

We give a copy of the form to the department or organisation that made the decision you want reviewed. We may also give a copy to any other person that is a party to the review.

If you give us other information during the review that another party does not have, we will usually give them a copy.

Limited information about a case is usually made available to the public on request and can be accessed using *eCase Search*, our online case search tool. This information includes the names of the parties and any representatives, the type of application, dates of conferences, hearings or other case events, the types of key documents lodged by the parties and the outcome of an application.

More information is usually made publicly available if we hold a hearing and make a decision in the case. Most AAT decisions are published on the internet.

We can order that information be kept confidential if we believe there is good reason to do so. You can apply for an order by writing to us stating what information you want kept confidential and why. In some cases, legislation requires that information be kept confidential.

For more information, see our fact sheet *Privacy and confidentiality at the AAT* and our Privacy Policy. Our Privacy Policy includes information about how you can access and seek correction of your personal information, make a complaint about the way we have handled your personal information and how we will deal with such a complaint. Copies are available on our website or from your local AAT office.

## **MORE INFORMATION ABOUT THE AAT**

More information about the AAT and how we conduct reviews is available on our website. You can also phone your local AAT office. Our staff can give you information about procedures but will not be able to give you legal advice.



## CONTACT THE AAT

### National 1300 number

You can call us on 1300 366 700 from anywhere in Australia. You will be connected to the AAT office in your capital city. Residents of northern NSW (postcodes 2460–2490) and the Northern Territory will be connected to the Brisbane Registry. Callers from fixed phone lines will be charged at local call rates; calls from mobiles may cost more.

### Non-English speakers

Call the Translating and Interpreter Service on 131 450 and ask them to call us.

### If you are deaf or have a hearing or speech impairment

Contact us through the National Relay Service.

- TTY users: call 133 677, then ask for 1300 366 700.
- Internet relay users: connect to the NRS, then ask for 1300 366 700.
- Speak and Listen (speech-to-speech relay) users: call 1300 555 727, then ask for 1300 366 700.
- SMS relay users: call 0423 677 767, then ask for 1300 366 700
- Video relay users: choose the available NRS video relay contact on Skype, then ask for 1300 366 700.

Hearing induction loops are available at our office counters, and in conference and hearing rooms.

## POST

AAT  
GPO Box 9955  
Your capital city  
(Northern Territory residents should write to Brisbane)

AAT  
c/- Supreme Court of Norfolk Island Registry  
Kingston, Norfolk Island 2899

<b>ADELAIDE</b> 11 Floor Chesser House 91 Grenfell Street ADELAIDE SA 5000  Fax 08 8201 0610 Email <a href="mailto:adelaide.registry@aat.gov.au">adelaide.registry@aat.gov.au</a>	<b>BRISBANE</b> Level 4 Commonwealth Law Courts Cnr Nth Quay & Tank St BRISBANE QLD 4000  Fax 07 3361 3001 Email <a href="mailto:brisbane.registry@aat.gov.au">brisbane.registry@aat.gov.au</a>	<b>CANBERRA</b> Level 8 14 Moore St CANBERRA CITY ACT 2600  Fax (02) 6243 4600 Email <a href="mailto:canberra.registry@aat.gov.au">canberra.registry@aat.gov.au</a>
<b>HOBART</b> Commonwealth Law Courts 39–41 Davey St HOBART TAS 7000  Fax (03) 6232 1701 Email <a href="mailto:hobart.registry@aat.gov.au">hobart.registry@aat.gov.au</a>	<b>MELBOURNE</b> Level 16, HWT Tower 40 City Rd SOUTHBANK VIC 3006  Fax (03) 9282 8480 Email <a href="mailto:melbourne.registry@aat.gov.au">melbourne.registry@aat.gov.au</a>	<b>NORFOLK ISLAND</b> Supreme Court of Norfolk Island KINGSTON Norfolk Island 2899  Fax 6723 23403 Email <a href="mailto:sydney.registry@aat.gov.au">sydney.registry@aat.gov.au</a>
<b>PERTH</b> Level 5 111 St Georges Terrace PERTH WA 6000  Fax (08) 9327 7299 Email <a href="mailto:perth.registry@aat.gov.au">perth.registry@aat.gov.au</a>	<b>SYDNEY</b> Level 7 55 Market St SYDNEY NSW 2000  Fax (02) 9283 4881 Email <a href="mailto:sydney.registry@aat.gov.au">sydney.registry@aat.gov.au</a>	

Form 1 Guide – 7/14

23 April 2015

Administrative Appeals Tribunal  
Level 7  
55 Market Street  
Sydney NSW 2000

Dear Registrar

**Application for fee reduction**  
**Attachment to application for review of decisions MR1400436 and MR1500061**

We act for the International Fund for Animal Welfare (IFAW) in the above matters.

**Request for matters to be heard together**

In our view it would be convenient for matters MR14/00436 and MR14/00061 to be heard together by the Administrative Appeals Tribunal (AAT).

The decisions made on 26 March 2015 (MR1400436) and 1 April 2015 (MR1500061) relate to Freedom of Information requests by IFAW to the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

Both matters concern access to information requests for environmental planning documents from Bight Petroleum and NOPSEMA in relation to Bight Petroleum's Lightning 3D Marine Seismic Survey to be conducted in the Bight Basin in South Australia. The applications and their partial refusals raise many of the same issues.

We request that the AAT hear these matters together.

**Request for fee reduction**

Pursuant to Regulation 19(6)(a) of the *Administrative Appeals Tribunal Regulations 1976 (the Regulations)*, applicants who have been granted legal aid under a legal aid scheme or service "established under Commonwealth, State or Territory law or approved by the Attorney-General, for the matter to which the application fee relates..." are entitled to the reduced application fee.

EDO NSW is a legal aid scheme approved by the Attorney-General in Part 1 of the *Legal Aid Schemes and Approvals 2013*.

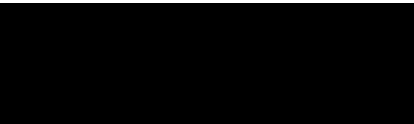
As these matters relate to the same applicant and, in our opinion, may be conveniently heard together, we request that the Registrar exercise the



discretionary power under Regulation 19(5) of the Regulations to order that only one application fee of \$100 be paid by the applicant.

If you require any further information, or clarification of anything in this letter, please do not hesitate to contact me on 9262 6989.

Yours sincerely,  
**EDO NSW**



Elaine Johnson  
Senior Solicitor

Our Ref: 1521943



Our ref: F064: A393668  
Contact: Nadia Ardallch: (08) 6188 8755  
Email: nadia.ardallch@nopsema.gov.au

Mr Matthew Collis  
International Fund for Animal Welfare (IFAW)  
Oceania Regional Office  
6 Belmore Street  
SURRY HILLS NSW 2010

28 November 2014

Dear Mr Collis

**FREEDOM OF INFORMATION REQUEST – NOTICE OF DECISION (ACCESS REFUSAL/PARTIAL REFUSAL)**

This notice contains my decision in relation to access to certain documents in the possession of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) that were requested under the *Freedom of Information Act 1982* (the FOI Act).

On 10 July 2014, you agreed to revise the scope of the request – a copy of the revised scope is attached at **Attachment A**.

On 14 November 2014, the Office of the Australian Information Commissioner (OAIC) NOPSEMA's request to extend the time for issuing a decision in relation to some of those documents. Specifically those documents are the Environment Plan submission documents including appendices and additional information to be included in the environment plan provided by the titleholder post-submission (there are seven documents in total). As per the OAIC's decision of 14 November 2014, a decision will be issued in relation to these remaining documents on or before 24 December 2014.

**Decision**

I am the decision maker in this matter, having been authorised under s 23 of the FOI Act.

Of the documents the subject of this decision, I identified 24 documents that fell within the scope of the request.

After reviewing each of the documents in issue, I have decided to grant access to 14 documents in full, 8 documents in part and refuse access in full to 2 documents. A schedule of these documents is enclosed at **Attachment B**. Specifically, I have decided:

- To grant access in full to documents A350719, A350875, A350876, A355458, A350902, A350949, A351053, A353158, A353959, A354309, A358084, A359100, A365335, A365338.
- to grant access in part to documents A351397, A351867, A353065, A353837, A354195, A353157, A351617, A364761, A365378 with irrelevant matter deleted under section 22 (relates to personal information, agreed to be excluded).

Level 8 Alluvion, 58 Mounts Bay Road, Perth WA 6000  
GPO Box 2568, Perth WA 6001 Australia  
t 08 6188 8700 f 08 6188 8737

- to refuse access in full to documents A369358 and A353065, exempt under s 47C of the FOI Act, documents disclosing deliberative processes of NOPSEMA.

My detailed reasons for refusal of access to documents are set out in the attached statement of reasons (**Attachment C**).

#### **Outstanding charges and release of documents**

Previously we advised you that the estimated charge for processing your request was \$774.05. You agreed to that charge and we received the amount of \$774.05 on 8 October 2014.

The actual amount for processing was calculated to be \$855.00. A revised schedule of charges is enclosed at **Attachment D** and the outstanding charge owing is now \$80.95.

Payment can be made by cheque or by direct deposit into the following account:

Commonwealth Bank of Australia  
BSB: 066-000  
A/c No: 1072 0887  
Account Name: National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)  
Reference: FOI 64

Following payment of the outstanding charge and applicable expiration of third party review rights on 29 December 2014, NOPSEMA will provide you with the documents I have decided to grant access. The third party review rights are the time a third party we consulted during the processing of your request has to seek a review of my decision.

The documents where no third party review rights apply will be released to you upon payment of the outstanding charges. Please advise us when you have made this payment.

#### **Your review rights**

If you are dissatisfied with my decision, you may apply for Internal review or Information Commissioner Review. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

#### **Internal review**

Any application for an internal review of the decision must be made in writing within 30 days of receipt of this decision. No fee is required for an application for internal review. A request for internal review should be directed to the following address:

The Internal Reviewer, Freedom of Information  
NOPSEMA  
GPO Box 2568  
PERTH WA 6001  
Email: [information@nopsema.gov.au](mailto:information@nopsema.gov.au).

No particular form is required but it is desirable to set out in the application the grounds on which you consider that the decision should be reviewed.

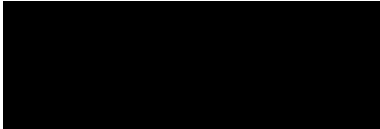
#### **Information Commissioner review**

Alternatively, you may make an application to the Information Commissioner under s 54 of the FOI Act. An application for review to the Information Commissioner must be made in writing within 60 days of receipt of this decision. An application can be made in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review/>  
email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
post: GPO Box 2999, Canberra ACT 2601  
in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to [www.oaic.gov.au/freedom-of-information/foi-reviews](http://www.oaic.gov.au/freedom-of-information/foi-reviews).

Yours sincerely



Nadia Ardalich  
Freedom of Information Coordinator

Attachments

- A. Revised scope of request
- B. Schedule of documents
- C. Statement of reasons
- D. Revised schedule of charges





## Scope of FOI request

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### *FOI Application No. F064*

This FOI request is a request for the following documents:

1. The full version of the Environment Plan submitted by Bight Petroleum for the Lightning 3D Marine Seismic Survey, as accepted by NOPSEMA in a decision dated 6 June 2014
2. NOPSEMA's assessment findings accepting the Environment Plan submitted by Bight Petroleum for the Lightning 3D Marine Seismic Survey, including;
  - a. Regulatory management system record detailing inspector assessment findings
  - b. Correspondence file that NOPSEMA took into account for the purpose of its assessment of the EP

### **SPECIFIC EXCLUSIONS:**

1. Appendix C to the Lightning 3D Marine Seismic Survey, as accepted by NOPSEMA in a decision dated 6 June 2014 (consultation report)
2. Draft and duplicate documents
3. Documents stored by NOPSEMA on back-up storage systems
4. Names and personal information of individuals





**NOPSEMA**

## Schedule of documents – IFAW

## Attachment B

Schedule of Documents A386116

NOPSEMA ID	Date	Description	Decision on access	Exemption
A350719	24/03/14	Email - IFAW to NOPSEMA encl response to invitation to comment on EPBC Act referral	Release document in full	N/A
A350875	24/03/14	Letter - IFAW to Bight Petroleum re response to invitation to comment on EPBC Act referral	Release document in full	N/A
A350876	24/03/14	Paper - IFAW response to invitation for public comment on EPBC Act referral	Release document in full	N/A
A355458	23/04/14	Letter - Senator Wright to NOPSEMA re Bight Petroleum Lightning 3D Seismic EP	Release document in full	N/A
A350902	27/03/14	Email - Internal notification of letter received from IFAW re EP	Release document in full	N/A
A350949	27/03/14	Email - IFAW to NOPSEMA re Bight Petroleum Pty Ltd, Lightning 3D Marine Seismic Survey Environment Plan	Release document in full	N/A
A351053	27/03/14	Email - Internal notification re relevant third party correspondence received from IFAW	Release document in full	N/A
A351397	31/03/14	Email - Bight Petroleum to NOPSEMA - Appendix Record Clarification	Release document in part: • Personal information deleted as per agreed scope	N/A
A351867	01/04/14	Email - Humane Society International to NOPSEMA - Bight Petroleum Environmental Plan consultation	Release document in part: • Personal information deleted as per agreed scope	N/A
A353065	29/05/14	Form - NOPSEMA - Assessment of Consultation Undertaken re responses provided by 3rd Parties	Refuse access to document in full	S47C – deliberative matter

## Schedule of documents – Applicant

## Attachment B

A353158	08/04/14	Email - Internal notification re correspondence received from KIMAG re consultation	Release document in full	N/A
A353959	08/04/14	Email - Internal notification re correspondence from SA Conservation Council	Release document in full	N/A
A353837	14/04/14	Email - Encl Conservation Council SA letter to NOPSEMA	Release document in part: • Personal information deleted as per agreed scope	N/A
A354195	16/04/14	Email - Inc Letter - Encl KI Council Correspondence	Release document in part: • Personal information deleted as per agreed scope	N/A
A354309	16/04/14	Email - Internal notification re third party correspondence from KI Council	Release document in full	N/A
A353157	24/04/14	Email Thread - NOPSEMA to KIMAG re Bight Petroleum consultation	Release document in part: • Personal information deleted as per agreed scope	N/A
A351617	29/04/14	Email - Kangaroo Island Dolphin Watch to NOPSEMA - Bight Petroleum Environmental Plan	Release document in part: • Personal information deleted as per agreed scope	N/A
A358084	22/05/14	Letter - NOPSEMA to Senator Wright re Bight Petroleum EP	Release document in full	N/A
A359100	22/05/14	Email - Internal notification re correspondence received from Eco-Action KI	Release document in full	N/A
A365335	03/06/14	Email - Internal notification confirming no further third party correspondence received	Release document in full	N/A
A364761	06/06/14	Letter - NOPSEMA to Bight Petroleum - Acceptance of Lightning 3D MSS EP	Release document in part: • Personal information deleted as per agreed scope	N/A

A365338	06/06/14	Email - Internal NOPSEMA assessment team recommend acceptance of the Bight Petroleum Pty Ltd Lightning 3D Marine Seismic Survey EP	Release document in full	N/A
A365378	05/06/14	Email - NOPSEMA to Bight Petroleum encl Acceptance Letter	Release document in part: <ul style="list-style-type: none"> <li>Personal information deleted as per agreed scope</li> </ul>	N/A
A369358	Extracted 1/07/2014	Report – Extract of NOPSEMA regulatory management system - assessment 2664 findings	Refuse access to document in full	S47C – deliberative matter



## Reasons for Decision – IFAW

### *Request for access to documents under Freedom of Information Act 1982*

#### Material taken into account

I have taken the following material into account in making my decision:

- the content of the documents that fall within the scope of the request
- the FOI Act (specifically sections 47C and 47G)
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the OAIC Guidelines)
- the views of a third party consulted by NOPSEMA under s 27 of the FOI Act
- provisions of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) and the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (the Environment Regulations)
- Statement of reasons (provided to the International Fund for Animal Welfare) in relation to NOPSEMA's acceptance of the Lightning 3D Marine Seismic Survey dated 1 August 2014
- Publicly available documents relating to the activity (Environment Plan Summary published on NOPSEMA's website<sup>1</sup>; Referral 2013/6770 documents under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) published on the Department of Environment website<sup>2</sup>).

The attached schedule (**Attachment B**) indicates each document (or part thereof) to which access is refused. My reasons for refusing access are given below.

#### Application of exemption provisions

##### *Public interest conditional exemption – s 47C – deliberative processes*

*Document ID A369358 – Extract of NOPSEMA regulatory management system – assessment 2664 findings*

*Document ID A353065 – NOPSEMA Assessment of consultation responses provided by third parties*

Document A369358 is a record of the scientific opinions and recommendations of the lead assessor (environmental specialist) in relation to an assessment of the submission of the Lightning 3D Marine Seismic Survey Environment Plan (the Lightning EP) submitted by the titleholder in relation to undertaking a seismic survey off the coast of South Australia. The document records the assessor's detailed scientific deliberations as to whether the Lightning EP complies with each assessment criteria required to be met under the Environment Regulations which led to the delegate's decision to accept the EP.

Document A353065 is a file note record of the assessor's deliberations in relation to how the Lightning EP complies with the specific assessment criteria in r 11A, relating to the consultation with 'relevant persons'

<sup>1</sup> <http://www.nopsema.gov.au/assets/epsummaries/Resubmission-2-EP-Summary-Bight-Petroleum-Lightning-3D-MSS.pdf>

<sup>2</sup> [http://www.environment.gov.au/cgi-bin/epbc/epbc\\_ap.pl?name=referral\\_detail&proposal\\_id=6770](http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=referral_detail&proposal_id=6770)



under the Environment Regulations. Specifically, NOPSEMA must assess that the plan demonstrates that the titleholder has carried out the consultations required by r 11A.

A document is conditionally exempt under s 47C of the FOI Act if its disclosure would disclose information relating to opinion, advice or recommendation obtained for the purposes of the deliberative functions of an agency. The deliberative processes involved in the functions of an agency are its thinking processes; the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action<sup>3</sup>. The OIAC guidelines provide that a deliberative process may include the recording or exchange of opinions, advice, recommendations, a collection of facts or opinions or interim decisions or deliberations.

Deliberative matter must relate to the functions of an agency, but does not include operational information (information about the functioning of the agency itself) or purely factual information. However, the exemption does extend to 'factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it'<sup>4</sup>.

On assessment of documents A369358 and A353065, I formed the view that the documents disclose deliberative matter. The documents record the assessor's detailed "thought processes" as to how the Lightning EP meets the criteria in the Environment Regulations to reduce risks and impacts to the environment. NOPSEMA is the 'Regulator' for the purposes of assessing compliance with the Environment Regulations, which is part of NOPSEMA's broader function to regulate management of the environment by the offshore oil and gas industry when undertaking petroleum activities in Commonwealth waters<sup>5</sup>.

Whilst I acknowledge that some of the information in the documents would be considered purely 'factual', it is so intertwined with the deliberative material that it would be impractical to excise it to provide edited versions of the documents.

Accordingly, I am satisfied that the documents A369358 and A353065 fall within the scope of the conditional exemption for s 47C of the FOI Act on the basis that they disclose NOPSEMA's internal deliberations in conducting its assessment of the titleholder's Lightning EP submission.

Under the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest. My weighing of public interest factors follows.

Of the factors favouring disclosure set out in s 11B(3) of the FOI Act, the following are relevant to this request:

- a) promote the objects of the FOI Act to allow access to information held by government; including, relevantly:
  - to reveal the reason for a government decision and any background or contextual information that informed the decision
  - to enhance the scrutiny of government decision-making
- b) inform debate on a matter of public importance.

One further relevant factor in favour of disclosure, as provided in the OIAC guidelines includes:

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<sup>3</sup> See *Re JE Waterford and Department of Treasury (No 2)* [1984] AATA 67.

<sup>4</sup> *Parnell & Dreyfus and Attorney-General's Department* [2014] AICmr 71 [38]

<sup>5</sup> See s646 of the OPGGS Act.

- reveal environmental or health risks of measures relating to public health and safety and contribute to the protection of the environment<sup>6</sup>.

There are no statutory factors against disclosure set out in the FOI Act. However, having regard to the OIAC guidelines at paragraph 6.29, I consider that the following are relevant factors against disclosure of the documents:

- that disclosure could reasonably be expected to prejudice NOPSEMA's ability to obtain confidential information
- that disclosure could reasonably be expected to prejudice NOPSEMA's ability to obtain similar information in the future.

When undertaking the assessment process, the assessor may sometimes obtain additional information from the titleholder to assist with their deliberations on the submission. Such information is provided in confidence, to enable the titleholder's full cooperation. Although I acknowledge that it is in the interests of titleholders to cooperate with NOPSEMA, releasing such information through NOPSEMA's deliberations could reasonably be expected to prejudice NOPSEMA's ability to obtain the same level of detail in the future. The need for confidentiality is particularly important where the interests of third parties are affected and there are potentially significant commercial implications arising from the detailed deliberations, which are also apparent in this case.

Not listed in the OIAC Guidelines, but relevant to this decision, is that disclosure of this information could reasonably be expected to inhibit the effectiveness of the decision-making and deliberative processes of NOPSEMA. NOPSEMA is conscious of the need to ensure that deliberations recorded for environment plan assessments are frank and sufficiently detailed to ensure that the decision delegate is properly informed before making their decision.

I consider that the assessment findings documents are not records of NOPSEMA's decision. In this regard, I note that the decision to accept the Lightning EP was set out in NOPSEMA's decision letter to the titleholder; document A364761, which has been released under this request. Further, a statement of reasons in relation to NOPSEMA's decision was provided to IFAW under the *Administrative Decisions (Judicial Review) Act 1977*. In my view, the public interest that exists in revealing reasons for a government decision has already been satisfied by the provision of these documents.

I also confirm that the following (irrelevant) factors have not been taken into account in deciding whether access to the document would be, on balance, contrary to the public interest:

- a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- b) access to the document could result in any person misinterpreting or misunderstanding the document;
- c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
- d) access to the document could result in confusion or unnecessary debate.

I acknowledge that the documents, if disclosed under the FOI Act, would be revealed without further restriction on their publication.

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<sup>6</sup> See paragraph 6.25, OIAC Guidelines

In my view, the factors against disclosure of the documents should be weighted more heavily than the factors in favour of disclosure. Whilst I acknowledge that there is a public interest in allowing access to information regarding government decisions, as mentioned above, I consider that this has already been satisfied by releasing the notice of decision (document A364761) and issuing the previous statement of reasons. Furthermore, there is a large amount of background or contextual information about the activity that informed this decision already publicly available; namely the Lightning EP summary and the EPBC Act referral documents. These documents contain significant detail regarding the activity and the measures that the titleholder has and will take to manage impacts and risks to the environment.

Accordingly, I am satisfied that the documents are conditionally exempt under s 47C and that disclosure would be contrary to the public interest.

#### **Deletion of exempt/irrelevant information**

Eight documents were found to contain irrelevant information, pursuant to your agreement to exclude certain categories of information in the documents (see **Attachment A** – revised scope of request).

Pursuant to s 22 of the FOI Act, I consider that it is practicable to delete the irrelevant material from the documents identified above and provide access to edited copies of the documents.

#### **Decision under s 11C – publication of documents on disclosure log**

NOPSEMA is required to publish information that has been released in response to each FOI access request on a public 'disclosure log' subject to certain exceptions. NOPSEMA's disclosure log is located on its website at <http://www.nopsema.gov.au/resources/foi/disclosure-log/>.

I am satisfied that none of the relevant exceptions apply, and the documents for which access is granted will be published on the disclosure log.

## Schedule of Charges - Final

### Search and retrieval charges (\$15 per hour) – Regulations, Schedule Part 1, item 2

TASK	ESTIMATE
Search and retrieval (20 hours)	300.00
Preparation of document schedules (8 hours)	120.00
<b>Sub-total</b>	<b>\$420.00</b>

### Processing charges (\$20 per hour) – Regulations, Schedule Part 1, item 5

TASK	ESTIMATE
Examination of documents and drafting decisions (53.5 hours)	1070.00
Consultation with third parties (16 hours)	320.00
5 hours processing at no charge	-100.00
<b>Sub-total</b>	<b>\$1,290.00</b>

TOTAL CHARGES	\$1,710.00
Less public interest discount – 50%	\$855.00
<b>TOTAL</b>	<b>\$855.00</b>





Our reference: MR14/00436

Agency reference: FO64:A393668

Mr Matthew Collis  
International Fund For Animal Welfare

Via email: [mcollis@ifaw.org](mailto:mcollis@ifaw.org)

Dear Mr Collis,

### **Application for review of an FOI decision – International Fund For Animal Welfare**

I refer to your application for Information Commissioner review (IC review) of a decision made by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) under the *Freedom of Information Act 1982* (Cth) (the Act) on 24 December 2014.

I wrote to you on 23 February 2015 indicating my intention not to undertake an IC review as I considered it desirable for the IC reviewable decision to be considered by the Tribunal. You were invited to provide a response by 9 March 2015.

In your telephone conversation with the OAIC on 11 March 2015, you indicated that you intended to apply to the Tribunal for a review of this matter.

### **Discretion not to undertake an IC review**

As a delegate of the Information Commissioner under s 54W(b) of the Act, having considered the circumstances of this application, I have decided to exercise my discretion to decide not to undertake an IC review on the basis that it is desirable that the IC reviewable decision be considered by the Tribunal.

Given the complexity of this matter relative to the current capacity of the OAIC, it is unlikely to be resolved in a reasonable time period through the IC review process. I have reached this view because of:

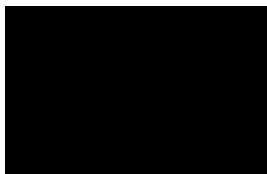
- the technical complexity of the documents in issue and the likelihood that a variety of exemptions may apply to them; and
- it appears unlikely that this matter will be either resolved informally or finalised by way of decision by the OAIC within a reasonable time period.

In coming to this conclusion the views of NOPSEMA were sought. The agency did not respond to the Office's intention to exercise discretion not to undertake an IC review of this matter under s 54W(b) of the Act.

An application for review of the relevant IC reviewable decision may be made to the Tribunal under s 57A within 28 days of this notice.

As such, your application is now considered finalised by this office.

Yours sincerely,



Karen Toohey  
Assistant Commissioner  
Dispute Resolution branch

26 March 2015

## **Summary of filing fees for FOI matters before the Administrative Appeals Tribunal**

No fee is payable if the FOI decision concerns a document relating to a decision that is specified in Schedule 3 to the AAT Regulations 1976: reg 19(2)(b) of the AAT Regulations 1976. Schedule 3 sets out decisions in relation to which no fee is payable to apply to the AAT for a review. They include decisions under the following legislation:

- family assistance law
- *Military Rehabilitation and Compensation Act 2004*
- *National Disability Insurance Act 2013*
- *Safety, Rehabilitation and Compensation Act 1988*
- social security law
- *Veterans' Entitlements Act 1986*.

The standard fee of \$861 is otherwise payable unless the person is eligible to pay a reduced fee of \$100.

A reduced fee is payable if the applicant:

- has been granted legal aid for the application to which the fee relates;
- holds a health care card, a pensioner concession card, a Commonwealth seniors health card or any other card issued by the Department of Social Services or the Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions;
- is in prison or lawfully detained in a public institution;
- is under 18 years of age; or
- is receiving youth allowance, Austudy or ABSTUDY.

A reduced fee is also payable if the AAT decides that paying the full fee would cause the person financial hardship. A form to apply for financial hardship is available on the AAT website.

Further information on filing fees is available from the AAT's website at  
<http://www.aat.gov.au/FormsAndFees/Fees.htm>







# ADMINISTRATIVE APPEALS TRIBUNAL OR SMALL TAXATION CLAIMS TRIBUNAL

## APPLICATION FOR REVIEW OF DECISION

This form can be used to lodge an application to the Commonwealth Administrative Appeals Tribunal (AAT) or to the Small Taxation Claims Tribunal (STCT). Please read the attached information sheet before filling out this form.

### APPLICANT

Full name

 Title: Mr. ☐ Ms. ☐ Mrs. ☐ Miss ☐ Other ☐ N/A

First name: N/A

Last name: International Fund for Animal Welfare

Gender

Male ☐Female ☐

Date of birth

N/A

Telephone  
(business)

+61 2 9288 4900

Telephone  
(home)

N/A

Your address

 6 Belmore Street  
 Surry Hills  
 Sydney NSW 2010

 Your  
 representative's  
 name, address and  
 telephone number  
 (if you have one)

(If you have a representative, please put their name (with firm or company name, if any), address and telephone number in this box.)

 EDO NSW  
 Level 5, 263 Clarence Street  
 Sydney NSW 2000 AUSTRALIA  
 E: edonsw@edonsw.org.au  
 T: + 61 2 9262 6989

Interpreter

 Do you require the assistance of an Interpreter? Yes ☐ No ☒

If yes, for which language?

Disability

If you have a disability and need assistance, please indicate whether:

Visual ☐Hearing ☐Wheelchair user ☐

Other, please specify .....

**DECISION**

You do not have to answer this question if you can attach a copy of the decision. If you don't have a copy, please describe the decision briefly:

Decisions are attached:

1. Original access decision by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) dated 24 December 2014 made pursuant to s23 of the Freedom of Information Act 1982 (Cth) (FOI Act);
2. Decision not to deal with external review application dated 1 April 2015 made by the Office of the Australian Information Commissioner under s54W of the FOI Act

Date the decision was made

24 December 2014 (NOPSEMA)  
1 April 2015 (OAIC)

Decision reference

Please refer to the attached Information for Applicants sheet

MR1500061

Date you received notice of the decision

1 April 2015

Who made the decision, if known:

Department or other body:

National Offshore Petroleum Safety and Environmental Management Authority

Address:

Level 8 Alluvion  
58 Mounts Bay Road  
Perth WA 6000

**REASONS FOR APPLICATION**

What are your reasons for seeking review of this decision? Please read the Information for Applicants sheet.

International Fund for Animal Welfare (IFAW) wishes to appeal the partial refusal of access to documents by the National Offshore Petroleum Safety and Environmental Management Authority in application MR1500061, made 24 December 2014.

Discretion not to review this decision was exercised by the Office of the Australian Information Commissioner on 5 March 2015, under section 54W(b) of the Freedom of Information Act 1982 (Cth) (The Act). Section 57A of the Act entitles the Tribunal to review these decisions if the application is lodged within 28 days of the notice being given.

Further, section 27A (1) of the Administrative Appeals Tribunal Act 1976 (Cth) entitles affected persons to seek review at the AAT. IFAW's interests have been affected by this decision as it is the access applicant for the information requested.

As notice of this decision by the OAIC was made on 1 April 2015, this application has been made in within the 28 day deadline.

**SMALL TAXATION CLAIMS TRIBUNAL (STCT)**

**MATTERS**  
(only answer this question if you want a tax decision reviewed in the STCT)

Please read the Information for Applicants sheet for details about the STCT and the Taxation Appeals Division of the AAT before you answer.

Is the amount of tax in dispute less than \$5,000? Yes ☐ No ☐

If yes, and you want your application dealt with in the STCT, please state the amount of tax in dispute.

\$.....

If the amount of tax in dispute is over \$5,000, or you do not state the amount of tax in dispute, your application will be dealt with in the Taxation Appeals Division of the AAT.

Signature



Date

23/4/2015



## Guide to Form 1: APPLICATION FOR REVIEW OF DECISION

Use the *APPLICATION FOR REVIEW OF DECISION* form if you want the Administrative Appeals Tribunal (AAT) to review a decision. The AAT can review a wide range of decisions made under Commonwealth laws by the Australian Government and some non-government bodies. The AAT can also review decisions of the Norfolk Island Government.

### COMPLETING THE FORM

Read this guide and the form carefully and answer all of the questions. If you need more space to answer a question, continue your answer on another sheet of paper and attach it to the form.

Ask the AAT if you need help filling out this form or if you need further information. When you have filled out the form, you can bring it to the AAT in person or send it to us by post, email or fax.

### APPLICANT

#### *Contact details*

The form asks you to give us your address and phone numbers. If you want us to contact you by email or fax, please give us those details as well.

#### *Representative*

You can represent yourself at the AAT or you can be represented by any person you choose. If you tell us that you have a representative, we will send letters and other documents about your case to your representative, instead of sending them to you.

#### *Interpreter*

If you need an interpreter, we will arrange for a qualified interpreter to assist you. Please let us know if you speak a particular dialect.

#### *Disability*

If you have a disability and need assistance, we will try to make appropriate arrangements for you. Our offices have portable hearing loops and are wheelchair accessible.

### DECISION

If you can, attach a copy of the decision you want us to review. If you can't, describe the decision briefly. For example: 'The SSAT decided that I cannot receive disability support pension'.

#### *Date the decision was made and date you received notice of the decision*

There are time limits for lodging an application for review of a decision. The time limit is usually 28 days after you receive the decision. For some types of decisions, it is longer. The time limit is usually stated in the information given to you about your review rights.

The form asks you to tell us when the decision was made and when you received the decision. We need this information to check whether the application has been lodged within the time limit.

If the time limit has expired, you can apply for an extension of time to make your application. We can extend most, but not all, time limits. You can use the following form – *Application for an Extension of Time for Lodging Application for Review of Decision*. It is available on our website.

#### *Decision reference*

You will usually find a reference number for the decision somewhere on the decision itself. By giving us this number, the relevant decision can be identified quickly.

#### *Who made the decision*

If you don't attach a copy of the decision to the form, you need to tell us the name and address of the department or organisation that made the decision.

## REASONS FOR APPLICATION

You must tell us briefly why you want to have the decision reviewed. For example, you may think the decision is wrong and a different decision should be made. You may think that information you provided was not taken into account or the law was not applied correctly.

We cannot start the review if you do not answer this question.

## TAX DECISIONS

Tax decisions are reviewed in our Taxation Appeals Division and in the Small Taxation Claims Tribunal (STCT).

You can choose to have your application reviewed in the STCT if the amount of tax in dispute is less than \$5,000.

There are some differences between the Taxation Appeals Division and the STCT.

- The application fee for the STCT is lower than the fee for the Taxation Appeals Division.
- The STCT's procedures are designed to finalise a review more quickly.
- Hearings in the STCT are held in public unless we order that a hearing should be held in private. Hearings in the Taxation Appeals Division will be held in private if you ask for a private hearing.

If you want to have your decision reviewed in the STCT, complete the STCT section of the form. You must write in the amount of tax that is in dispute in your case.

If the amount of tax in dispute is \$5,000 or more, or you do not complete the STCT section of the form, the decision will be reviewed in the Taxation Appeals Division.

## OTHER INFORMATION ABOUT APPLYING TO THE AAT

### APPLICATION FEE

There is no fee when you apply to us for review of some kinds of decisions. For example: applications about Commonwealth workers' compensation, decisions under the National Disability Insurance Scheme, social security or family assistance payments or veterans' pension decisions.

For other kinds of decisions, a fee must be paid when you lodge your application. The full application fee is \$861. The lower fee for the STCT is \$85.

You might be eligible to pay a reduced fee of \$100 instead of a full application fee. For example:

- you hold a health care card or Commonwealth seniors health card
- you are able to show that you can't afford to pay the full fee.

If you have paid a full application fee and the application is resolved in your favour, most of it will be refunded. There is no refund if you paid the reduced application fee or if the decision was reviewed in the STCT.

For more information about fees, including when there is no fee and whether you might be eligible to pay a reduced fee, go to the AAT website or contact your local AAT office.

#### *How to pay a fee*

You can pay a fee in cash or by cheque, money order, EFTPOS or credit card. We accept payment by American Express, Diners Club, MasterCard and Visa.

All payment types are accepted over the counter at our offices. Credit card payments can also be made by phone.

## **APPLYING TO SUSPEND A DECISION**

In general, a decision continues to operate while we are reviewing it. In some cases, we can order that the decision be suspended while the review is taking place.

If you want to ask us to suspend the operation of the decision, you must complete a *Request for stay order* form and send it to us. The form is available on our website.

## **STEPS IN A REVIEW**

In most cases, we use alternative dispute resolution (ADR) to help the parties – you and the department or organisation that made the decision you want reviewed – try to reach agreement about how the case should be resolved. Many cases are resolved at this stage. ADR processes are held in private.

If agreement cannot be reached, we will hold a hearing and make a decision. Hearings are usually open to the public.

Our procedures and the time needed to complete the review vary from case to case. We aim to have cases finalised within 12 months.

## **WHAT DO WE DO WITH INFORMATION GIVEN TO US?**

We collect information from you to process your application and to carry out the review under the *Administrative Appeals Tribunal Act 1975*.

We give a copy of the form to the department or organisation that made the decision you want reviewed. We may also give a copy to any other person that is a party to the review.

If you give us other information during the review that another party does not have, we will usually give them a copy.

Limited information about a case is usually made available to the public on request and can be accessed using *eCase Search*, our online case search tool. This information includes the names of the parties and any representatives, the type of application, dates of conferences, hearings or other case events, the types of key documents lodged by the parties and the outcome of an application.

More information is usually made publicly available if we hold a hearing and make a decision in the case. Most AAT decisions are published on the internet.

We can order that information be kept confidential if we believe there is good reason to do so. You can apply for an order by writing to us stating what information you want kept confidential and why. In some cases, legislation requires that information be kept confidential.

For more information, see our fact sheet *Privacy and confidentiality at the AAT* and our Privacy Policy. Our Privacy Policy includes information about how you can access and seek correction of your personal information, make a complaint about the way we have handled your personal information and how we will deal with such a complaint. Copies are available on our website or from your local AAT office.

## **MORE INFORMATION ABOUT THE AAT**

More information about the AAT and how we conduct reviews is available on our website. You can also phone your local AAT office. Our staff can give you information about procedures but will not be able to give you legal advice.

## CONTACT THE AAT

### National 1300 number

You can call us on 1300 366 700 from anywhere in Australia. You will be connected to the AAT office in your capital city. Residents of northern NSW (postcodes 2460–2490) and the Northern Territory will be connected to the Brisbane Registry. Callers from fixed phone lines will be charged at local call rates; calls from mobiles may cost more.

### Non-English speakers

Call the Translating and Interpreter Service on 131 450 and ask them to call us.

### If you are deaf or have a hearing or speech impairment

Contact us through the National Relay Service.

- TTY users: call 133 677, then ask for 1300 366 700.
- Internet relay users: connect to the NRS, then ask for 1300 366 700.
- Speak and Listen (speech-to-speech relay) users: call 1300 555 727, then ask for 1300 366 700.
- SMS relay users: call 0423 677 767, then ask for 1300 366 700
- Video relay users: choose the available NRS video relay contact on Skype, then ask for 1300 366 700.

Hearing induction loops are available at our office counters, and in conference and hearing rooms.

## POST

AAT  
GPO Box 9955  
Your capital city  
(Northern Territory residents should write to Brisbane)

AAT  
c/- Supreme Court of Norfolk Island Registry  
Kingston, Norfolk Island 2899

<b>ADELAIDE</b> 11 Floor Chesser House 91 Grenfell Street ADELAIDE SA 5000  Fax 08 8201 0610 Email <a href="mailto:adelaide.registry@aat.gov.au">adelaide.registry@aat.gov.au</a>	<b>BRISBANE</b> Level 4 Commonwealth Law Courts Cnr Nth Quay & Tank St BRISBANE QLD 4000  Fax 07 3361 3001 Email <a href="mailto:brisbane.registry@aat.gov.au">brisbane.registry@aat.gov.au</a>	<b>CANBERRA</b> Level 8 14 Moore St CANBERRA CITY ACT 2600  Fax (02) 6243 4600 Email <a href="mailto:canberra.registry@aat.gov.au">canberra.registry@aat.gov.au</a>
<b>HOBART</b> Commonwealth Law Courts 39–41 Davey St HOBART TAS 7000  Fax (03) 6232 1701 Email <a href="mailto:hobart.registry@aat.gov.au">hobart.registry@aat.gov.au</a>	<b>MELBOURNE</b> Level 16, HWT Tower 40 City Rd SOUTHBANK VIC 3006  Fax (03) 9282 8480 Email <a href="mailto:melbourne.registry@aat.gov.au">melbourne.registry@aat.gov.au</a>	<b>NORFOLK ISLAND</b> Supreme Court of Norfolk Island KINGSTON Norfolk Island 2899  Fax 6723 23403 Email <a href="mailto:sydney.registry@aat.gov.au">sydney.registry@aat.gov.au</a>
<b>PERTH</b> Level 5 111 St Georges Terrace PERTH WA 6000  Fax (08) 9327 7299 Email <a href="mailto:perth.registry@aat.gov.au">perth.registry@aat.gov.au</a>	<b>SYDNEY</b> Level 7 55 Market St SYDNEY NSW 2000  Fax: (02) 9283 4881 Email: <a href="mailto:sydney.registry@aat.gov.au">sydney.registry@aat.gov.au</a>	

Form 1 Guide – 7/14



DEFENDING THE ENVIRONMENT  
ADVANCING THE LAW

ABN 72 002 880 864  
Level 5, 263 Clarence Street  
Sydney NSW 2000 AUSTRALIA  
E: edonsw@edonsw.org.au  
W: www.edonsw.org.au  
T: + 612 9262 6989  
F: + 612 9264 2414

23 April 2015

Administrative Appeals Tribunal  
Level 7  
55 Market Street  
Sydney NSW 2000

Dear Registrar

**Application for fee reduction**

**Attachment to application for review of decisions MR1400436 and MR1500061**

We act for the International Fund for Animal Welfare (IFAW) in the above matters.

**Request for matters to be heard together**

In our view it would be convenient for matters MR14/00436 and MR14/00061 to be heard together by the Administrative Appeals Tribunal (AAT).

The decisions made on 26 March 2015 (MR1400436) and 1 April 2015 (MR1500061) relate to Freedom of Information requests by IFAW to the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

Both matters concern access to information requests for environmental planning documents from Bight Petroleum and NOPSEMA in relation to Bight Petroleum's Lightning 3D Marine Seismic Survey to be conducted in the Bight Basin in South Australia. The applications and their partial refusals raise many of the same issues.

We request that the AAT hear these matters together.

**Request for fee reduction**

Pursuant to Regulation 19(6)(a) of the *Administrative Appeals Tribunal Regulations 1976 (the Regulations)*, applicants who have been granted legal aid under a legal aid scheme or service "established under Commonwealth, State or Territory law or approved by the Attorney-General, for the matter to which the application fee relates..." are entitled to the reduced application fee.

EDO NSW is a legal aid scheme approved by the Attorney-General in Part 1 of the *Legal Aid Schemes and Approvals 2013*.

As these matters relate to the same applicant and, in our opinion, may be conveniently heard together, we request that the Registrar exercise the

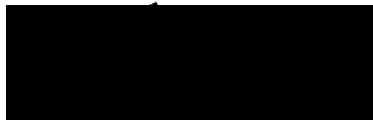




discretionary power under Regulation 19(5) of the Regulations to order that only one application fee of \$100 be paid by the applicant.

If you require any further information, or clarification of anything in this letter, please do not hesitate to contact me on 9262 6989.

Yours sincerely,  
**EDO NSW**



Elaine Johnson  
Senior Solicitor

Our Ref: 1521943





Our reference: MR15/00061

Agency reference: FO64

Mr Matthew Collis  
International Fund For Animal Welfare

Via email: [mcollis@ifaw.org](mailto:mcollis@ifaw.org)

Dear Mr Collis

### **Application for review of an FOI decision – International Fund for Animal Welfare**

I refer to your application for Information Commissioner review (IC review) of a decision made by the National Offshore Petroleum Safety and Environmental Management Authority under the *Freedom of Information Act 1982* (Cth) (the Act) on 24 December 2014.

I wrote to you on 5 March 2015 indicating my intention not to undertake an IC review as I considered it desirable for the IC reviewable decision to be considered by the Administrative Appeals Tribunal. You were invited to provide a response by 13 March 2015.

In your telephone conversation with the OAIC on 11 March 2015, you indicated that you intended to apply to the Tribunal for a review of this matter.

#### **Discretion not to undertake an IC review**

As a delegate of the Information Commissioner under s 54W(b) of the Act, having considered the circumstances of this application, I have decided to exercise my discretion to decide not to undertake an IC review on the basis that it is desirable that the IC reviewable decision be considered by the Tribunal.

Given the complexity of this matter relative to the current capacity of the OAIC, it is unlikely to be resolved in a reasonable time period through the IC review process. I have reached this view because of:

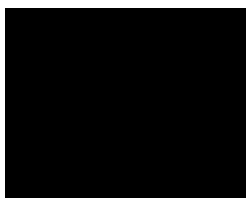
- the technical complexity of the documents in issue and the likelihood that a variety of exemptions may apply to them; and
- it appears unlikely that this matter will be either resolved informally or finalised by way of decision by the OAIC within a reasonable time period.

In coming to this conclusion the views of the parties were sought. The agency did not object to the office exercising its discretion not to undertake an IC review of this matter under s 54W(b) of the Act.

An application for review of the relevant IC reviewable decision may be made to the Tribunal under s 57A within 28 days of this notice. A schedule of fees that may apply is attached.

As such, your application is now considered finalised by this office.

Yours sincerely,



Karen Toohey  
Assistant Commissioner  
Dispute Resolution branch

1 April 2015

## Summary of filing fees for FOI matters before the Administrative Appeals Tribunal

No fee is payable if the FOI decision concerns a document relating to a decision that is specified in Schedule 3 to the AAT Regulations 1976: reg 19(2)(b) of the AAT Regulations 1976. Schedule 3 sets out decisions in relation to which no fee is payable to apply to the AAT for a review. They include decisions under the following legislation:

- family assistance law
- *Military Rehabilitation and Compensation Act 2004*
- *National Disability Insurance Act 2013*
- *Safety, Rehabilitation and Compensation Act 1988*
- social security law
- *Veterans' Entitlements Act 1986*.

The standard fee of \$861 is otherwise payable unless the person is eligible to pay a reduced fee of \$100.

A reduced fee is payable if the applicant:

- has been granted legal aid for the application to which the fee relates;
- holds a health care card, a pensioner concession card, a Commonwealth seniors health card or any other card issued by the Department of Social Services or the Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions;
- is in prison or lawfully detained in a public institution;
- is under 18 years of age; or
- is receiving youth allowance, Austudy or ABSTUDY.

A reduced fee is also payable if the AAT decides that paying the full fee would cause the person financial hardship. A form to apply for financial hardship is available on the AAT website.

Further information on filing fees is available from the AAT's website at <http://www.aat.gov.au/FormsAndFees/Fees.htm>





Our ref: F064;  
Contact: Nadia Ardalich: (08) 6188 8755  
Email: nadia.ardalich@nopsema.gov.au

Mr Matthew Collis  
International Fund for Animal Welfare (IFAW)  
Oceania Regional Office  
6 Belmore Street  
SURRY HILLS NSW 2010

24 December 2014

Dear Mr Collis

**FREEDOM OF INFORMATION REQUEST -- NOTICE OF DECISION (ACCESS REFUSAL/PARTIAL REFUSAL)**

This notice contains my decision in relation to access to certain documents in the possession of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) that were requested under the *Freedom of Information Act 1982* (the FOI Act).

On 14 November 2014, the Office of the Australian Information Commissioner (OAIC) NOPSEMA's request to extend the time for issuing a decision in relation to some of those documents. Specifically those documents are the Environment Plan submission documents including appendices and additional information to be included in the environment plan provided by the titleholder post-submission (there are seven documents in total).

**Decision**

I am the decision maker in this matter, having been authorised under s 23 of the FOI Act.

Of the documents the subject of this decision, I identified 7 documents that fell within the scope of the request.

After reviewing each of the documents in issue, I have decided to grant access to one documents in full and 7 documents in part. A schedule of these documents is enclosed at **Attachment A**. Specifically, I have decided:

- To grant access in full to document A350301
- to grant access in part to documents A356884, A355671 and A362997 with irrelevant matter deleted under section 22 (relates to personal information, agreed to be excluded)
- to grant access in part to documents A350302, A350303 and A362850 with irrelevant and exempt matter deleted under s22 and exempt under s 47G, business affairs.



My detailed reasons for refusal of access to documents are set out in the attached statement of reasons (**Attachment B**).

#### **Outstanding charges and release of documents**

As set out in my decision of 28 November 2014, an outstanding charge of \$80.95 is owing before documents can be released. Payment can be made by cheque or by direct deposit into the following account:

Commonwealth Bank of Australia  
BSB: 066-000  
A/c No: 1072 0887  
Account Name: National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)  
Reference: FOI 64

Following payment of the outstanding charge and applicable expiration of third party review rights on 22 January 2015, NOPSEMA will provide you with the documents I have decided to grant access. The third party review rights are the time a third party we consulted during the processing of your request has to seek a review of my decision.

#### **Your review rights**

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner Review. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

##### ***Internal review***

Any application for an internal review of the decision must be made in writing within 30 days of receipt of this decision. No fee is required for an application for internal review. A request for internal review should be directed to the following address:

The Internal Reviewer, Freedom of Information  
NOPSEMA  
GPO Box 2568  
PERTH WA 6001  
Email: [information@nopsma.gov.au](mailto:information@nopsma.gov.au).

No particular form is required but it is desirable to set out in the application the grounds on which you consider that the decision should be reviewed.

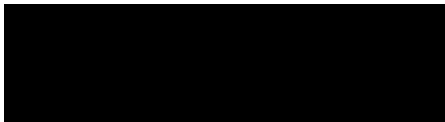
##### ***Information Commissioner review***

Alternatively, you may make an application to the Information Commissioner under s 54 of the FOI Act. An application for review to the Information Commissioner must be made in writing within 60 days of receipt of this decision. An application can be made in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review/>  
email: [enquiries@oalc.gov.au](mailto:enquiries@oalc.gov.au)  
post: GPO Box 2999, Canberra ACT 2601  
in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to [www.oaic.gov.au/freedom-of-information/foi-reviews](http://www.oaic.gov.au/freedom-of-information/foi-reviews).

Yours sincerely



Nadia Ardalich  
**Freedom of Information Coordinator**

**Attachments**

- A. Schedule of documents
- B. Statement of reasons





**NOPSEMA**

# Attachment A

## Schedule of Documents

NOPSEMA ID	Date	Description	Decision on access	Exemption
A350301	24/03/14	Submission - EP - Bight Petroleum Pty Ltd - Lightning 3D Marine Seismic Survey - Appendix A	Release document in full	N/A
A350302	24/03/14	EP submission - Bight Petroleum Pty Ltd - Lightning 3D Marine Seismic Survey - Part 1 (including Appendix A & B)	Release document in part: <ul style="list-style-type: none"> <li>Personal information excluded by agreement (p 2, 12, 231, 232, 233, 239)</li> <li>Consultation record extracts excluded by agreement (p 55, 56, 59, 60, 62-63, 84, 199-206)</li> <li>Information adversely affecting business affairs removed (p 23-24, 107, 119-123, 142-147, 149-153, 179-189, 220-227, Appendix B)</li> </ul>	s47G business affairs
A350303	24/03/14	Submission - EP - Bight Petroleum Pty Ltd - Lightning 3D Marine Seismic Survey - Part 2 (Excluding Appendix C, including appendix D, E & F)	Release document in part: <ul style="list-style-type: none"> <li>Appendix C - consultation record excluded by agreement</li> <li>Information adversely affecting business affairs removed (Appendix D, Appendix E)</li> </ul>	s47G business affairs
A356884	07/05/14	Email - NOPSEMA to Bight Petroleum encl NOPSEMA request for further written information	Release document in part: <ul style="list-style-type: none"> <li>Personal information excluded by agreement</li> </ul>	N/A
A355671	07/05/14	Letter - NOPSEMA to Bight Petroleum requesting further written information	Release document in part: <ul style="list-style-type: none"> <li>Personal information excluded by agreement</li> </ul>	N/A
A362850	26/05/14	Letter - Bight Petroleum to NOPSEMA encl response to request for further written information	Release document in part: <ul style="list-style-type: none"> <li>Personal information excluded by agreement (p 14)</li> </ul>	s47G business affairs

				<ul style="list-style-type: none"> <li>• Consultation record extracts excluded by agreement (p 15, 26, 28, 30, 33-40)</li> <li>• Information adversely affecting business affairs removed (p14, 15)</li> </ul>	
A362997	27/05/14	Email - Receipt of Request for Further Written Information	Release document in part: <ul style="list-style-type: none"> <li>• Personal information excluded by agreement</li> </ul>	N/A	

## Reasons for Decision – IFAW

### *Request for access to documents under Freedom of Information Act 1982*

#### Material taken into account

I have taken the following material into account in making my decision:

- the content of the documents that fall within the scope of the request
- the FOI Act (specifically sections 47C and 47G)
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the OAIC Guidelines)
- the views of a third party consulted by NOPSEMA under s 27 of the FOI Act
- provisions of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) and the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (the Environment Regulations)
- Statement of reasons (provided to the International Fund for Animal Welfare) in relation to NOPSEMA's acceptance of the Lightning 3D Marine Seismic Survey dated 1 August 2014
- Publicly available documents relating to the activity:
  - Environment Plan Summary relating to the Lightning 3D Marine Seismic Survey published on NOPSEMA's website<sup>1</sup>
  - Referral 2013/6770 documents under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) published on the Department of Environment website<sup>2</sup>
  - AMSA National Plan for Maritime Environmental Emergencies
  - Marine bioregional plan for the South-west Marine Region prepared under the EPBC Act and published on the Department of Environment website.

The attached schedule (**Attachment B**) indicates each document (or part thereof) to which access is refused. My reasons for refusing access are given below.

#### Application of exemption provisions

##### *Public interest conditional exemption – s 47G – business affairs*

##### *Document ID A350302 – EP submission - Lightning 3D Marine Seismic Survey Part 1 – 24-03-2014*

Document A350302 is the first part of the titleholder's submission of the Lightning 3D Marine Seismic Survey Environment Plan (the Lightning EP) regarding a seismic survey off the coast of South Australia. The document is 257 pages in length and contains significant detail of the titleholder's plan regarding how it intends to manage the seismic survey activity impacts and risks to the environment; specifically how it will

<sup>1</sup> <http://www.nopsema.gov.au/assets/epsummaries/Resubmission-2-EP-Summary-Bight-Petroleum-Lightning-3D-MSS.pdf>

<sup>2</sup> [http://www.environment.gov.au/cgi-bin/epbc/epbc\\_ap.pl?name=referral\\_detail&proposal\\_id=6770](http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=referral_detail&proposal_id=6770)

meet its obligations under the Environment Regulations. The plan is divided into various numbered sections, summarised as follows;

1. Introduction and background information
2. Description of the location of the activity
3. Existing physical and cultural environment
4. Summary of the relevant legislative framework
5. Risk assessment process
6. Implementation strategies followed to manage risks
7. Internal and external reporting requirements
8. Oil Pollution Emergency Plan (OPEP)

Appendix A, whilst it is referenced in the contents, it does not appear in the relevant part of the EP document, but was in fact submitted as a separate, stand-alone document (identified as A350301). This document has been linked to [www.bightpetroleum.com](http://www.bightpetroleum.com) and previously published online, however is no longer accessible from this website. Given that the document is already publicly available, I have decided to release that document in full.

Appendix B to this document comprises a 'Net Environmental Benefits Assessment' which relates to the oil spill response information in section 8.

**Document ID A353303 – EP submission - Lightning 3D Marine Seismic Survey Part 2– 24-03-2014**

Document A350303 is the second part of the titleholder's EP submission, comprising of four appendices, namely;

- Appendix C – consultation record (excluded by agreement)
- Appendix D – Oil Spill Trajectory Modelling study containing various calculations and mapping of potential impact zones prepared by environmental consultants for the titleholder
- Appendix E – Oil Spill Dispersed Oil Calculation
- Appendix F – Preliminary Master Commitments List.

**Document ID A362850 – Further written information submission - Lightning 3D Marine Seismic Survey – 26-05-2014**

This document comprises the titleholder's response to further questions from NOPSEMA, following NOPSEMA's initial review of the EP, prior to its acceptance. The information provided in this document includes:

- Consideration of additional fauna species and their environmental characteristics, risks to species and how risks will be managed
- Analysis and measures to manage risks to and/or detecting biologically significant upwelling
- Consideration of risks to tourism attributed to acoustic disturbance
- Additional specific details of proposed control measures outlined in the original EP
- Various responses to additional third party consultation queries.

**Consultation**

I made the preliminary assessment that the documents contained information that concerned the business affairs of a petroleum titleholder (affected third party). I was therefore required by s 27 of the FOI Act to give these parties 'a reasonable opportunity to make submissions in support of the exemption contention' under ss 47 and 47G of the FOI Act.

The affected third party provided submissions in response to requests for consultation, indicating how the release of certain information contained in the documents would, if disclosed, would unreasonably affect the business affairs of the company adversely.

### Consideration of application of the exemption

Section 47G(1)(a) permits the conditional exemption of a document containing information about the business affairs of a person or an organisation where its disclosure would, or could reasonably be expected to, unreasonably affect that person or business adversely.

I first considered whether each of the documents contain information concerned the business information of the petroleum operator organisations. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs' and 'anything which occupies the time and attention and labour of a (person), for the purpose of profit'<sup>3</sup>.

On assessment of the documents, I formed the view that all relevant documents contained information about how the titleholder was planning to undertake an offshore petroleum activity (seismic survey) in Commonwealth waters in compliance with the Environment Regulations. The documents provide significant detail about the activity including (but not limited to):

- the equipment and vessel to be used for the activity, the structure of the organisation and crew responsibilities
- modelling of oil spills in various scenarios
- detailed analysis of the environment, potential impacts to the environment (e.g. vessel and aircraft presence, collision, oil spill and other discharges, lighting, operation of seismic sound sources) and risk assessment of those impacts
- audit, monitoring, testing and other practices which will be utilised by the titleholder to manage and reduce risks to as low as reasonably practicable and to be employed in the event of environmental incidents.

I am satisfied that such information is central to a petroleum titleholder's money-making activities, as a seismic survey is an exploration activity undertaken for the purpose of discovering petroleum (a money making venture). The EP details exactly how the titleholder will operate when undertaking the survey, which is a key part of the titleholder's primary business of petroleum exploration.

To be conditionally exempt, the disclosure of business information in a document must reasonably be expected to have either of the following two outcomes:

- an unreasonable and adverse effect on the business, commercial or affairs of an organisation; or
- prejudice the future supply of information to the Commonwealth for the purpose of the administration of a law of the Commonwealth or administration of matters administered by an agency.

I acknowledge that the adverse effects contemplated by the exemption would include, for example:

- a loss of business reputation
- enabling competitors to gain an advantage in the marketplace
- diminishing the ability of the petroleum operators to negotiate agreements, maintain confidential communications on sensitive issues, and attract and retain clients, personnel and investors.

The term 'unreasonably' implies a need to balance public and private interests (but does not amount to the public interest test in s 11A(5) of the FOI Act, which is discussed below). In relation to the 'unreasonableness' of the potential adverse effects of disclosing the information in the documents, I considered that the following factors were relevant:

<sup>3</sup> *Re Cockcroft and Attorney-General's Department* (1985) 12 ALD 462 at 464.



- whether the documents provided a significant level of detail regarding the third parties' petroleum operations
- whether the information is, or is likely to be publicly available or known by its competitors and other stakeholders
- the public interest in understanding how risks to the environment are managed
- whether disclosure would compromise the organisation's ability to properly manage their operations.

As set out in the attached schedule, I have identified the following relevant parts of the documents which I consider fall within this exemption; summarised below.

**Document A350302**

- pages 23-24 contain modelling data produced by an environmental consultant exclusively for the titleholder (not publicly available) which map the potential wind speed in the survey area at various times of year. This modelling was solicited by the titleholder under a confidentiality agreement with the consultant and contains the consultant's detailed intellectual property. Release of such information would be likely to result in the titleholder having difficulty maintaining its relationship with the consultant and/or negotiating contracts for services in the future if the confidentiality of the information is not maintained.
- Pages 107, 119-123 contain detailed information regarding the titleholder's specific strategies to manage risks to acoustic impacts to marine fauna, which contain detailed considerations in the design of the survey and the assessment of comparative options available. This information is not already publicly available and, according to the titleholder, is unique to their business. The titleholder submits that the information if released would allow its prospective competitors to gain access to and use this information to their advantage, which is particularly sensitive given that the activity has not yet commenced.
- pages 142 – information relating to replacement cost of seismic equipment
- pages 143-147, 149-153, 220-227 and Appendix B comprise of information regarding oil spill modelling specific to the region of the survey which was prepared by a specialist environmental consultant on behalf of the titleholder (at a cost). This information is not already publicly available and the titleholder has indicated that disclosure would be likely to reduce competitiveness if other prospective titleholders/competitors were able to access such information at no cost, thereby disadvantaging the titleholder who had first solicited the information.
- pages 179- 189 comprise a summary of the titleholder's risk assessment for all identified risks, impacts and control measures and the risk ratings given for each identified risk. Whilst the general information describing the various risks, impacts and measures is already available earlier in the document, the risk ratings are not. I am satisfied that these risk ratings are particularly sensitive as they represent the titleholder's decision and judgement determined on the basis of expert advice of environmental specialist consultants. I accept the titleholder's submission that releasing such information could adversely affect their commercial relationship with their consultant specialist.

I am satisfied that disclosure of the above information would be unreasonable, as the offshore petroleum industry is a highly competitive and high-cost industry where companies compete vigorously for customers, investors and skilled workers and negotiate joint venture projects to further their profit-making activities, to the benefit of their shareholders. I also consider that there is particular sensitivity given that the activity has not yet commenced. Further, I acknowledge that the document, if disclosed under the FOI Act, would

be revealed without further restriction on its publication. I have balanced this with the public interest in ensuring the protection of the environment when undertaking petroleum operations; specifically I have noted that there is already a significant body of information publicly available, and being released in relation to this request regarding this activity in terms of how environmental risks will be managed.

**Document A353303**

- Appendix D and Appendix E both contain oil spill modelling data, predictions and calculations produced by an environmental consultant exclusively for the titleholder to prepare the EP. Similarly with the document above, this information is not already publicly available and the titleholder has indicated that disclosure would be likely to reduce competitiveness if other prospective titleholders/competitors were able to access such information at no cost. Further, release of this information would be likely to adversely affect the titleholder's confidentiality agreement with their environmental consultant and/or negotiating contracts for services in the future.

For these reasons, I am satisfied that disclosure of the above information would be unreasonable, taking into account that offshore petroleum industry is a highly competitive and high-cost industry where companies compete vigorously for customers and investors and consultants undertake highly technical analysis at significant cost to titleholders, and on a confidential basis. Further, I acknowledge that the document, if disclosed under the FOI Act, would be revealed without further restriction on its publication. I have balanced this with the public interest in ensuring the protection of the environment when undertaking petroleum operations; specifically I have noted that there is already a significant body of information publicly available, and being released in relation to this request regarding this activity in terms of how environmental risks will be managed.

**Document A362850**

- page 14 contains detailed information regarding the titleholder's specific considerations and methodology for a proposed pre-mobilisation aerial survey. This information is not already publicly available and, according to the titleholder, is unique to their business. The titleholder submits that the information if released would allow its prospective competitors to gain access to and use this information to their advantage
- page 15 contains information pertaining to confidential consultation occurring between the titleholder and a stakeholder third party. The titleholder submitted that this information was obtained under an understanding of confidence and that release of such information would be likely to damage their relationship significantly with this stakeholder, particularly in relation to this project.

I am satisfied that disclosure of the above information would be unreasonable, noting that the offshore petroleum industry is a highly competitive and high-cost industry where companies compete vigorously for customers and investors and maintaining relationships with stakeholders is integral to a project's viability. I consider that there is particular sensitivity given that the activity has not yet commenced. Further, I acknowledge that the document, if disclosed under the FOI Act, would be revealed without further restriction on its publication. I have balanced this with the public interest in ensuring the protection of the environment when undertaking petroleum operations; but in this regard, I note that there is already a significant body of information publicly available, and being released in relation to this request regarding managing environmental risks for this activity.

**The public interest test**

For the reasons outlined above, I am satisfied that certain information in the documents fall within the scope of the conditional exemption for s 47G of the FOI Act on the basis that they disclose information that could reasonably be expected to unreasonably affect the business affairs of the titleholder adversely.

Under the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest. My weighing of public interest factors follows.

Of the factors favouring disclosure set out in s 11B(3) of the FOI Act and the Guidelines<sup>4</sup>, the following are relevant to this request:

- a) promote the objects of the FOI Act to allow access to information held by government; including, relevantly:
  - to reveal the reason for a government decision and any background or contextual information that informed the decision
  - to enhance the scrutiny of government decision-making
- b) reveal environmental or health risks of measures relating to public health and safety and contribute to the protection of the environment.

There are no statutory factors against disclosure set out in the FOI Act. However, having regard to the OIAC guidelines at paragraph 6.29, I consider that the following are relevant factors against disclosure of the documents:

- that disclosure could reasonably be expected to prejudice NOPSEMA's ability to obtain confidential information
- that disclosure could reasonably be expected to prejudice NOPSEMA's ability to obtain similar information in the future.

I also acknowledge that there is a strong public interest in titleholders being able to consult openly and confidentially (if appropriate) with their stakeholders in order to achieve the desired environmental outcomes; an integral part of titleholders being able to comply with the Environment Regulations.

The specific harm that would be caused by disclosure of such information includes:

- to place the organisation in an unfair financial and/or reputational position in relation to their competitors, in terms of what information is already publicly available (noting that the activity in question is yet to commence)
- to compromise the titleholder's ability to undertake frank consultation and negotiate agreements with its stakeholders.

I also confirm that the following (irrelevant) factors have not been taken into account in deciding whether access to the document would be, on balance, contrary to the public interest:

- a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- b) access to the document could result in any person misinterpreting or misunderstanding the document;
- c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
- d) access to the document could result in confusion or unnecessary debate.

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<sup>4</sup> See paragraph 6.25, OIAC Guidelines

In my view, the factors against disclosure of the parts of the documents considered exempt should be weighted more heavily than the factors in favour of disclosure. Whilst I acknowledge that there is a public interest in allowing access to information held by government generally, and about management of the environment, I consider that, as there is already a considerable amount of information about this particular activity available, the public interest in providing background to government decisions and enhancing scrutiny of those decisions is satisfied. Further, the parts of the documents that I consider are exempt are limited to very specific information (not already available) which in my view, could prejudice the titleholder's and NOPSEMA's ability to obtain in the same level of detail in the future.

Accordingly, I am satisfied that the documents are conditionally exempt under s 47G and that disclosure would be contrary to the public interest.

#### **Deletion of exempt/irrelevant information**

Three documents were found to contain exempt information as outlined above and in attached schedule.

Six documents were found to contain irrelevant information, pursuant to your agreement to exclude certain categories of information in the documents.

Pursuant to s 22 of the FOI Act, I consider that it is practicable to delete the irrelevant and exempt material from the documents identified above and provide access to edited copies of the documents.

#### **Decision under s 11C – publication of documents on disclosure log**

NOPSEMA is required to publish information that has been released in response to each FOI access request on a public 'disclosure log' subject to certain exceptions. NOPSEMA's disclosure log is located on its website at <http://www.nopsema.gov.au/resources/foi/disclosure-log/>. Two relevant exceptions to publication include:

- if it would be unreasonable to publish personal information about any person
- if it would be unreasonable to publish information about the business, commercial, financial or professional affairs of any person.

For the same reasons as outlined above, for the purposes of publication on NOPSEMA's disclosure log, NOPSEMA will maintain the deletions outlined above in relation to the agreed exclusions and the exempt information relating to the business affairs of the affected third party.



## Certificate of Exhibit DM-4

No. VID519 of 2021

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law & Human Rights

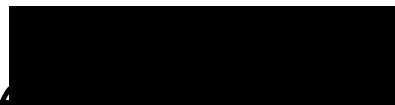
**Senator Rex Patrick**

Applicant

**Australian Information Commissioner**

Respondent

This and the following 2 pages form Exhibit DM-4 to the Affidavit of David Morris affirmed on 16 October 2021 before me.



re of witness



Jessica Trappel

Qualification: Solicitor



# Administrative Appeals Tribunal

ADMINISTRATIVE APPEALS TRIBUNAL )  
 ) No: 2015/1937  
GENERAL DIVISION )

Re: International Fund for Animal Welfare  
Applicant

And: National Offshore Petroleum Safety and Environmental Management Authority  
Respondent

**TRIBUNAL:** Deputy President J W Constance

**DATE:** 5 January 2016

**PLACE:** Sydney

In accordance with subsection 42C(1) of the *Administrative Appeals Tribunal Act 1975*:

1. the parties have reached an agreement as to the terms of a decision of the Tribunal that is acceptable to the parties; and
2. the terms of the agreement have been reduced to writing, signed by or on behalf of the parties and lodged with the Tribunal; and
3. the Tribunal is satisfied that a decision consistent with those terms is within the powers of the Tribunal and is appropriate to make.

Pursuant to subsection 42C(2) of the *Administrative Appeals Tribunal Act 1975*, the Tribunal decides that part of the reviewable decision dated 24 December 2014, as refers to documents A350302, A350303 and A362850, is varied to provide that the Applicant is granted full access to documents A350302, A350303 (excluding Appendix C) and A362850.



.....[SGD].....  
JW Constance  
Deputy President



# Administrative Appeals Tribunal

ADMINISTRATIVE APPEALS TRIBUNAL )  
 ) No: 2015/1938  
GENERAL DIVISION )

Re: International Fund for Animal Welfare  
Applicant

And: National Offshore Petroleum Safety and Environmental Management Authority  
Respondent

**TRIBUNAL:** Deputy President J W Constance

**DATE:** 5 January 2016

**PLACE:** Sydney

In accordance with subsection 42C(1) of the *Administrative Appeals Tribunal Act 1975*:

1. the parties have reached an agreement as to the terms of a decision of the Tribunal that is acceptable to the parties; and
2. the terms of the agreement have been reduced to writing, signed by or on behalf of the parties and lodged with the Tribunal; and
3. the Tribunal is satisfied that a decision consistent with those terms is within the powers of the Tribunal and is appropriate to make.

Pursuant to subsection 42C(2) of the *Administrative Appeals Tribunal Act 1975*, the Tribunal decides that part of the reviewable decision dated 28 November 2014, as refers to documents A353065 and A369358, is varied to provide that the Applicant is granted full access to documents A353065 and A369358.

.....[SGD].....  
J W Constance  
Deputy President





## Certificate of Exhibit DM-5

No. VID519 of 2021

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law & Human Rights

**Senator Rex Patrick**

Applicant

**Australian Information Commissioner**

Respondent

This and the following 56 pages form Exhibit DM-5 to the Affidavit of David Morris affirmed on 16 October 2021 before me.



ture of witness

Name: *Jessica Trappel*  
Qualification: Solicitor



# Administrative Appeals Tribunal

## Application for Review of Decision (Organisation)

This form is for organisations applying for a review of a decision in the General Division, Freedom of Information Division, National Disability Insurance Scheme Division, Security Division or Taxation & Commercial Division of the AAT. If you are an individual, please complete the AAT form *Application for Review of Decision (Individual)*.

Please read the *Guide to applying for review* before completing this form. You must complete the fields and answer questions marked with an asterisk (\*).

### SECTION 1 APPLICANT (Organisation)

<b>Organisation name *</b>	Humane Society International Inc		
<b>ABN</b>	Charity ABN: 63510927032 ARBN: 066 675 170		
<b>Street address *</b>	5/27 Old Barrenjoey Road AVALON		
	State: NSW	Postcode: 2107	
<b>Postal address *</b> 'As above' if also your street address.	PO Box 439 AVALON		
	State: NSW	Postcode: 2107	
<b>Contact person</b>	Mr <input checked="" type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Miss <input type="checkbox"/> Other: <input type="checkbox"/>		
	Name: Michael Kennedy AM		
	Position in organisation: Campaign Director		
<b>Email</b>	michael@hsi.org.au		
<b>Telephone * / Fax</b>	Landline (02) 9973 1728	Mobile:	Fax: (    )
<b>Preferred method for receiving correspondence</b> Please select one *		Email: <input checked="" type="checkbox"/>	Fax: <input type="checkbox"/> Post: <input type="checkbox"/>
<b>Representative</b> If someone will represent your organisation, please fill in these details	Name: Elaine Johnson, Principal Solicitor (Contact solicitor: Rana Koroglu, Senior Solicitor)		
	Organisation: EDO NSW		
	Postal address: Level 5, 263 Clarence Street, Sydney		
	State: NSW	Postcode: 2000	
<b>Email</b>	rana.koroglu@edonsw.org.au		
<b>Telephone / Fax</b>	Landline (02) 9262 6989	Mobile:	Fax: (    )
<b>Preferred method for receiving correspondence</b> Please select one *		Email: <input checked="" type="checkbox"/>	Fax: <input type="checkbox"/> Post: <input type="checkbox"/>
<b>Interpreter *</b>	Does any person need an interpreter?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If yes, for which language or dialect?
<b>Assistance</b>	If any person has a disability or other special need and would like some assistance, please indicate the type of disability/need and assistance required:		
	Physical (e.g. wheelchair user)	<input type="checkbox"/>	
	Sensory (e.g. hearing or visual)	<input type="checkbox"/>	
	Other, please specify:	<input type="checkbox"/>	

Turn to page 2 →

**SECTION 2 DECISION**

Date you received the decision you want reviewed \*

OAIC decision: 01 / 09 / 2016

Are you sending us a copy of this decision?

Yes ☒

Go to section 3

No ☐

Complete all of section 2, then go to section 3

Briefly describe the decision

Who made the decision?

Name and address of organisation

State:

Postcode:

Date the decision was made

/ /

Decision reference

**SECTION 3 REASONS FOR THE APPLICATION**

Why do you claim the decision is wrong? \*

Please read the 'Reasons you are making an application' section in the *Guide to applying for review* before answering this question.

The Humane Society International (HSI) wishes to appeal the decision made on 1 September 2016 by the Australian Information Commissioner (OAIC Reference MR15/00288). The Information Commissioner's decision was made under s 55K(1)(a) of the *Freedom of Information Act 1982* (Cth) (the Act), being a decision that affirmed the internal review decision made on 14 July 2015 by the Department of Environment. The Department of Environment's internal review decision on 14 July 2015 was made under s 54C of the Act (Department's reference 010215). The Department of Environment's internal review decision was to refuse access to four documents in full and partially refuse access to three documents held by the Department of Environment.

Section 57A(1)(a) of the Act entitles HSI to seek a review of the decision made by the Information Commissioner if the application is lodged within 28 days of the notice being given. Section 27A(1) of the *Administrative Appeals Tribunal Act 1976* (Cth) entitles affected persons to seek review at the AAT. HSI's interests have been affected by this decision as it is the access applicant for the information requested. As notice of this decision was provided by the Information Commissioner on 1 September 2016, this application has been made in within the 28 day timeframe.

HSI considers the decision is wrong and a different decision should be made, namely that access to the seven documents be granted in full. HSI claims the decision is wrong on the basis that:

1. The conditional exemption under s 47B of the FOI Act does not apply to each of the documents;
2. In the alternative, if the conditional exemption does apply (which HSI does not admit), that the Department failed to undertake the necessary balancing exercise in s 11A(5) of the Act, as evidenced by its failure to state the findings on any material questions of fact, referring to the material on which those findings were based in respect of the finding that access would, on balance, be contrary to the public interest under s 11A(5) of the Act, an error which was not addressed in the Information Commissioner's reasons under s 55K(4)(a) of the Act;
3. In the alternative, if the conditional exemption does apply (which HSI does not admit), that it is in the public interest to disclose each of the documents, that is, public interest factors for disclosure outweigh factors against disclosure.

HSI does not seek to make the Acting Information Commissioner a party to the proceedings, and considers the appropriate respondent is the Department of Environment under s 60 of the Act.

**SECTION 4 TAX DECISIONS**

Complete this section only if you are applying to us for review of a tax decision.

A lower application fee is payable if the amount of tax in dispute is less than \$5,000.

Is the amount of tax in dispute less than \$5,000?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, please state the amount of tax in dispute:	\$	

**SIGNATURE**

Signature		Date	29 / 09 / 2016
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\* Mandatory field/question

## GUIDE TO APPLYING FOR REVIEW

The Administrative Appeals Tribunal (AAT) can review a wide range of decisions made under Commonwealth laws by the Australian Government and some non-government bodies. We also review decisions made under Norfolk Island laws.

You should use this guide if you want to apply for a review of a decision in the AAT's General Division, Freedom of Information Division, National Disability Insurance Scheme Division, Security Division, Taxation & Commercial Division or Veterans' Appeals Division.

The four parts of this guide will:

- help you choose which application form to use (Part 1)
- help you complete the application form (Part 2)
- give you some other information about applying to the AAT (Part 3) and
- show you where to send your form and how to contact the AAT (Part 4).

If you want to apply for a review of a decision in the AAT's Migration & Refugee Division or Social Services & Child Support Division, go to [www.aat.gov.au](http://www.aat.gov.au) and follow the links on the website.

### PART 1: CHOOSING WHICH APPLICATION FORM TO USE

The AAT has three application forms to apply for a review of a decision in the AAT's General Division, Freedom of Information Division, National Disability Insurance Scheme Division, Security Division, Taxation & Commercial Division or Veterans' Appeals Division.

#### *Application for Review of Decision (Individual)*

Use that form if you are an individual, unless you want to apply for a second review of a decision of the former Social Security Appeals Tribunal or the AAT's Social Services & Child Support Division.

#### *Application for Review of Decision (Organisation)*

Use this form if you are an organisation.

#### *Application for Second Review of Decision*

Use that form if you want to apply for a second review of a decision made by the former Social Security Appeals Tribunal or the AAT's Social Services & Child Support Division:

- about a Centrelink decision (except an employer-related paid parental leave decision)
- to refuse an extension of time to apply for a child support review
- about a percentage of care for a child in a child support review.

For information about completing this form, see Part 2 of this guide.

## PART 2: COMPLETING THE APPLICATION FORM

Read this guide and the form carefully. If you need more space to answer a question, continue your answer on another sheet of paper and attach it to the form.

If you need help filling out the form or if you need more information, ask us. When you have completed the form, you can bring it to the AAT in person or send it to us by post, email or fax. Our contact details are at the end of this guide.

### APPLICANT

#### CONTACT DETAILS

The form asks you to give us your address, phone numbers, and any email addresses or fax numbers. Please tell us your preferred method for receiving written information from us by ticking the box. If you have given us an email address and you do not tick a box, we will email the documents to you.

#### REPRESENTATIVE

You can represent yourself at the AAT or any person you choose can represent you. If you tell us that you have a representative, we will send the letters and other documents about your case to your representative instead of sending them to you.

#### INTERPRETER

If you need an interpreter, we will arrange for a qualified interpreter to assist you free of charge. If you speak a particular dialect, please include this in the form.

#### DISABILITY

If you have a disability or special need and would like some assistance, we will try to make appropriate arrangements for you. Our offices (known as registries) have portable hearing loops and are wheelchair accessible.

### DECISION

#### DATE YOU RECEIVED THE DECISION

We ask you to tell us on the form when you received the decision. We need this information so we can check if your application has been lodged within the time limit.

The time limit for lodging an application for a review of a decision is usually 28 days after you receive the decision. For some types of decisions, the time limit is longer and for others it's shorter. The time limit is usually stated in the information given to you about your review rights.

If the time limit has expired, you can apply for an extension of time to make your application. We can extend most, but not all, time limits. You can use the *Application for an Extension of Time for Making an Application for Review of Decision* form which is on our website.

#### SEND US A COPY OF THE DECISION

If you can, send us a copy of the decision you want us to review. If you can't, describe the decision briefly, for example: 'The Tax Office decided that I have to pay a tax debt'.

#### WHO MADE THE DECISION

If you are not sending us a copy of the decision, you need to tell us the name and address of the department or organisation that made the decision.



## DATE THE DECISION WAS MADE AND DECISION REFERENCE

If you are not sending us a copy of the decision, we ask you to tell us on the form when the decision was made and to give us a decision reference. You will usually find a reference number for the decision somewhere on the decision itself. Giving us these details helps us to identify the decision quickly.

## REASONS YOU ARE MAKING AN APPLICATION

You must tell us briefly why you want to have the decision reviewed. For example, you may think the decision is wrong and a different decision should be made, or the information you provided was not taken into account, or the law was not applied correctly.

We cannot start the review if you do not answer this question.

## TAX DECISIONS

If you are applying for a review of a tax decision, a lower application fee is payable if the amount of tax in dispute is less than \$5,000. To be eligible to pay the lower fee, you must write on the form the amount of tax that is in dispute in your case.

If the amount of tax in dispute is \$5,000 or more you must pay the standard application fee.

See below for information about the amount of the lower fee and other types of tax decisions that attract a lower application fee.

## PART 3: OTHER INFORMATION ABOUT APPLYING TO THE AAT

### APPLICATION FEES

You do not have to pay a fee when you apply to us for a review of some types of decisions, such as applications about Commonwealth workers' compensation, family assistance or social security payments, military compensation, the National Disability Insurance Scheme or veterans' pensions.

For the review of other types of decisions, you must pay a fee when you lodge your application. The standard application fee is \$884. The lower fee of \$87 is payable for the review of the following tax decisions:

- the amount of tax in dispute is less than \$5,000
- the Tax Office has refused your request to be released from paying a tax debt (regardless of the amount involved)
- the Tax Office has refused to extend the time for you to lodge an objection.

You are entitled to pay a reduced fee of \$100 instead of a standard application fee if:

- you have been granted legal aid for your application
- you hold a health care card, pensioner concession card or Commonwealth seniors health card
- you are in prison or lawfully detained in a public institution
- you are under 18 years of age or receiving youth allowance, Austudy or ABSTUDY, or
- we decide that paying the full fee would cause you financial hardship.

To apply for a fee reduction on the grounds of financial hardship, you must fill out the *Request for Fee Reduction* form, which is on our website, and send it to us.

Application fees must be paid when the application is lodged. The AAT may dismiss your application if you do not pay the fee within six weeks.

If you have paid a standard application fee and the application is resolved in your favour, most of it will be refunded to you. There is no refund if you paid the lower application fee of \$87 or the reduced fee of \$100.

For more information about fees, including when there is no fee and whether you are eligible to pay a reduced fee, go to the AAT website or contact your local AAT registry.

#### *How to pay a fee*

You can pay a fee in cash or by cheque, money order, EFTPOS or credit card. We accept payment by MasterCard and Visa.

All payment types are accepted at our registries. Credit card payments can also be made by phone.

### **APPLYING TO SUSPEND A DECISION**

In general, a decision continues to operate while we are reviewing it. In some cases, we can order that the decision be suspended while the review is taking place.

If you want to ask us to suspend the operation of the decision, you must complete a *Request for Stay Order* form, which is on our website, and send it to us.

### **STEPS IN A REVIEW**

In most cases, we use alternative dispute resolution (ADR) to help the parties – you and the department or organisation that made the decision you want reviewed – try to reach agreement about how the case should be resolved. Many cases are resolved at this stage. ADR processes are held in private.

If agreement cannot be reached, we will hold a hearing and make a decision. Hearings are usually open to the public.

Our procedures and the time needed to complete the review vary from case to case. We aim to have cases finalised within 12 months.

### **WHAT DO WE DO WITH INFORMATION GIVEN TO US?**

We collect information from you to process your application and to carry out the review under the *Administrative Appeals Tribunal Act 1975*.

We give a copy of the form to the department or organisation that made the decision you want reviewed. We may also give a copy to any other person that is a party to the review.

If you give us other information during the review that another party does not have, we will usually give them a copy.

Limited information about cases in the AAT's General Division, Freedom of Information Division, National Disability Insurance Scheme Division, Taxation & Commercial Division or Veterans' Appeals Division is usually made available to the public on request and can be accessed using *eCase Search* on our website. This information includes the names of the parties and any representatives, the type of application, dates of conferences, hearings or other case events, the types of key documents lodged by the parties and the outcome of an application.

More information is usually made publicly available if we hold a hearing and make a decision in the case. Many AAT decisions are published on the internet.

We can order that information be kept confidential if we believe there is good reason to do so. You can apply for an order by writing to us stating what information you want kept confidential and why. In some cases, legislation requires that information be kept confidential.

For more information see our fact sheet, *Privacy and confidentiality at the AAT*, and our Privacy Policy. Our Privacy Policy includes information about how you can access and seek correction of your personal information, make a complaint about the way we have handled your personal information and how we will deal with such a complaint. *Privacy and confidentiality at the AAT* and our Privacy Policy are on our website or are available from your local AAT registry.

## MORE INFORMATION ABOUT THE AAT

For more information about the AAT and how we conduct reviews go to our website or call us. Our staff can give you information about procedures but cannot give you legal advice.

## PART 4 CONTACT THE AAT

### HOW DO I SUBMIT THIS FORM?

You can send us your form by email, post, or fax, or deliver it to a registry.

**Email:** [generalreviews@aat.gov.au](mailto:generalreviews@aat.gov.au)

**Post:** AAT, GPO Box 9955, Your capital city (*Northern Territory residents should write to Adelaide*) or

AAT, c/- Supreme Court of Norfolk Island Registry, Kingston, Norfolk Island 2899

#### In person or by fax:

<b>ADELAIDE</b> Floor 11 Chesser House 91 Grenfell Street ADELAIDE SA 5000 <b>FAX (08) 8201 0610</b>	<b>BRISBANE</b> Level 4, Harry Gibbs Building Commonwealth Law Courts 119 North Quay BRISBANE QLD 4000 <b>FAX (07) 3361 3001</b>	<b>CANBERRA</b> Level 8 14 Moore St CANBERRA CITY ACT 2600 <b>FAX (02) 6243 4600</b>	<b>HOBART</b> Edward Braddon Building Commonwealth Law Courts 39–41 Davey St HOBART TAS 7000 <b>FAX (03) 6232 1601</b>
<b>MELBOURNE</b> Level 16, HWT Tower 40 City Rd SOUTHBANK VIC 3006 <b>FAX (03) 9282 8480</b>	<b>NORFOLK ISLAND</b> Supreme Court of Norfolk Island KINGSTON Norfolk Island 2899 <b>TEL +61 2 9391 2400</b> <b>FAX +61 2 9283 4881</b>	<b>PERTH</b> Level 5 111 St Georges Terrace PERTH WA 6000 <b>FAX (08) 9327 7299</b>	<b>SYDNEY</b> Level 6 83 Clarence St SYDNEY NSW 2000 <b>FAX (02) 9276 5599</b>

If you want more information or assistance, call us on **1800 228 333** (calls are free from landline phones, however calls from mobiles may be charged). Residents of northern NSW (postcodes 2460–2490) will be connected to the Brisbane registry and residents of the Northern Territory will be connected to the Adelaide registry.

Non-English speakers can call the Translating and Interpreting Service on 131 450 and ask them to call the AAT.

If you are deaf or have a hearing or speech impairment, contact us through the National Relay Service. For more information visit [www.relayservice.gov.au](http://www.relayservice.gov.au)

**Website:** [www.aat.gov.au](http://www.aat.gov.au)







## ***Humane Society International Inc. and Department of the Environment [2016] AICmr 57 (1 September 2016)***

**Decision and reasons for decision of  
Acting Australian Information Commissioner, Timothy Pilgrim**

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<b>Applicant:</b>	Humane Society International Inc.
<b>Respondent:</b>	Department of the Environment
<b>Decision date:</b>	1 September 2016
<b>Application number:</b>	MR15/00288
<b>Catchwords:</b>	Freedom of Information — Commonwealth-State relations — Whether disclosure would be contrary to the public interest — (CTH) <i>Freedom of Information Act 1982 ss 11A, 47B</i>

### **Decision**

1. Under s 55K of the *Freedom of Information Act 1982* (the FOI Act), I affirm the decision of the Department of the Environment (the Department) of 14 July 2015.

### **Scope of IC review**

2. On 6 February 2015, Humane Society International Inc. (the applicant) applied to the Department for access to documents under the FOI Act. The request was revised on 2 April 2015 to seek:

All Correspondence and documents, including, but not limited to, briefs, reports, analysis, checklists and emails, that have been prepared by, sent from, or received by staff within the Regulatory Reform Taskforce/Branch within Department of the Environment for the purpose of analysing the draft or final NSW Major Projects Offsets Policy and only those documents that the NSW Major Projects Offsets Policy was the principal focus.

3. On 18 May 2015, the Department identified 46 documents within the scope of the request, granting access to 39 documents and deciding that six documents (documents 4, 12, 14-16 and 18) were exempt in full and one document (document 22) was exempt in part under s 47B of the FOI Act (Commonwealth-State relations exemption). The Department released one further document

with deletions under s 22 on the basis that the material would reasonably be regarded as irrelevant to the request.

4. On 17 June 2015, the applicant applied for internal review under s 54 of the FOI Act.
5. On 14 July 2015, the Department decided on internal review to affirm the decision that documents 12 and 14-16 were exempt in full and to release additional material in documents 4, 18 and 22.
6. The decision specified that documents 4 and 18 were exempt in part and document 12 was exempt in full under s 47B(a) of the FOI Act (damage to Commonwealth-State relations). Documents 14-16 were found to be exempt in full and document 22 exempt in part under s 47B(b) of the FOI Act (matter communicated in confidence by or on behalf of the government of a state).
7. On 11 September 2015, the applicant sought IC review of the Department's decision under s 54L of the FOI Act.
8. In this IC review, I have considered whether the documents are exempt under ss 47B(a) and 47B(b) of the FOI Act.
9. During the course of the IC review, the Department identified a further document within the scope of the request, an attachment to document 22. The document was released in full to the applicant and will not be considered within the scope of the IC review of the access refusal decision.
10. In making my decision, I have had regard to the following:
  - the Department's original and internal review decisions and reasons for decision of 18 May and 14 July 2015
  - the application for IC review
  - the documents at issue
  - the FOI Act, in particular s 47B
  - the Guidelines under s 93A to which agencies must have regard in performing a function or exercising a power under the FOI Act, in particular paragraphs [6.34] – [6.55], and
  - the parties' submissions.

### **Commonwealth-State relations exemption (s 47B)**

11. The documents in issue relate to bilateral discussions on the 'One Stop Shop Reforms' agreed to by the Council of Australian Governments to 'accredit state planning systems under national environmental law, to create a single

environmental assessment and approval process for nationally protected matters.’<sup>1</sup>

12. The Department advised the OAIC:

Under these reforms, the Australian Government will delegate to State and Territory governments through bilateral agreements capacity to assess and approve projects under national environmental law, the *Environment Protection & Biodiversity Conservation Act 1999*. Negotiations between States and Territories on measures required to implement the Reforms are ongoing and remain confidential between the parties. The requested documents reflect these negotiations.

More specifically, the documents cover negotiations between the Australian Government and the State of New South Wales regarding implementing environmental offsets in NSW once the Reforms are in place. This is with a view that NSW's offset arrangements under the Reforms deliver comparable offset outcomes to those that would be achieved where offsets are determined by applying the Australian Government's *Environment Protection & Biodiversity Conservation Act 1999 Offset Policy* (EPBC Act Offset Policy).

13. In its application for IC review, the applicant relied on the submissions made in support of its request for internal review. I have had regard to the submissions, which were summarised as:

- the reliance on likely damage to Commonwealth/State relations (s 47B(a)) as a reason to refuse access to the documents concerned is inappropriate in the circumstances
- the refusal does not provide substantial evidence or reasoning that giving access to these documents would cause the harm envisaged by the Department
- even if the conditional exemption is applicable on its face, access should be given to the documents because, on balance, access would not be contrary to the public interest (that is, in the circumstances, giving access would be in the public interest), and
- in relation to the purported understanding of confidentiality no Commonwealth or State Government officer can responsibly agree to override the public interest in the release of information under the FOI Act and in the event such confidentiality formed some part of an exemption to be relied upon (which it does not appear to be the case from the original decision) we submit that on balance the public interest would weigh favourably on disclosure.<sup>2</sup>

14. I have also had regard to the applicant's submissions in the application for internal review as to the public interest in transparency around the discussions between the Commonwealth and NSW, and in environmental regulation more

<sup>1</sup> <https://www.environment.gov.au/epbc/one-stop-shop>

<sup>2</sup> Footnotes have been omitted where the applicant's submissions are referenced in this decision

generally. Before considering where the public interest lies in relation to disclosing a document, I must first determine whether the documents are conditionally exempt.

### **Damage to Commonwealth-State relations (47B(a))**

15. As discussed in the Guidelines and in IC review cases,<sup>3</sup> the main requirement of this conditional public interest exemption is that disclosure of the document would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a state.
16. The material that the Department decided was exempt under s 47B(a) comprises:
  - a brief which analyses and compares the draft NSW Offsets Policy with the EPBC Offsets Policy, and summarises the Australian Government's position for the purpose of bilateral discussions (document 4)
  - meeting notes prepared by the Department following a meeting between the Department and NSW officials (document 12), and
  - a brief which analyses and compares the draft NSW Offsets Policy for Major Projects with the EPBC Offsets Policy, and summarises the Australian Government's position for the purpose of providing comments to NSW on the draft NSW policy (document 18).
17. The Department's decision of 14 July 2015 states:

I am releasing Documents 4 and 18, with redactions removing the Commonwealth's negotiating position in bilateral discussions with New South Wales regarding the NSW Offsets Framework. The negotiating position is comprised of an analysis and response to the NSW Offsets Framework which, if released, would in my view cause damage to the relationship between the Commonwealth and New South Wales and are conditionally exempt under s47B(a).

I consider that Document 12 should not be released. In the first instance, the document contains information about confidential discussions that were had between the Commonwealth and New South Wales regarding the NSW Offsets Framework. Further to this, New South Wales has not agreed to the content of the document, and does not agree to its release. I therefore consider that releasing the document would be damaging to relations between the Commonwealth and New South Wales and are conditionally exempt under s47B(a).

18. In relation to documents 4 and 18, the Department submits:

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<sup>3</sup> Generally, see *Guidelines* [6.34]-[6.55]; *'HJ' and Australian Federal Police* [2015] AICmr 71; *Greenpeace Australia Pacific and Department of Industry* [2014] AICmr 140; *Crowe and Department of Prime Minister and Cabinet* [2014] AICmr 72 and *Diamond and Australian Curriculum, Assessment and Reporting Authority* [2013] AICmr 57.

Negotiations with NSW regarding the Reforms, including to achieve the goals in relation to delivery of offsets under the bilateral agreements, are ongoing and characterised by the need for adequate flow of information. The exempt material contained in Documents 4 and 18 was prepared by the Department as internal briefing in preparation for negotiations with NSW. The documents and, in particular, the Department's assessment of the NSW offset policy, have not been disclosed to NSW officials...release of the information could reasonably be expected to cause damage to the relations between the Australian Government and NSW and, in particular, affect ongoing negotiations in relation to the accreditation of the NSW offsets policy. I was of the view that disclosure would not be in the public interest as it could reasonably be expected to impede the Department's ability to progress the implementation of the Reforms in NSW and other jurisdictions. Accordingly, I formed the view that information demonstrating the Australian Government's negotiating position for active negotiations should be exempt from release.

19. In relation to documents 4 and 18, the applicant submits:

We disagree with the Department's assertion that disclosure of these documents could affect ongoing negotiations regarding accreditation of the NSW offsets policy. There are no reasons to reasonably expect that the flow of information will be stifled or that the Department will be impeded from progressing the reforms, by disclosure of the Department's position. We are of the view that public scrutiny of the discussions in relation to the development of biodiversity offsetting policies to satisfy legal obligations would enhance, not disrupt the qualitative outcomes of any such policies.

...

Prior to the negotiations for the development of an approval bilateral agreement (of which the offsets policy accreditation is one component), the Department and NSW entered into a Memorandum of Understanding (MOU) in which they mutually agreed to "ensure high standards are maintained for the protection of the environment and, in particular, matters of national environmental significance". We submit that there is an overriding public interest in informing the public of how the Department is evaluating the offsets policy with NSW, in order to meet its own agreed goal of ensuring high standards are maintained for the protection of the environment".

The Department and NSW have both agreed that "in developing" the approval bilateral agreement, that to ensure that environmental standards are maintained, NSW will not act inconsistently with relevant Commonwealth EPBC Act statutory guidelines, plans and policies in its decision making". Disclosure of the Department's position and the Department's evaluation of the NSW offsets policy, in comparison to the *Environment Protection and Biodiversity Act 1999* (Cth) (EPBC Act) offsets policy, is absolutely vital for ensuring that the Department is held accountable for fulfilling its commitment to maintaining EPBC Act standards". We therefore submit that on balance, more good than harm will result from the full disclosure of Documents 4 and 18.

20. In relation to document 12, the Department submits:



...releasing the information is highly likely to restrict the necessary flow of information between the Australian Government and all States and Territories regarding the Reform negotiations. The parties to the negotiations need to be able to divulge positions and document their understandings in order to reach resolution without risk of premature disclosure in a rapidly paced, evolving and consultative environment...the public interest favours non-disclosure at this time as I am of the view that disclosure of the material could reasonably be expected to affect the ability of the Department to conduct open and consultative negotiations and document preliminary understandings about outcomes of these live negotiations that will assist in progressing the implementation of the Reforms.

21. In relation to document 12, the applicant submits:

...while the concerns raised by NSW must be taken into account, this is not a determinative factor for the purpose of determining whether the conditional exemption applies.

The Department has repeatedly submitted that Document 12 is a potentially inaccurate reflection of the meeting and not approved by NSW. Many government records of meetings only reflect the government's position, without a formal endorsement of other attendees at the meeting. To alleviate any concerns the Department may have that the document would be misinterpreted as being an accurate record of the meeting, Document 12 can be disclosed by describing it as not representing official approved minutes of a meeting.

We submit that inherent in the Department's submissions is an underlying concern that disclosure of Document 12 could result in confusion or unnecessary debate, or that access to the document could result in a misinterpretation or misunderstanding of the document - both of which are explicitly irrelevant considerations under the FOI Act. Furthermore, we submit that the fact that a document may only reflect the Department's understanding, as opposed to reflecting a mutually agreed record of meeting, is immaterial.

...no reason is proffered as to why disclosure would reasonably be expected to restrict the flow of information in the future, or affect the ability of the Department to conduct open and consultative negotiations. It is not apparent why such information, being policy formulation on attempting to 'offset' damaging impacts on Australia's biodiversity, cannot be conducted openly and transparently, consistent with the objects of the FOI Act.

We submit that non-disclosure of meeting notes and actions will result in a lack of accountability of government officials...

There is no clear basis for asserting the communication is confidential between the Department and NSW regarding the policy formulation of the approval bilateral agreement, of which the offsets policy is one component.

In this regard, we refer to the MOU relating to the development of the policies in question. The MOU, and the joint statement prepared several weeks after

the MOU, reflect the intention of NSW and the Department to develop an approval bilateral agreement. At no point does the MOU or the joint statement, expressly or impliedly, suggest that the communication between the parties will be confidential. Indeed, quite the opposite is recorded, in that the MOU states that, "The Parties acknowledge the importance of working with stakeholders and the community to develop the new arrangements and to build confidence in the one stop shop agreements and maintenance of high environmental outcomes."

22. I have examined documents 4, 12 and 18.
23. In relation to documents 4 and 18, I am satisfied that in the context of ongoing negotiations, release of the internal analysis and response to the NSW Offsets Framework, prior to the assessment being disclosed to NSW officials, could reasonably be expected to cause damage to relations between the Commonwealth and NSW.
24. In relation to document 12, I have considered the objections to the release of the information by the NSW Government and the disagreement as to the contents of the document and find that release of the document would cause damage to relations between the Commonwealth and NSW.<sup>4</sup>
25. I am satisfied that the documents are conditionally exempt under s 47B(a) of the FOI Act.

**Matter communicated in confidence by or on behalf of the government of a state (47B(b))**

26. As discussed in the Guidelines and in IC review cases,<sup>5</sup> the main requirement of this conditional public interest exemption is that disclosure of the document would divulge information or matter communicated in confidence by or on behalf of the Government of a state or an authority of a state, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.
27. When assessing whether information was communicated in confidence, the test is whether the communication was considered to be confidential at the time of the communication.<sup>6</sup>

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<sup>4</sup> That finding is separate to my consideration of the public interest test in which I must not take into account any irrelevant factors specified in s 11B(4) of the FOI Act

<sup>5</sup> Generally, see *Guidelines* [6.34]-[6.55]; 'GA' and *Department of the Prime Minister and Cabinet [2015] AICmr 42* and *Greenpeace Australia Pacific and Department of Industry [2014] AICmr 140*

<sup>6</sup> *Guidelines*, [6.44]



28. The material that the Department decided was exempt under s 47B(b) comprises:
- case studies applying the NSW offsets policy (and Framework for Biodiversity Assessment) to alternative developments (documents 14-16)
  - email transmitting the case studies from NSW to the Department, and includes internal comments on those case studies (Document 22)
29. The Department's decision of 14 July 2015 states:

I am releasing a revised redacted version of Document 22 as I believe the revised version – containing additional information to the version released as part of the primary decision – more adequately meets your FOI request whilst respecting the confidential nature of the case studies supplied by NSW to the Commonwealth. I consider that any further release of information in Document 22 would divulge information communicated in confidence by New South Wales.

Document 22 states that the case studies attached to that email are being communicated in confidence to the Commonwealth. I consider therefore that Documents 14-16, being the case studies attached to that email, should not be released and are conditionally exempt under s47B(b).

30. In relation to documents 14-16 and 22, the Department submits:

...release of this information would adversely affect the level of trust established between the Department and NSW and impair the flow of information between our agencies on this and other matters...

I believe that release of these documents could reasonably be expected to prejudice the ability of this Department to adequately support negotiations with States and Territories regarding implementation of the Reforms, in particular outcomes on offsets required to deliver the Reforms.

31. In relation to documents 14-16 and 22, the applicant made various submissions which I have had regard to.
32. I have examined documents 14-16 and 22.
33. Document 22 itself contains contemporaneous evidence that documents 14-16 were provided in confidence. I find that the information in documents 14-16 was considered to be confidential at the time of the communication. The references in document 22 to documents 14-16 that the Department decided were exempt, are also therefore conditionally exempt under s 47B(b).

#### **Public interest test (s 11A(5))**

34. In finding that the documents contain material that is conditionally exempt, I am therefore required to consider whether it would be contrary to the public

interest to give the applicant access to conditionally exempt material at this time.

35. I have considered the applicant's extensive submissions and have made a decision based on a consideration of the public interest factors arising from the specific documents in issue.
36. I have considered the factors in favour of disclosure of the documents in this case. Disclosure could reasonably be expected to:
  - promote the objects of the FOI Act, and
  - inform debate on a matter of public importance.
37. The fact that disclosure would damage Commonwealth-State relations is not solely determinative of whether it is contrary to the public interest to allow access<sup>7</sup> however, here I find it is a relevant public interest factor against disclosure, to which I attach significant weight. In particular, the damage to Commonwealth-NSW relations given:
  - the objection of NSW to the release of documents 12, 14-16 and 22
  - the material obtained in confidence from NSW in the course of ongoing discussions (documents 14-16 and 22), and
  - the Australian Government's analysis of the NSW Offsets Policy for the purpose of ongoing bilateral discussions prior to disclosure to NSW officials (documents 4 and 18).
38. In balancing the factors for and against disclosure, I give the greatest weight to the factors against disclosure.
39. I am satisfied that giving access to the documents at this time would be contrary to the public interest.

Timothy Pilgrim  
Acting Australian Information Commissioner  
1 September 2016

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<sup>7</sup> *Guidelines*, [6.55]

### **Review rights**

If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Appeals Tribunal. The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

An application to the AAT must be made within 28 days of the day on which the applicant is given the IC review decision (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. Further information is available on the AAT's website ([www.aat.gov.au](http://www.aat.gov.au)) or by telephoning 1300 366 700.



Ms Sue Higginson  
Principal Solicitor  
EDO NSW  
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LISMORE NSW 2480

[edonr@edonsw.org.au](mailto:edonr@edonsw.org.au)

Dear Ms Higginson

**Freedom of Information – Internal Review Decision**  
**Request No. 010215**

I refer to your letter to the Department of the Environment (the Department) dated 17 June 2015, requesting an internal review of that part of the primary decision to refuse access to Documents 4, 12, 14-16, 18 and 22 (in part) under section 47B of the *Freedom of Information Act 1982* (Cth) (the FOI Act).

**Authority**

I am authorised by the Secretary of the Department under section 23 of the FOI Act to make decisions on internal review requests under section 54C of the FOI Act. Internal reviews, in accordance with the FOI Act, are conducted as a complete reconsideration of the merits of the primary decision. As the officer conducting the review I am empowered to affirm, vary or overturn, in part or in whole, the primary decision.

**Background**

The primary decision, dated 18 May 2015, was to grant full access to 46 documents except the documents listed below (the relevant documents).

<b>Doc No.</b>	<b>Date</b>	<b>Description</b>
4	18 Feb 2014	<b>Brief.</b> One Stop Shop Bilateral Discussion, 18/19 Feb 2014
12	12 March 2014	<b>Meeting notes.</b> One Stop Shop Bilateral Discussion, 12 March 2014
14	12 March 2014	<b>Case study</b> - applying the NSW offsets policy (and Framework for Biodiversity Assessment)
15	12 March 2014	<b>Case study</b> - applying the NSW offsets policy (and Framework for Biodiversity Assessment)
16	12 March 2014	<b>Case study</b> - applying the NSW offsets policy (and Framework for Biodiversity Assessment)
18	11 December 2013	<b>Brief.</b> One Stop Shop Bilateral Discussion, 11 December 2013
22	11 March 2014	<b>Email.</b> Re: One Stop Shop - Offsets Technical Discussion.

The authorised officer considered that releasing the relevant documents in full could reasonably be expected to cause damage to relations between the Commonwealth and New South Wales or would divulge information communicated in confidence by New South Wales to the Commonwealth. The primary decision on your application was therefore to exempt the documents either in full or in part from release under s47B of the FOI Act.

#### **Internal review decision**

I am required under the FOI Act to provide notice of my internal review decision in accordance with the requirements set out in section 26 of the FOI Act. The purpose of this letter is to provide a statement of reasons for my decision on your request for internal review.

In respect of the documents that are subject to the internal review request, I have made a decision to:

- affirm the primary decision to not release documents 12, 14, 15 and 16;
- grant access to parts of documents 4 and 18; and
- release document 22 with revised redactions.

#### **Material considered in making internal review decision**

In making my decision in relation to each document I have considered:

- Freedom of Information Request No. 010215, dated 2 April 2015;
- the primary decision;
- your request for internal review dated 17 June 2015;
- the relevant documents;
- the FOI Act; and
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (Version 1.4, October 2014).

The detailed reasons for my decision are set out below.

#### **Reasons for internal review decision**

##### **The relevant documents**

The relevant documents relate to the Department's analysis of the NSW Offsets Policy in the context of One Stop Shop Reform bilateral discussions, specifically:

- **Document 4** analyses and compares the draft NSW Offsets Policy with the EPBC Offsets Policy, and summarises the Australian Government's position for the purpose of bilateral discussions.
- **Document 12** is meeting notes prepared by the Department following a meeting between Department and NSW officials. The meeting notes were for internal use only and were not reviewed by NSW officials.
- **Documents 14-16** are case studies of applying the applying the NSW offsets policy (and Framework for Biodiversity Assessment) to alternative developments. The case

studies were provided by NSW on a confidential basis for the purpose of informing One Stop Shop Reform bilateral discussions.

- **Document 18:** analyses and compares the draft NSW Offsets Policy for Major Projects with the EPBC Offsets Policy, and summarises the Australian Government's position for the purpose of providing comments to NSW on the draft NSW policy.
- **Document 22:** This email transmits the above case studies from NSW to the Department, and includes internal comments on those case studies.

#### ***Section 47B – Commonwealth-State Relations***

Relevantly, section 47B of the FOI Act provides that a document is conditionally exempt if disclosure:

- (a) would or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or
- (b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

I am releasing **Documents 4 and 18**, with redactions removing the Commonwealth's negotiating position in bilateral discussions with New South Wales regarding the NSW Offsets Framework. The negotiating position is comprised of an analysis and response to the NSW Offsets Framework which, if released, would in my view cause damage to the relationship between the Commonwealth and New South Wales and are conditionally exempt under s47B(a).

I consider that **Document 12** should not be released. In the first instance, the document contains information about confidential discussions that were had between the Commonwealth and New South Wales regarding the NSW Offsets Framework. Further to this, New South Wales has not agreed to the content of the document, and does not agree to its release. I therefore consider that releasing the document would be damaging to relations between the Commonwealth and New South Wales and are conditionally exempt under s47B(a).

I am releasing a revised redacted version of **Document 22** as I believe the revised version – containing additional information to the version released as part of the primary decision – more adequately meets your FOI request whilst respecting the confidential nature of the case studies supplied by NSW to the Commonwealth. I consider that any further release of information in Document 22 would divulge information communicated in confidence by New South Wales.

Document 22 states that the case studies attached to that email are being communicated in confidence to the Commonwealth. I consider therefore that **Documents 14-16**, being the case studies attached to that email, should not be released and are conditionally exempt under s47B(b).

#### ***Public Interest Test***

Under the FOI Act, a public interest test applies to the conditional exemptions set out in Part IV of the FOI Act. Accordingly I must, in considering whether the above exemptions apply to Documents 4, 12, 14-16, 18 and 22, also consider whether providing access to the documents (at this time) would, on balance, be contrary to the public interest.

In deciding whether or not providing access would, on balance, be contrary to the public interest, there are a number of factors that favour access and a number of irrelevant factors that I must not take into account.



The factors favouring access (see sub-section 11B(3) of the FOI Act) include whether access would do any of the following:

- promote the objects of the FOI Act (including all the matters set out in sections 3 and 3A);
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure;
- allow a person to access his or her own personal information.

I must not take into account the following factors (see sub-section 11B(4) of the FOI Act):

- access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- access to the document could result in any person misinterpreting or misunderstanding the document;
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
- access to the document could result in confusion or unnecessary debate.

I have had regard to the public interest factors set out above in making my decision. In my view, providing access to the documents in whole would, on balance, be contrary to the public interest because it would or could reasonably be expected to cause damage to relations between the Commonwealth and New South Wales.

I have therefore made a decision, in accordance with section 47B of the FOI Act, to refuse access to Documents 12 and 14-16, and to parts of Documents 4, 18 and 22 that fall within the scope of your FOI request.

#### **Review rights**

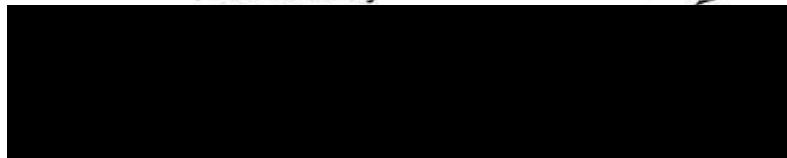
Under the FOI Act you may seek a review of my decision by the Information Commissioner – see Part VII of the FOI Act.

Further information regarding your review rights is available at **Attachment A** and the enclosed OAIC's FOI Fact Sheet 12 titled *Freedom of Information – your review rights*.

#### **Further assistance**

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or, by email at [foi@environment.gov.au](mailto:foi@environment.gov.au) for any assistance with your request.

Yours sincerely

  
Andrew McNee  
Acting First Assistant Secretary  
Environmental Standards Division

14 July 2015



**Australian Government**  
**Department of the Environment**

Sue Higginson  
Level 1, 71 Molesworth Street  
PO Box 868  
Lismore NSW 2480

Dear Ms Higginson

**Freedom of Information - Access Decision Letter**  
**Request No. 010215**

I refer to your revised request of 2 April 2015 to the Department of the Environment (the Department), in which you have sought access under the *Freedom of Information Act 1982* (Cth) (the FOI Act) to documents relating to:

*All Correspondence and documents, including, but not limited to, briefs, reports, analysis, checklists and emails, that have been prepared by, sent from, or received by staff within the Regulatory Reform Taskforce/Branch within Department of the Environment for the purpose of analysing the draft or final NSW Major Projects Offsets Policy and only those documents that the NSW Major Projects Offsets Policy was the principal focus.*

**Authority**

I am authorised by the Secretary of the Department under section 23 of the FOI Act to make a decision in relation to this request.

**Background**

The Department has identified 46 documents as relevant and falling with the scope of your request. A schedule of the documents is available at Attachment A.

**Decision**

After considering your FOI request and relevant documentation, I have decided to:

- grant access to document numbers 1, 2, 3, 5-11, 13, 17, 19, 20, 21, 23 and 25-46 meeting the terms of the request;
- refuse access to a part of document number 22 as the part contains material that is exempt under section 47B FOI Act. This part has been removed in accordance with section 22 of the FOI Act;
- refuse access to part of document 24 as this part contains material that is irrelevant to your request, and therefore has been removed under section 22 of the FOI Act; and
- refuse access in full of documents numbered 4, 12, 14, 15, 16 and 18 as these documents are exempt under section 47B.



As I have decided to release information that was the subject of consultation with third parties, those third parties have 30 days in which to apply for internal review of my decision or to seek review of my decision by the Information Commissioner. Therefore, I cannot give you access to the documents containing that information until the third party review period has expired or, should a review of my decision be sought, until the conclusion of the third party review process. These documents are numbered 2, 3, 6, 8, 13, 19, 20, 21, 22, and 23.

You will be kept informed should any third parties seek a review of my decision.

I have, however, enclosed a copy of the documents I have decided to release in whole that are not subject to the third party review period.

#### **Material considered in making decision**

In making my decision in relation to each document I have considered:

- the documents;
- the FOI Act;
- where relevant, third party submissions; and
- the Office of the Australian Information Commissioner (OAIC), *Guidelines under s 93A of the FOI Act* (the FOI Guidelines).

I set out below my detailed reasons for my decision regarding your request.

#### **Reasons for Decision (Statement of Reasons pursuant to section 26 of the FOI Act)**

##### ***Section 47B – Commonwealth-State Relations***

Relevantly, section 47B of the FOI Act provides that a document is conditionally exempt if disclosure:

- (a) would or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or
- (b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

For section 47B, a State includes the Northern Territory, the Australian Capital Territory and Norfolk Island.

I am of the view that a number of the documents that fall within the scope of your request would or could reasonably be expected to cause damage to relations between the Commonwealth and a New South Wales or would divulge information communicated in confidence by New South Wales to the Commonwealth.

This is because disclosure would:

- interrupt or create difficulty in negotiations or discussions that are underway, including in the development of joint or parallel policy;

- adversely affect the administration of a continuing Commonwealth-State programme of work;
- adversely affect the continued level of trust or co-operation in existing inter-office relationships; and,
- impair or prejudice the flow or future flow of information to and from the Commonwealth.

Furthermore, information contained within some documents was communicated and received on an understanding that the communication would be kept confidential.

In considering whether this exemption applies and whether providing access would, on balance, be contrary to the public interest for the purposes of the public interest test set out below, I have consulted with the State of New South Wales in accordance with section 26A of the FOI Act. I have considered the comments provided by the New South Wales in making my decision.

#### *Public Interest Test*

Under the FOI Act, a public interest test applies to the conditional exemptions set out in Part IV of the FOI Act.

Accordingly, in considering whether this exemption applies, I must also consider whether providing access to the documents (at this time) would, on balance, be contrary to the public interest.

In deciding whether or not providing access would, on balance, be contrary to the public interest, there are a number of factors that favour access and a number of irrelevant factors that I must not take into account.

The factors favouring access (see sub-section 11B(3) of the FOI Act) include whether access would do any of the following:

- promote the objects of the FOI Act (including all the matters set out in sections 3 and 3A);
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure;
- allow a person to access his or her own personal information.

I must not take into account the following factors (see sub-section 11B(4) of the FOI Act):

- access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- access to the document could result in any person misinterpreting or misunderstanding the document;
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
- access to the document could result in confusion or unnecessary debate.

I have had regard to the public interest factors set out above in making my decision. In my view, providing access to a number of the documents would, on balance, be contrary to the public interest because it would or could reasonably be expected to cause damage to relations between the Commonwealth and New South Wales.

I have therefore made a decision to exempt or refuse access to part of 8 documents in their entirety that fall within the scope of your FOI request in accordance with section 47B of the FOI Act.

#### Review rights

Under the FOI Act you may seek a review of my decision through:

- an internal review that is conducted by the Department – see Part VI of the FOI Act; or
- a review by the Information Commissioner – see Part VII of the FOI Act.

Further information regarding your review rights is available at Attachment C and the enclosed OAIC's FOI Fact Sheet 12 titled *Freedom of Information – your review rights*.

#### Disclosure Log

The Department is required by section 11C of the FOI Act to publish a disclosure log on its website. The disclosure log lists information which has been released by the Department in response to an FOI access request. The publication of such documents must be done within 10 working days of the applicant being given access to the document(s). However, the disclosure log requirement does not apply to the following:

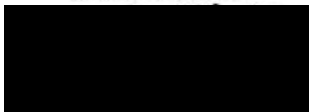
- personal information about any person if publication of that information would be unreasonable;
- information about the business, commercial, financial or professional affairs of any person if publication of that information would be unreasonable;
- other information covered by a determination made by the Australian Information Commissioner if publication of that information would be unreasonable; and
- any information if it is not reasonably practicable to publish the information because of the extent of modifications that would need to be made to delete the information listed in the above dot points.

As the documents to be released to you do not appear to contain any of the above information it is likely that they will be published on the Department's FOI disclosure log (<http://www.environment.gov.au/foi/disclosure-log.html>).

#### Further assistance

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or, by email at [foi@environment.gov.au](mailto:foi@environment.gov.au) for any assistance with your request.

Yours sincerely



James Tregurtha  
Assistant Secretary  
Policy and Reform Branch

(8 / 05 / 2015

## DOCUMENT SCHEDULE

### Request under the *Freedom of Information Act 1982*

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FOI number :	010215
Applicant's name:	Sue Higginson – Environmental Defenders' Office NSW On behalf of Humane Society International Inc.
Description of FOI request:	All Correspondence and documents, including, but not limited to, briefs, reports, analysis, checklists and emails, that have been prepared by, sent from, or received by staff within the Regulatory Reform Taskforce/Branch within Department of the Environment for the purpose of analysing the draft or final NSW Major Projects Offsets Policy and only those documents that the NSW Major Projects Offsets Policy was the principal focus.

### Schedule of documents – Freedom of information request no. 010215

Document no.	Date	Size	Description	Decision on access	Exemption (or comment)
1	091214	3	091214 - Min Brief - release revised assessment bilateral agreement for public consultation - Key features of Agreement	Release	
2	250314	5	2.3 Brief - Offsets Meeting brief for workshop with NSW on 25 March 2014 regarding offsets.	Release	
3	250314	2	2.3 Brief - Offsets Case study - Kellyville - 25 March 2014	Release	
4	180214	1	Document 4	Refused	CTH-STATE RELATIONS
5	230215	4	NSW Offsets Analysis	Release	Note - AFTER FOI DATE
6	Can not be determined	7	Alignment btw NSW and Cth Offsets - sent from NSW	Release	
7	Can not be determined	8	Alignment NSW offset policy with EPBC Policy	Release	Note - AFTER FOI DATE
8	120314	1	Attach A - NSW-Cth Offsets Technical Mtg - Agenda - 12 March 2014	Release	
9	140115	4	Meeting notes - NSW 14 January 2015 - Workshop – Revised Assessment Bilateral Implementation	Release	
10	090215	2	Endorsement of NSW offsets - Additional TPs	Release	

11	120314	5	Meeting Brief - NSW Offsets Technical Discussion - 12 March 2014	Release	
12	120314	5	Document 12	Refused	CTH-STATE RELATIONS
13	030414	2	NSW response to Cth questions re offsets - from negotiations 3 April 2014	Release	
14	120314	13	Document 14	Refused	CTH-STATE RELATIONS
15	120314	14	Document 15	Refused	CTH-STATE RELATIONS
16	120314	7	Document 16	Refused	CTH-STATE RELATIONS
17	140314	12	Offset checklist 20140314	Release	
18	091213	3	Document 18	Refused	CTH-STATE RELATIONS
19	050814	2	RE: NSW Offsets [SEC=UNCLASSIFIED]	Release	
20	010414	2	RE: NSW draft offsets policy [SEC=UNCLASSIFIED]	Release	
21	260314	4	FW: One Stop Shop - Offsets Technical Discussion [SEC=UNCLASSIFIED]	Release	

22	260314	4	FW: One Stop Shop - Offsets Technical Discussion [SEC=UNCLASSIFIED]	Release in part	OTH-STATE RELATIONS
23	140214	3	RE: NSW actions from December 11 EPBC approvals bilateral negotiation meeting [SEC=UNCLASSIFIED]	Release	
24	011214	2	RE: BRIEF MS14-003074 - release of draft NSW revised assessment bilat for public consultation [SEC=UNCLASSIFIED]	Release in part	MATERIAL IRRELEVANT TO REQUEST
25	010414	3	FW: NSW Approval Bilateral - Key Issues for Review (urgent) [SEC=UNCLASSIFIED]	Release	
26	121214	3	FW: My poor communication/assumptions about communication [SEC=UNCLASSIFIED]	Release	
27	271614	1	WA bilateral agreement – information on offsets in NSW [DLM=For-Official-Use-Only]	Release	
28	250614	2	For discussion - proposed email to WA on offsets [DLM=For-Official-Use-Only]	Release	
29	240614	4	RE: For clearance - Email to WA on offsets [DLM=For-Official-Use-Only]	Release	
30	230614	1	NSW Offsets [SEC=UNCLASSIFIED]	Release	
31	060215	1	NSW Offsets - Background and Q&A [SEC=UNCLASSIFIED]	Release	
32	220115	3	For information - Open resignation letter from NSW OEH employee [SEC=UNCLASSIFIED]	Release	
33	091214	1	FOR CLEARANCE: Alignment of NSW and EPBC offsets policies [SEC=UNCLASSIFIED]	Release	



34	091214	1	Alignment NSW offset policy with EPBC Policy v0.3 [SEC=UNCLASSIFIED]	Release	
35	081214	1	FW: [SEC=UNCLASSIFIED]	Release	
36	081214	1	[SEC=UNCLASSIFIED]	Release	
37	041214	1	Changes to briefing pack [SEC=UNCLASSIFIED]	Release	
38	031214	1	Offsets alignment document [SEC=UNCLASSIFIED]	Release	
39	281114	1	RE: BRIEF MS14-003074 - release of draft NSW revised assessment biat for public consultation [SEC=UNCLASSIFIED]	Release	
40	050814	1	FW: NSW Offsets [SEC=UNCLASSIFIED]	Release	
41	250614	5	RE: For clearance - Email to WA on offsets [DLM=For-Official-Use-Only]	Release	
42	050614	2	FW: QUICK ISSUES BRIEF BioBanking in NSW - industry concerns (residential development) [SEC=UNCLASSIFIED]	Release	
43	040614	2	FW: Checklist [DLM=For-Official-Use-Only]	Release	
44	240214	1	FW: [SEC=UNCLASSIFIED]	Release	
45	240214	1	[SEC=UNCLASSIFIED]	Release	
46	051213	2	FW: Draft NSW Offsets Policy [SEC=UNCLASSIFIED]	Release	





Australian Government  
Department of the Environment

### **Internal Review**

If you wish to seek an internal review, you must apply to the Department within 30 days after the day you are notified of this decision.

An application for internal review of the decision made must be made in writing. No particular form is required but it is helpful if you set out in the application the grounds on which you consider that the decision should be reviewed. Your application for an internal review should be sent to:

#### **By post**

FOI Contact Officer  
Legal Section  
Department of the Environment  
GPO Box 787  
Canberra ACT 2601

#### **By email**

Email: [foi@environment.gov.au](mailto:foi@environment.gov.au)

### **Review by the Information Commissioner**

Alternatively, you may seek a review of my decision by the Information Commissioner.

The option to seek an internal review (see above) does not prevent you from seeking a review by the Information Commissioner at a later stage – this is because the Information Commissioner can also review an internal review.

If you wish to seek a review of my decision by the Information Commissioner you must apply within 30 days after the day on which notice of this decision was given to you or after the day on which notice of the internal review decision was given.

Your application must be in writing and must provide details of how notices may be sent to you and include a copy of this decision letter. The Information Commissioner also suggests that your application sets out why you are objecting to the decision. Your application can be lodged in one of the following ways:

**Online:** [www.oaic.gov.au](http://www.oaic.gov.au)

**Post:** GPO Box 2999, Canberra ACT 2601

**Fax:** +61 2 9284 9666

**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

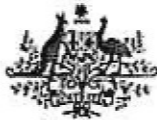
**In person:** Level 3, 25 National Circuit Forrest, ACT, or at

Level 8, Piccadilly Tower, 133 Castlereagh Street, Sydney, NSW

### **Complaints**

You may also make a complaint to the Information Commissioner if you have concerns about how the Department has handled this part (or any part) of your request under the FOI Act.

Also, **enclosed** is the OAIC's FOI Fact Sheet 13 titled *Freedom of Information – how to make a complaint*. This fact sheet provides further information on how to make a complaint to the OAIC.



## FOI Fact Sheet 12: Freedom of information – Your review rights — April 2011

If you disagree with the decision of an Australian Government agency or minister under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if someone is to be granted access to information that is about you, if the agency has informed you that it will impose a charge for processing your request or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by the agency, and external review by the Australian Information Commissioner.

### Internal review

If an agency makes an FOI decision that you disagree with, you can ask the agency to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless the agency extended the application time. You should contact the agency if you wish to seek an extension. The agency must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed.

Internal review is not available if a minister or the chief officer of the agency made the decision personally.

### Review by the Information Commissioner

The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act.

#### *Is a review the same as a complaint?*

No. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that an agency decision is wrong, it will be treated as an application for a review. Your matter will be treated as a complaint when a review would not be practical or would not address your concerns (for example, if you were not consulted about a document that contains your personal information before it was released). For more information see

#### *Do I have to go through the agency's internal review process first?*

No. You may apply directly to the Information Commissioner. However, going through the agency's internal review process gives the agency the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

***Do I have to pay?***

No. The Information Commissioner's review is free.

***How do I apply?***

You must apply in writing and you can lodge your application in one of the following ways:

online: [www.oaic.gov.au](http://www.oaic.gov.au)  
post: GPO Box 2999, Canberra ACT 2601  
fax: +61 2 9284 9666  
email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
in person: Level 3,  
175 Pitt Street  
Sydney NSW 2000

An application form is available on the website at [www.oaic.gov.au](http://www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

***Can I get help in completing the application?***

Yes. The Information Commissioner's staff are available to help you with your application if anything is unclear.

***When do I have to apply?***

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the Information Commissioner within 30 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

***Who will conduct the review?***

Staff of the Information Commissioner will conduct the review. Only the Information Commissioner, the FOI Commissioner or the Privacy Commissioner can make a decision at the end of the review.

***Does the Information Commissioner have to review my matter?***

No. The Information Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Alternatively the Information Commissioner may decide that the Administrative Appeals Tribunal (AAT) would be better placed to review the matter, and if so, will advise you of the procedure for applying to the AAT. This will not be common.

***Can I withdraw my application?***

Yes. An application can be withdrawn at any time before the Information Commissioner makes a decision.

***What happens in the review process?***

The review process is designed to be as informal as possible. The Information Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Information Commissioner may also ask the agency or minister to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be made on the basis of the submissions and papers provided by the parties. Sometimes the Information Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

***Will there be other parties to the review?***

There may be. The Information Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

***Can someone else represent me?***

Yes, including a lawyer. However, the Information Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

***Will the Information Commissioner look at all documents, including ones that are claimed to be exempt?***

Yes. The Information Commissioner's review is a fresh decision, so all the relevant material must be examined, including documents that the agency or minister has declined to release. Developments that have occurred since the original decision may also be considered.

***What powers does the Information Commissioner have?***

While the review process is designed to be informal, the Information Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

An agency or minister can also be ordered to undertake further searches for documents.

***What decisions can the Information Commissioner make?***

After reviewing a decision, the Information Commissioner must do one of three things:

- set the decision aside and make a fresh decision
- affirm the decision, or
- vary the decision.

The Information Commissioner will give reasons for the decision.

***Will the decision be made public?***

Yes. The Information Commissioner will publish decisions on the website. Exempt material (that is, material that is not released) will not be included. Nor will the name of the review applicant, unless that person requests otherwise or there is a special reason to publish it.

***What can I do if I disagree with the Information Commissioner's review decision?***

You can appeal to the AAT. The Information Commissioner will not be a party to those proceedings. The fee for lodging an AAT application is \$777 (at November 2010), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

**FOI applications made before 1 November 2010**

The Information Commissioner can only review an agency's or minister's FOI decision if you made your FOI request on or after 1 November 2010. If you made your FOI request before 1 November, even if the decision was made after that date, the review process is different.

You must first ask the agency for internal review of the decision. You may then appeal to the AAT if you are not satisfied with the decision.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice

## Freedom of information – How to make a complaint

You may complain to the Australian Information Commissioner if you have concerns about how an Australian Government agency handled a request for documents under the *Freedom of Information Act 1982* (the FOI Act) or took any other action under that Act. If you are unhappy with the agency's decision about giving or refusing access to documents, you should ask for the decision to be reviewed, which is a separate process.

### Disagree with an FOI decision?

If you disagree with an agency's or minister's decision on your request under the FOI Act, you have the right to have the decision reviewed. You can ask an agency to review its decision internally. You also have the right to ask the Information Commissioner to review an agency's or minister's decision. See FOI Fact Sheet 12 *Freedom of information – Your review rights* for more information about the review process.

If you are concerned about the way an agency has handled your matter, you can complain to the Information Commissioner.

### What are the powers of the Information Commissioner?

The Information Commissioner can investigate a complaint about how an agency handled an FOI request, or other actions the agency took under the FOI Act. The Information Commissioner cannot investigate a complaint about a minister.

In conducting the investigation the Information Commissioner has the power to:

- make inquiries of an agency
- obtain information from any person
- take possession of, or inspect, any relevant documents.

If the Information Commissioner decides to investigate your complaint, the agency you have complained about will be notified in writing of the complaint. The Information Commissioner conducts investigations of complaints in private.

### Who can make a complaint?

Any person can make a complaint about the actions of an agency in relation to an FOI activity. You do not need to have requested documents under the FOI Act.

### When should I make a complaint?

You can complain to the Information Commissioner at any time. If your complaint relates to an FOI request you can make the complaint at any stage of the process.

Before making a complaint to the Information Commissioner, you should contact the agency directly to try to resolve your concerns. The Information Commissioner may decide not to investigate your complaint if you have not raised your concerns first with the agency or you have not given the agency a reasonable opportunity to deal with your complaint.

### How do I make a complaint?

Your complaint must be in writing and must specify the agency you are complaining about. You can send your complaint to us using the details at the end of this fact sheet. A complaint form is also



available on our website at [www.oaic.gov.au](http://www.oaic.gov.au).

If you need help we can assist you. You can contact us on 1300 363 992 or by email to [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au).

What information do I need to put in the complaint?

To help the Information Commissioner give the best consideration to your complaint, please provide as much relevant information as possible. Be clear about the issues in your complaint and what action or outcome you would like to see as a result.

Is there a fee for making a complaint?

No. There are no costs involved in making a complaint to the Information Commissioner.

### What will happen to my complaint?

An officer of the Information Commissioner will contact you to discuss your complaint and you will be kept informed of the progress of your complaint along the way.

Before deciding whether to investigate your complaint the Information Commissioner may make preliminary inquiries of the agency you have complained about.

If the Information Commissioner decides to investigate your complaint, the Commissioner will write to the agency and request information to assist with the investigation.

Can the Information Commissioner decide not to investigate my complaint?

Yes. The Information Commissioner may decide not to investigate, or may discontinue an investigation, if:

- your complaint does not concern an agency's action under the FOI Act
- it is more appropriate for you to complain to another body (such as the agency or the Commonwealth Ombudsman)
- it is more appropriate for you to ask for the decision to be reviewed
- the agency you complained about has dealt with your complaint, or is in the process of dealing with it
- your complaint is frivolous, lacking in substance or not made in good faith
- you do not have sufficient interest in the matter.

If the Information Commissioner decides not to investigate or discontinues an investigation, the Commissioner will notify you and the agency of the reasons for this in writing.

### How will my complaint be resolved?

In some cases the Information Commissioner's investigation and intervention may result in the agency addressing the issues that you have complained about. In other cases the Information Commissioner may make suggestions or recommendations that the agency should implement. You and the agency will be notified in writing of the outcome of the investigation.

If an agency fails to take adequate and appropriate action to implement any recommendations, the Information Commissioner may issue a formal implementation notice. This notice requires the agency to explain what action it will take to implement the recommendations. The Information Commissioner may also provide a written report to the minister responsible for the agency, and the report will be tabled in Parliament.



Your name will not be included in the report unless there is a special reason and you were first consulted.

### **Investigation by the Ombudsman**

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the Information Commissioner, the Ombudsman will consult the Information Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate, the complaint and all relevant documents must be transferred to the Information Commissioner.

The Information Commissioner can also transfer to the Ombudsman a complaint that could more appropriately be investigated by the Ombudsman. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

**For further information**  
**telephone: 1300 363 992**  
**email: [enquiries@oalc.gov.au](mailto:enquiries@oalc.gov.au)**  
**write: GPO Box 2999, Canberra ACT 2601**  
**or visit our website at**  
**[www.oalc.gov.au](http://www.oalc.gov.au)**



DEFENDING THE ENVIRONMENT  
ADVANCING THE LAW

29 September 2016

Administrative Appeals Tribunal, NSW Registry  
Level 6  
83 Clarence Street  
Sydney NSW 2000

By Hand

Dear Registrar

**Application for fee reduction; Application to review decision MR15/00288**

We act for the Humane Society International (HSI) in the above matter.

Pursuant to Regulation 21(a) of the *Administrative Appeals Tribunal Regulations 2015 (the Regulations)*, applicants who have been granted legal aid under a legal aid scheme or service "established under Commonwealth, State or Territory law or approved by the Attorney-General, for the matter to which the application fee relates..." are entitled to the reduced application fee.

EDO NSW is a legal aid scheme approved by the Attorney-General in Part 1 of the *Legal Aid Schemes and Approvals 2013*,<sup>1</sup> a copy of which is attached. We will be representing our client for the full duration of the above matter.

On behalf of our client, we request that the Registrar exercise the discretionary power under Regulation 21(a) of the Regulations to order that the application fee of \$100 be paid by the applicant.

Thank you for your consideration of our request. If you require any further information, or clarification of anything in this letter, please do not hesitate to contact me on 9262 6989.

Yours sincerely,  
EDO NSW

Rana Koroglu  
Senior Solicitor

Our Ref: 1624252

<sup>1</sup> Accessible here:

<https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/LegalServicesProgram/Pages/default.aspx>





## Legal Aid Schemes and Services Approval 2013

*Family Law (Fee) Regulation 2012, Federal Magistrates and  
Federal Court Regulations 2012, High Court of Australia (Fees)  
Regulations 2012*

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I, NICOLA ROXON, Attorney-General, acting under paragraph 2.04(1)(a)(ii) of the *Family Law (Fee) Regulation 2012*, paragraph 2.05(1)(a)(ii) of the *Federal Court and Federal Magistrates Regulation 2012* and paragraph 11(1)(a)(ii) of the *High Court of Australia (Fees) Regulation 2012*:

- (a) revoke the Approval of legal aid schemes and services made on 28 October 2010;  
and
- (b) approve the legal aid schemes and services mentioned in Schedule 1 for each of  
those paragraphs.

This Approval commences on 2 January 2013.

Dated

NICOLA ROXON  
Attorney-General

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## **Schedule 1      Approved legal aid schemes and services**

### **Part 1      New South Wales**

<b>Item</b>	<b>Legal aid scheme or service</b>
101	Arts Law Centre of Australia
102	Aboriginal Legal Service (NSW/ACT) Limited
103	Australian Centre for Disability Law
104	Central Coast Community Legal Centre
105	Consumer Credit Legal Centre NSW Inc
106	Court Support Scheme
107	Domestic Violence Advocacy Service
108	Environmental Defenders Office Ltd
109	Far West Community Legal Centre Incorporated – Warra Warra Legal Service
110	Gurehlgam Corporation Limited
111	Hawkesbury Nepean Community Legal Centre Incorporated
112	HIV/AIDS Legal Centre Incorporated
113	Hunter Community Legal Centre Inc
114	Illawarra Legal Centre Inc
115	Immigration Advice and Rights Centre Inc
116	Inner City Legal Centre
117	Intellectual Disability Rights Service Incorporated
118	Kingsford Legal Centre
119	Macarthur Legal Centre Incorporated
120	Macquarie Legal Centre Inc
121	Marrickville Legal Centre
122	Mid North Coast Community Legal Centre
123	Mt Druitt & Area Community Legal Centre Incorporated
124	National Children's and Youth Law Centre
125	Northern Rivers Community Legal Centre Inc
126	North & North West Community Legal Service Inc
127	Public Interest Advocacy Centre Inc
128	Redfern Legal Centre Ltd
129	Refugee Advice and Casework Service (Australia) Incorporated

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<b>Item</b>	<b>Legal aid scheme or service</b>
130	Shoalcoast Community Legal Centre Incorporated
131	Shopfront Youth Legal Centre
132	South West Sydney Legal Centre Inc
133	Tenants Union of NSW
134	The Aged-Care Rights Service Incorporated
135	The Elizabeth Evatt Community Legal Centre Incorporated
136	The Youth and Enterprise Legal Centre
137	The University of Newcastle Legal Centre (UNLC)
138	Thiyama-li Family Violence Service Incorporated
139	Welfare Rights Centre Ltd
140	Western NSW Community Legal Centre Inc
141	Wiringa Baiya Aboriginal Women's Legal Centre
142	Women's Legal Services (NSW)
143	Yoorana Gunya Family Violence Healing Centre Aboriginal Corporation — Binaal Billa Family Violence Prevention Legal Service

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## Part 2 Victoria

Item	Legal aid scheme or service
201	Aboriginal and Torres Strait Islander Corporation Family Violence Prevention and Legal Service (Victoria)
202	Barwon Community Legal Service Inc
203	Brimbank Melton Community Legal Centre — Community West Inc
204	Broadmeadows Community Legal Service Inc
205	Casey Cardinia Community Legal Service Inc
206	Central Highlands Community Legal Centre
207	Consumer Action Law Centre
208	Darebin Community Legal Centre Inc
209	Disability Discrimination Legal Service Inc
210	Eastern Community Legal Centre Inc
211	Emma House
212	Environment Defenders Office (Victoria) Ltd
213	Family Law Legal Service Inc
214	Fitzroy Legal Service
215	Flemington and Kensington Community Legal Centre Inc
216	Footscray Community Legal Centre Inc
217	Gippsland Community Legal Service
218	Homeless Persons' Legal Clinic — PILCH
219	Hume Riverina Community Legal Service
220	inTouch Multicultural Centre Against Family Violence
221	Job Watch
222	Loddon Campaspe Community Legal Centre
223	Mental Health Legal Centre Inc
224	Monash Oakleigh Legal Service Incorporated
225	Moonee Valley Legal Service
226	Moreland Community Legal Centre Inc
227	Murray Mallee Community Legal Service
228	North Melbourne Legal Service Inc
229	Peninsula Community Legal Centre Inc
230	Refugee & Immigration Legal Centre Inc
231	Senior Rights Victoria
232	Social Security Rights Victoria



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Item	Legal aid scheme or service
233	Springvale Community Aid and Advice Bureau Incorporated
234	Springvale Monash Legal Service Inc
235	St Kilda Legal Service Co-op Ltd
236	Tenants Union of Victoria Limited
237	Victorian Aboriginal Legal Service Co-operative Ltd
238	Western Suburbs Legal Services
239	West Heidelberg Community Legal Service Incorporated
240	Whittlesea Community Legal Service — Whittlesea Community Connections Inc
241	Women's Legal Service Victoria
242	Wyndham Legal Service Inc
243	Youthlaw —Young People's Legal Rights Centre Inc

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## Part 3 Queensland

Item	Legal aid scheme or service
301	Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd
302	Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service
303	Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc
304	Banana Shire Community Legal Centre
305	Bayside Community Legal Service Inc
306	Cairns Community Legal Centre Inc
307	Care Goondiwindi Association Inc.
308	Carers Queensland Inc
309	Caxton Legal Centre Inc
310	Centacare
311	Central Queensland Community Legal Centre Inc
312	Citizens Advice Bureau & Gold Coast Legal Service Inc
313	Court Network Inc
314	DV Connect Ltd
315	Environmental Defenders Office Qld Inc
316	Environmental Defenders Office of Northern Queensland Inc
317	Gladstone Community Advisory Service
318	ILS Qld Limited
319	Ipswich Community Legal Centre
320	Mackay Regional Community Legal Centre Inc
321	Maranoa Regional Council — Maruma-Li Mari Outreach Service
322	Moreton Bay Regional Community Legal Service Inc
323	North Queensland Women's Legal Service Inc
324	Nundah Community Legal Centre Inc
325	Pine Rivers Community Legal Service
326	Prisoners' Legal Service Inc
327	Queensland Advocacy Inc
328	Queensland Aged and Disability Advocacy Inc
329	Queensland Indigenous Family Violence Legal Service Aboriginal Corporation
330	Queensland Public Interest Law Clearing House Incorporated
331	Refugee and Immigration Legal Service Inc
332	Roma Community Legal Service Inc

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Item	Legal aid scheme or service
333	South West Brisbane Community Legal Centre Inc
334	Suncoast Community Legal Service Inc
335	Taylor Street Community Legal Centre
336	Tenants' Union of Queensland Inc
337	The Advocacy and Support Centre Inc — Toowoomba Community Legal Service Inc
338	The Women's Legal Service Inc
339	Youth and Family Service
340	Welfare Rights Centre Inc
341	Western Queensland Justice Network
342	Youth Advocacy Centre Inc

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## Part 4 Western Australia

Item	Legal aid scheme or service
401	Aboriginal Legal Service of WA (Inc)
402	Albany Community Legal Centre Inc
403	Bunbury Community Legal Centre Inc
404	Centre for Advocacy, Support and Education for Refugees Inc
405	Citizens Advice Bureau of WA Inc
406	Consumer Credit Legal Service (WA) Inc
407	Environmental Defender's Office WA (Inc)
408	Fremantle Community Legal Centre
409	Geraldton Resource Centre Inc
410	Goldfields Community Legal Centre Inc
411	Gosnells Community Legal Centre (Inc)
412	Joondalup Community Legal Centre
413	Kimberley Community Legal Services Inc
414	Marninwarntikura Fitzroy Women's Resource Centre (Aboriginal Corporation) – Fitzroy Crossing Family Violence Prevention Legal Unit
415	Mental Health Law Centre (WA) Inc
416	Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council
417	Northern Suburbs Community Legal Centre Inc
418	Peel Community Legal Services Incorporated
419	Pilbara Community Legal Service Incorporated
420	Southern Aboriginal Corporation – Albany Family Violence Prevention Legal Service
421	Southern Communities Advocacy Legal & Education Service Inc
422	Street Law Centre WA Incorporated
423	Sussex Street Community Law Service
424	Tenants Advice Service (Inc)
425	Welfare Rights and Advocacy Service
426	Western Australian Family Violence Prevention Legal Service Aboriginal Corporation
427	Wheatbelt Community Legal Centre
428	Women's Law Centre
429	Youth Legal Service

## **Part 5          South Australia**

<b>Item</b>	<b>Legal aid scheme or service</b>
501	Aboriginal Legal Rights Movement Inc
502	Central Community Legal Service
503	Environmental Defender's Office (SA) Inc
504	Family Violence Legal Service Aboriginal Corporation (SA)
505	Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council
506	Northern Community Legal Service Inc
507	Riverland Community Legal Service Incorporated
508	South East Community Legal Service Inc
509	Southern Community Justice Centre Inc
510	Welfare Rights Centre SA Inc
511	WestSide Community Lawyers Inc
512	Wirraka Maya Health Service Aboriginal Corporation
513	Women's Legal Service SA Inc

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## **Part 6      Tasmania**

<b>Item</b>	<b>Legal aid scheme or service</b>
601	Environmental Defenders Office (Tasmania) Inc
602	Hobart Community Legal Service
603	Launceston Community Legal Centre Inc
604	North West Community Legal Centre Inc
605	Tasmanian Aboriginal Centre Inc
606	Tenants Union of Tasmania Inc
607	Womens Legal Service (Tasmania) Inc

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## **Part 7          Australian Capital Territory**

<b>Item</b>	<b>Legal aid scheme or service</b>
701	Environmental Defenders Office (ACT) Inc
702	Street Law
703	Welfare Rights & Legal Centre Ltd
704	Women's Legal Centre ACT & Region Inc

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## **Part 8      Northern Territory**

<b>Item</b>	<b>Legal aid scheme or service</b>
801	Aboriginal Women's Outreach Unit
802	Central Australian Aboriginal Family Legal Unit Aboriginal Corporation
803	Central Australian Aboriginal Legal Aid Service Inc
804	Central Australian Womens Legal Services Inc
805	Darwin Community Legal Service Inc
806	Environmental Defenders Office NT Inc
807	Katherine Aboriginal Families' Support Unit
808	Katherine Women's Information & Legal Service
809	Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council Aboriginal Corporation
810	North Australian Aboriginal Family Violence Legal Service Aboriginal Corporation
811	North Australian Aboriginal Justice Agency Ltd
812	Top End Womens Legal Service Inc

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## Certificate of Exhibit DM-6

No. VID519 of 2021

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law & Human Rights

**Senator Rex Patrick**

Applicant

**Australian Information Commissioner**

Respondent

This and the following 1 page form Exhibit DM-6 to the Affidavit of David Morris affirmed on 16 October 2021 before me.

Signature of witness

e: *Jessica Trappel*

Qualification: Solicitor



# Administrative Appeals Tribunal

ADMINISTRATIVE APPEALS TRIBUNAL )  
 ) No: 2016/5197  
FREEDOM OF INFORMATION DIVISION )

Re: Humane Society International INC  
Applicant

And: Department of the Environment  
Respondent

**TRIBUNAL:** The Hon. Dennis Cowdroy OAM QC, Deputy President

**DATE:** 27 February 2018

**PLACE:** Sydney

In accordance with subsection 42C(1) of the *Administrative Appeals Tribunal Act 1975*:

1. the parties have reached an agreement as to the terms of a decision of the Tribunal that is acceptable to the parties; and
2. the terms of the agreement have been reduced to writing, signed by or on behalf of the parties and lodged with the Tribunal; and
3. the Tribunal is satisfied that a decision consistent with those terms is within the powers of the Tribunal and is appropriate to make.

Pursuant to subsection 42C(2) of the *Administrative Appeals Tribunal Act 1975*, the Tribunal decides that:

1. the decision under review, being the decision of the Acting Australian Information Commissioner made on 1 September 2016, is varied as follows:
  - a) access is granted, in full, to Documents 4, 12, 18 and 22 under section 11A of the *Freedom of Information Act 1982* (Cth) (**FOI Act**); and
  - b) access if granted, in part, to Documents 14, 15 and 16 under section 11A of the FOI Act.

.....[sgd].....  
The Hon. Dennis Cowdroy OAM QC, Deputy President



## Certificate of Exhibit DM-7

No. VID519 of 2021

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law & Human Rights

**Senator Rex Patrick**

Applicant

**Australian Information Commissioner**

Respondent

This and the following 8 pages form Exhibit DM-7 to the Affidavit of David Morris affirmed on 16 October 2021 before me.

[Redacted]

[Redacted]

ure of witness

Name:

Qualification: Solicitor

*Jessica Trappel*

20 July 2017

Gillian Cameron  
Review and Investigation Officer  
Office of the Australian Information Commissioner  
GPO Box 5218  
Sydney NSW 2001

By email: [gillian.cameron@oaic.gov.au](mailto:gillian.cameron@oaic.gov.au)

Dear Ms Cameron,

**IC Review MR 17/00038 – Invitation to comment on submissions of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)**

1. We act for Greenpeace Australia Pacific in relation to the above matter.
2. We refer to your email to our client dated 7 July 2017 inviting our client to comment on the submissions (undated) made by NOPSEMA in the relation to the above Information Commissioner Review matter (**NOPSEMA IC Submissions**). We are instructed by our client to respond to the invitation to comment on NOPSEMA's Submissions.

**Background**

3. On 30 August 2016 our client requested access to the following information from NOPSEMA under section 15 of the *Freedom of Information Act 1982* (Cth) (**FOI Act**):

*BP's approved Well Operation Management Plan (**WOMP**) for the Great Australian Bight Project (BP and Statoil exploration permits EPP37-40).*

4. On 18 November 2016 NOPSEMA determined to grant access to part of the WOMP. We are instructed that BP, a party affected by the access decision, and Greenpeace separately sought internal review of the decision.
5. On 20 December 2016, the internal reviewer issued a single decision in respect of both the Greenpeace and BP internal review applications and determined to vary the original decision (**Internal Review Decision**).
6. The Internal Review Decision concurred with the original decision maker to redact some information on the basis that it is conditionally exempt under s47F (personal privacy) under the FOI Act.

7. The Internal Review Decision also concurred with the original decision in respect of redacting some information on the basis that it is conditionally exempt to s47G of the FOI Act (business affairs). However the internal reviewer varied the reasons as to why that exemption applied. He also further redacted three additional parts of the WOMP pursuant to the business affairs exemption (see paragraph [18] of the Internal Review Decision).
8. On 19 January 2017 our client made an application for review of the Internal Review Decision to the Office of the Australian Information Commissioner (**External Review Request**). The External Review Request focusses on the decision by the internal reviewer that information in the WOMP is conditionally exempt under s47G of the FOI Act. Our client does not object to the redaction of information under s47F of the FOI Act.
9. Examples of the type of information in the WOMP determined to be withheld by the internal reviewer under s47G of the FOI Act include information under the following headings: Organisational Competency (s4.1.1) Management of Change (s4.5), Well Design (s 5), Temporary Abandonment (s6.3.8), Source Control and Blowout Contingency Measures (s12).

#### **Overarching purpose of the FOI Act and s47G (Business Affairs exemption)**

10. The FOI Act is founded on the principle of open government, and provides the Australian public with a right of access to information held by the Commonwealth Government. Section 3 provides that the objects of the Act include:
  - providing the Australian community with access to information held by the Government,
  - increased public participation and scrutiny of Government decision-making, and
  - that information held by Government is a national resource.
11. Section 11 of the FOI Act gives Greenpeace a legally enforceable right of access. The onus is on NOPSEMA to show that the right is overridden by a public interest factor against disclosure.
12. In the circumstances of the current matter, the business affairs conditional exemption (s47G) only applies where disclosure:
  - would, or could, unreasonably adversely affect BP's business affairs, or
  - disclosure could reasonably be expected to prejudice the future supply of information to NOPSEMA, for example for the purpose of the administration of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (**Regulations 2011**).

#### **The Internal Review Decision**

13. The Internal Review Decision gives weight to BP's submissions objecting to disclosure. BP contends that:

- the WOMP is a technical document containing information about how the titleholder intends to design and operate its well for the purposes of exploration drilling and to meet the requirements of the Regulations 2011.
  - the Regulations 2011 do not include any processes for consultation and scrutiny of such matters is to be confined to NOPSEMA
  - disclosure would place BP at significant commercial disadvantage vis-à-vis their competitors and third party service providers
  - disclosure would reasonably be expected to prejudice the future supply of information to NOPSEMA.
14. Our client does not dispute that the information sought is of the kind which concerns the 'business affairs' of BP. However our client disputes that disclosure would have an unreasonable adverse impact on BP, or that it could reasonably be expected to prejudice the future supply of information to NOPSEMA.
15. The internal reviewer disagrees with the reasoning of the original decision maker in relation to "an unreasonable and adverse effect on the business, commercial or affairs of an organisation": "- that the likelihood of opposition/protest groups using the information to oppose all drilling activities in the Great Australian Bight" and removes this reason from his decision.
16. However, the internal reviewer agreed with BP that:
- the document contains specific technical details, rather than just a general plan, that is central to a petroleum titleholder's money-making activities
  - the document provides highly sensitive commercial information that is not otherwise available or known by BP's competitors, other stakeholders or the public and unplanned release of the information to the market would unfairly benefit competitors
  - disclosure of certain information in the documents could be expected, on balance, to unreasonably adversely affect BP's business activities and it would be disclosed without further restriction on its publication
  - disclosure of the document would not be in the public interest to release as the scope and purpose of the document is limited to the technical requirements to maintain the well rather than managing its risks to the environment.

**Disclosure could not be expected to unreasonably affect the business affairs of BP**

*Particulars of "adverse effect" not made out*

17. To satisfy the criteria in s47G(1)(a) that disclosure could reasonably be expected to adversely affect the business affairs of BP, there must be more than a mere risk or possibility of prejudice that may occur if the information is released. The particulars of the predicted effect and the reasons behind the

identification of those particulars should be articulated during the decision making process.<sup>1</sup>

18. The internal reviewer finds that the WOMP contains a large amount of BP's "original work" which he determines would have been commissioned at a cost to BP and which would therefore be likely to assist competitors if it were disclosed by enabling them to benefit at no cost. No explanation is provided as to how competitors might benefit from the highly site-specific information and who those competitors or stakeholders might be. In this regard we note BP's announcement in October 2016 that it would no longer be pursuing drilling plans in the Great Australian Bight.<sup>2</sup> Further, that BP has already entered a deal to transfer its exploration permits to Statoil.<sup>3</sup> Therefore we consider the utility of withholding information on the basis that disclosure could commercially disadvantage BP is undermined as the exploration permits have already been sold and there is even more of a public interest in ensuring regulatory oversight of the new title holder.
19. The WOMP is a legally enforceable document prepared for submission to a public authority under the Regulations 2011.<sup>4</sup> Any promises made by BP to its consultants, third party service providers or other stakeholders about confidentiality of the information produced in the WOMP were at BP's risk. It is not reasonable for NOPSEMA or BP to now rely on any such promises to prevent access.

#### *Test of unreasonableness*

20. It is a requirement of s47G(1)(a) of the FOI Act that the alleged adverse effect that could occur be unreasonable.
21. The Australian Information Commissioner has issued Guidelines under s93A to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. Part 6 of the Guidelines explain that:

*The test of reasonableness [in s 47G(1)(a)] applies not to the claim of harm but to the objective assessment of the expected adverse effect. For example, the disclosure of information that a business's activities pose a threat to public safety may have a substantial adverse effect on that business but it may be reasonable in the circumstances to disclose it. Similarly, it would not be unreasonable to disclose information about a business that revealed unlawful conduct. These considerations necessitate a weighing of a public interest (public safety) against a private interest (preserving the profitability of a business) but at this stage it bears only on the threshold question of whether the disclosure would be unreasonable.*

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<sup>1</sup> *Re Actors' Equity Association (Aust) and Australian Broadcasting Tribunal (No 2)* [1985] AATA 69.

<sup>2</sup> <http://www.abc.net.au/news/2016-10-11/bp-withdraws-from-great-australian-bight-drilling/7921956>

<sup>3</sup> <http://www.abc.net.au/news/2017-06-09/great-australian-bight-drilling-flagged-after-bp-swap-deal/8604454>

<sup>4</sup> Part 5 Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011.



22. As acknowledged by NOPSEMA in its IC Submissions at page 2, the purpose of the WOMP is to ensure that the titleholder has adequate controls in place to prevent occupational health and safety risks and the release of hydrocarbons from the well into the environment. The Regulations 2011 require the WOMP to “show that the risks identified by the titleholder in relation to the well activity will be managed”.<sup>5</sup>
23. The primary purpose of our client’s access request is to enable public scrutiny and accountability of both the title holder and regulator in approving such plans. Yet, the information redacted by NOPSEMA includes information about ‘Source Control Blowout and Contingency Measures’ and ‘Cap and Containment Plan’ which is precisely the type of information sought by our client in order to ensure that adequate safeguards are in place to manage the risks identified by the titleholder in relation to well activity.
24. The major (and real) concern of both our client and the public is how title holders manage the risks of well blow outs, oil spills and other environmental disasters in the Great Australian Bight.<sup>6</sup> In 2010 a disastrous blowout of the Macondo Prospect well in the Gulf of Mexico killed 11 people and caused more than US\$40 billion of environmental damage along the US coast. It is reasonable that the Australian public can seek to access information in the WOMP which is prepared by the title holder to manage and prevent the risks in relation to well activity in the Great Australian Bight.
25. The information redacted in the WOMP goes to this very question and the reasons given by NOPSEMA do not support a finding that the private interests of BP ought to be given more weight than the right of the public to know how the titleholder is able to manage risks to well integrity.
26. NOPSMA submits that the WOMP is limited to technical requirements regarding the maintenance of well integrity rather than BP’s wider plans for managing environmental risk. How BP proposes to manage the risk of uncontrolled well fluids throughout the lifecycle of the proposed exploration well and its internal management systems is critical to the public’s understanding of what BP is proposing to do in the Bight Basin, and how it is required by law to manage the environmental and operational risks.
27. For those reasons, the threshold is high for deciding that the effect of disclosure upon BP’s business would be unreasonable. Neither NOPSEMA nor BP has provided any reasons why the adverse effect that it says will result from disclosure would be unreasonable.

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<sup>5</sup> Clause 5.08 ‘Criteria for acceptance of well operations management plan’ *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*.

<sup>6</sup> See for example: <https://www.theguardian.com/environment/2015/oct/09/bp-oil-spill-in-great-australian-bight-would-be-catastrophic-modelling-shows>;  
<http://www.abc.net.au/news/2016-09-16/bps-oil-spill-modelling-shows-damage-to-great-australian-bight/7851586>

*Legislation governing WOMPs does not include process for public consultation*

28. Under Division 2 of Part 5 the Regulations 2011, BP is required to have an approved well operations management plan in place and undertake activities in accordance with that plan.
29. BP contends that the document should not be released in full as the regulations governing the WOMP do not include any processes for public consultation, and scrutiny of such technical matters is intended to be confined to NOPSEMA. We submit that this is even more of a reason in favour of release of the entirety of the WOMP, as full disclosure would encourage the objects of the FOI Act by increasing scrutiny and transparency, particularly given there is no other opportunity for public participation and that NOPSEMA is the sole authority tasked with regulating offshore oil and gas exploration.
30. Prior to February 2014, a proponent proposing to undertake a petroleum 'activity' in Commonwealth waters would have been required to refer the proposal under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), and if the action was a controlled action, would have to have it assessed and approved (subject to conditions) under the EPBC Act before undertaking the action.
31. This requirement supplemented the broader separate obligation to obtain and comply with a petroleum title (including an exploration permit) issued under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) and Regulations 2011.
32. In 2013, the Commonwealth Government reformed the assessment and approvals framework into one regime with NOPSEMA as the sole designated assessor and regulator, under its commitment to streamline environmental management regulation for offshore petroleum and greenhouse gas activities.
33. In circumstances where oversight of the environmental management of offshore oil and gas activities is now managed by NOPSEMA alone, rather than with the additional scrutiny of the Department of Environment and Energy, it is even more important that the public can access the information and plans relied on by BP, and accepted by NOPSEMA, as being sufficient to manage well operations. In our view, disclosure of the WOMP in its entirety would benefit the Australian public and further the objects of the FOI Act by providing an opportunity for additional oversight and scrutiny of Government information, which is a national resource.

**Disclosure could reasonably be expected to prejudice the future supply of information to NOPSEMA**

34. Section 47G(1)(b) will apply if disclosure of the information in the documents 'could reasonably be expected to prejudice the future supply of information to ... an agency for the purpose of the administration of a law of the Commonwealth ... or the administration of matters administered by an agency'.

35. The Internal Review Decision does not specifically address this limb of the test in s47G.
36. Our client submits that there can be no reasonable expectation that disclosure of the WOMP in its entirety could be expected to prejudice the future supply of information to NOPSEMA.
37. The Regulations 2011 set out the information that a titleholder must include in its WOMP. It is a strict liability offence to undertake a well activity without a WOMP or to fail to comply with the WOMP.<sup>7</sup>
38. Disclosure of the information sought by our client could not and would not prejudice the future supply of such information to NOPSEMA because it is a legally enforceable requirement to supply such information under the governing legislation.

### **Public interest favours disclosure**

39. Even if the test for applying the conditional exemption for business affairs could be satisfied (which our client submits that it cannot), the information must still be released unless there is an overriding public interest against disclosure.
40. Matters in favour of disclosure include:
  - a. Promoting the objects of the FOI Act in ss3 and 3A, which include
    - i. providing the Australian community with access to information held by the Government,
    - ii. increased public participation and scrutiny of Government decision-making, and
    - iii. that information held by Government is a national resource.
  - b. Informing debate on matters of public importance.
41. There is substantial public interest in understanding the basis on which NOPSEMA has decided that the risks identified by BP and the way in which those risks will be managed, meet the criteria in the Regulations 2011, which includes NOPSEMA making an assessment as to whether the risk management measures in place in relation to the design, construction and operational activity of the wells are acceptable.<sup>8</sup>
42. Given that the WOMP is a legally enforceable document, and non-compliance with the WOMP is prohibited by the Regulations 2011, it is impossible for the public to meaningfully participate in and scrutinise the regulation of BP's well management, and the industry generally, without access to the full WOMP.

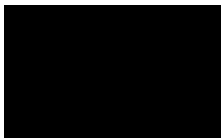
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<sup>7</sup> See Clause 5.04 'Requirement to have accepted well operations management plan' and Clause 5.06 'Requirement to undertake activities in accordance with accepted well operations management plan' *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*.

<sup>8</sup> For example: <https://www.theguardian.com/environment/2016/sep/12/call-to-halt-great-australian-bight-oil-drilling-amid-faulty-equipment-fears>

43. The potential impacts of an environmental incident, if the risks associated with ensuring well integrity are not properly managed, are significant, such as the impacts to the southern Australian coastline and its wildlife, as well as impacts to tourism operators and commercial fisheries. There is a substantial public interest in disclosing the information contained in the WOMP for public scrutiny.
44. These issues directly affect the public, in that public resources would be required to address any major environmental incident response should the management of those risks. The information would therefore inform debate on matters of public importance.
45. Any such public interests must necessarily override any claimed private interests that may be held by BP in relation to the commercial value of the information, which is at the heart of NOPSEMA's decision to refuse access to parts of the WOMP.
46. The contact point at EDO NSW in relation to this matter is Principal Solicitor Elaine Johnson who can be contacted by phone on (02) 9262 6989 or by email at [elaine.johnson@edonsw.org.au](mailto:elaine.johnson@edonsw.org.au).

Yours sincerely,  
**EDO NSW**



Sarah Roebuck  
Senior Solicitor

Our Ref: 1724975

## Certificate of Exhibit DM-8

No. VID519 of 2021

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law & Human Rights

**Senator Rex Patrick**

Applicant

**Australian Information Commissioner**

Respondent

This and the following 3 pages form Exhibit DM-8 to the Affidavit of David Morris affirmed on 16 October 2021 before me.

[Redacted]

of witness

Name:

Jessica Trappel

Qualification: Solicitor

## Nadja Zimmermann

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**From:** Brendan Dobbie  
**Sent:** Wednesday, 10 October 2018 2:35 PM  
**To:** Nadja Zimmermann  
**Subject:** FW: IC reviews - Greenpeace and NOPSEMA - MR17/00038, MR17/00183 and MR17/00616 - revised decisions - next steps [SEC=UNCLASSIFIED]

Kind regards

**Brendan Dobbie | Acting Principal Solicitor | EDO NSW**  
T: +61 2 9262 6989

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**From:** Gillian Cameron [mailto:gillian.cameron@oaic.gov.au]  
**Sent:** Monday, 10 September 2018 5:20 PM  
**To:** Brendan Dobbie  
**Subject:** IC reviews - Greenpeace and NOPSEMA - MR17/00038, MR17/00183 and MR17/00616 - revised decisions - next steps [SEC=UNCLASSIFIED]

Dear Mr Dobbie

I write further to previous correspondence in relation to these IC reviews.

On 6 September 2018, NOPSEMA made revised decisions under s 55G of the FOI Act and decided to give Greenpeace access to further material in response to the requests relating to the OPEP and WOMP. In summary, NOPSEMA no longer relies on the business affairs exemption (s 47G) and has decided that access should be given to these documents with the exception of personal information that it maintains is exempt under the personal privacy exemption (s 47F).

Under s 55G(2) of the FOI Act, NOPSEMA's revised decisions become the decisions under review in IC reviews MR17/00038 and MR17/00616. Given that the revised decisions give access to the documents with the exception of personal information (information that Greenpeace had agreed to exclude from the scope of these IC reviews), I would be grateful if you could advise whether Greenpeace is willing to withdraw these IC review applications. At this stage, Greenpeace has not been given access to the documents in line with the revised decisions pending the expiry of BP's review rights under s 54M of the FOI Act.

I note that Greenpeace remains an affected third party in IC review MR17/00183 which relates to BP's application for IC review of NOPSEMA's original decision in relation to the OPEP.

I would be grateful for your response by **close of business on 24 September 2018**. If you have any questions, I would be happy to discuss by telephone if you would prefer.

Regards

Gillian



**Gillian Cameron** | Assistant Director  
Freedom of Information  
Office of the Australian Information Commissioner  
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**From:** Gillian Cameron  
**Sent:** Wednesday, 22 August 2018 2:39 PM  
**To:** 'Brendan Dobbie' <Brendan.Dobbie@edonsw.org.au>  
**Subject:** RE: IC reviews - Greenpeace and NOPSEMA - MR17/00038, MR17/00183 and MR17/00616 - update [SEC=UNCLASSIFIED]

Dear Mr Dobbie

I write further to recent correspondence in relation to IC reviews MR17/00038, MR17/00183 and MR17/00616 regarding to NOPSEMA's decisions in relation to Greenpeace's requests for access to BP's WOMP and OPEP.

NOPSEMA has advised the OAIC that it is currently reviewing its position in relation to the exemptions applied to the WOMP and OPEP in light of further third party consultation and consultation with NOPTA. Noting the further consultation that is being undertaken, I have agreed to NOPSEMA providing the OAIC with its submissions in these matters by **3 September 2018**. After this date, I will contact you to discuss next steps and whether these matters can be progressed for the Information Commissioner's consideration.

Please contact me if you have any questions.

Yours sincerely

**Gillian Cameron** | Assistant Director | Freedom of Information  
**Office of the Australian Information Commissioner**  
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**From:** Gillian Cameron  
**Sent:** Monday, 30 July 2018 6:37 PM  
**To:** 'Brendan Dobbie' <[Brendan.Dobbie@edonsw.org.au](mailto:Brendan.Dobbie@edonsw.org.au)>  
**Subject:** RE: IC reviews - Greenpeace and NOPSEMA - MR17/00038, MR17/00183 and MR17/00616 - update [SEC=UNCLASSIFIED]

Dear Mr Dobbie

I write further to my email of 27 July 2018 (copied below). I have written to NOPSEMA and BP today in relation to these IC reviews to invite further submissions. I do not require any further information from Greenpeace at this time.

I will be out of the office from 3-15 August inclusive and will contact you to provide a further update upon my return.

Yours sincerely

**Gillian Cameron** | Assistant Director (A/g) | FOI Dispute Resolution  
**Office of the Australian Information Commissioner**  
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---

**From:** Gillian Cameron  
**Sent:** Friday, 27 July 2018 4:53 PM  
**To:** 'Brendan Dobbie' <[Brendan.Dobbie@edonsw.org.au](mailto:Brendan.Dobbie@edonsw.org.au)>  
**Subject:** IC reviews - Greenpeace and NOPSEMA - MR17/00038, MR17/00183 and MR17/00616 - update [SEC=UNCLASSIFIED]

Dear Mr Dobbie

I write further to our telephone discussion last week regarding IC reviews MR17/00038, MR17/00183 and MR17/00616 during which I told you I would be contacting the parties this week to request further information required to progress these reviews.

The preparation of my correspondence to the parties has taken longer than anticipated and therefore I have been unable to finalise it this week. I will be aiming to finalise it and send it out on Monday instead.

I will be in contact early next week with a further update.

Yours sincerely

**Gillian Cameron** | Assistant Director (A/g) | FOI Dispute Resolution

**Office of the Australian Information Commissioner**

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