NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 11/10/2021 3:30:01 PM 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:	Concise Statement
File Number:	VID519/2021
File Title:	SENATOR REX PATRICK v AUSTRALIAN INFORMATION COMMISSIONER
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

Dated: 11/10/2021 4:49:42 PM AEDT

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 NCF1

Amended Concise Statement

No. VID519/2021

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law & Human Rights

Senator Rex Patrick

Applicant

Australian Information Commissioner

Respondent

Important facts giving rise to the claim

1. Since November 2017 and to the present day, the Applicant has been a Senator for South Australia in the Federal Parliament. The Applicant makes requests under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) to obtain information which assists him to execute the accountability and transparency aspects of his oversight role as a Senator, and to assist his constituents.
2. The FOI Act provides a process whereby a request may be made for access to certain types of government held information (see Part III of the FOI Act). Section 11 of the FOI Act provides a legally enforceable right of access to certain documents held by the Government.
3. The right of access to documents is provided to achieve the objectives set out in s 3 of the FOI Act which include:
    a. the promotion of Australia's representative democracy through increased public participation in Government processes, better-informed decision-making, and increased scrutiny, discussion, comment and review of the Government's activities,
    b. management of government information for public purposes and as a national resource, and
    c. the facilitation and promotion of public access to information promptly and at the lowest reasonable cost.
4. Where a person has made a request for documents and the government entity which holds the documents:

Filed on behalf of (name & role of party) Rex Patrick, Senator for SA

Prepared by (name of person/lawyer) Stella Majury

Law firm (if applicable) In house lawyer

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Address for service (Electorate Office) Lvl 2/31 Ebenezer Place, Adelaide, SA, 5000

(include state and postcode)

a. makes a decision on the request which the person making the request is dissatisfied with, or
b. fails to make a decision within the statutory timeframe (30 days subject to certain exemptions),

the person who made the request may apply to the Respondent, the Australian Information Commissioner (**IC**) for review of the decision (see Part VII of the FOI Act). Time limits apply (generally 60 days) to the filing of an application for IC review. No express time limit applies to the IC to determine an application for IC review.

5. Where a relevant Department or Agency has decided a request, but a person is dissatisfied with the decision, the person may apply for an internal review (see Part IV of the FOI Act). The Department or Agency must make a decision on internal review within 30 days, unless an application for further time has been granted by the IC. It is not mandatory for a person to seek internal review prior to making an application for an IC review. If a person is dissatisfied with a decision on internal review, they may make an application for IC review.

6. The Applicant currently has 232 applications under the FOI Act which were the subject of refusals or partial access decisions by the relevant government Department, and upon which the Applicant sought IC Review but has not received a decision from the Respondent. Of those 232 applications, at 1 September 2021:
   a. two have been with the IC for more than two years
   b. twelve have been with the IC for more than a year, and
   c. a further five six have been with the IC for more than six months; and
   c.d. three have been with the IC for less than 6 months.

7. A table marked "**Appendix A**" is attached to the Amended Originating Application and sets out a summary of the 19 23 applications for IC Review, 20 of which have been outstanding for six months or more (at 1 September 2021) (**Long Term Outstanding IC Review Applications**).

8. On 18 August 2021, the Applicant received an email sent on behalf of the Respondent relating to an IC review sought by the Applicant on 21 June 2021 (MR21/00551). The review is of a decision of the Department of Health made on 12 May 2021. Under the heading "next steps", the following was stated:

   At this stage, your matter is awaiting further consideration by a review adviser. Due to the number of IC review applications on hand, this may take up to 12 months.

   Emails containing the same statement were also received in relation to MR21/00340 and MR21/00422 on 18 August 2021.

Relief sought

9. Pursuant to rule 40.51 of the *Federal Court Rules 2011* (Cth), an interlocutory order that the maximum costs as between party and party that may be recovered in the proceeding is $10.

10. Pursuant to s 16(3)(a) of the *Administrative Decision (Judicial Review) Act 1977* (Cth) (**ADJR**), orders that the Respondent make a decision on each of the ~~Long Term Outstanding~~ IC Review Applications which were lodged with the respondent 6 months or more prior to 1 September 2021 (see **Appendix A to Amended Originating Application**) within 30 days, or such alternate timeframe as the court deems appropriate.

11. Further and in the alternative, pursuant to s 16(3)(b) of the *Administrative Decision (Judicial Review) Act 1977* (Cth) (**ADJR**), an order declaring that the delay in the Respondent processing the IC Review Applications which were lodged 6 months or more prior to 1 September 2021 (see **Appendix A to Amended Originating Application**) is contrary to the interests of the administration of the *Freedom of Information Act 1982* (Cth).

12. Further, pursuant to s 16(3)(b) of the *Administrative Decision (Judicial Review) Act 1977* (Cth) (**ADJR**), an order declaring that the delay in the Respondent considering each of the IC Review Applications which were lodged less than 6 months prior to 1 September 2021 (see **Appendix A to Amended Originating Application**) is contrary to the interests of the administration of the *Freedom of Information Act 1982* (Cth).

Primary legal grounds for relief sought

~~11.~~13. Section 55K(1) of the FOI Act creates a duty in the Respondent to decide an application for IC review. By implication, the Respondent must exercise that duty within a reasonable time. In failing to make a decision on the Long Term Outstanding IC Review Applications, the Respondent has failed to decide the applications within a reasonable time.

14. Section 7(1) of the ADJR provides for a person aggrieved by a failure to make a decision to apply to the court for review in respect of such a failure on grounds that there has been an unreasonable delay in making the decision. The Applicant is a person aggrieved for the purposes of s 7(1), and there has been an unreasonable delay by the Respondent in deciding each of the Long Term Outstanding IC Review Applications.

15. Further and in the alternative, the failure of the Respondent to provide a decision on each of the Long Term Outstanding IC Review Applications is contrary to the interests of the administration of the FOI Act and it is open for the Respondent to exercise its discretion under s 54W of the FOI Act.

16. Further, the delay in considering each of the three IC Review Applications which were lodged less than 6 months prior to 1 September 2021 is contrary to the interests of the administration of the FOI Act and it is open for the Respondent to exercise its discretion under s 54W of the FOI Act.

~~12.~~

~~13.~~17. Each of the ~~Long Term Outstanding~~ IC Review Applications in Appendix A relate to FOI requests made by the Applicant in his capacity as a Senator for South Australia, and in the interests of his constituents. They are not made for any private purpose.

~~14.~~18. There is a public interest in the objectives of the FOI Act being achieved. This requires that information which can be provided in accordance with the Act is provided in a timely manner.

~~15.~~19. The utility and value of information sought under an FOI request generally declines over time, with the decay being rapid in some circumstances. Participation in Government decision-making processes is most effective at an early stage in the process when issues can be raised and discusses prior to the Government making its decision on a matter.

Harm suffered

~~16.~~20. As a result of the Respondent's failure to decide the ~~Long Term Outstanding~~ IC Review Applications or exercise its discretion pursuant to s 54W(b) of the FOI Act within a reasonable time, the Applicant:

a. has been prevented from appropriately engaging in scrutiny, discussion, comment and review of the Government's activities relating to the various requests for information, and
b. is unable to progress each FOI request because, in the absence of a decision by the Respondent, he is unable to either obtain the relevant documents, or lodge an application for review by the Administrative Appeals Tribunal under s57A(1)(a) of the FOI Act.

Certificate of lawyer

I Stella Majury certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~9 September 2021~~ 11 October 2021

[redacted]

Signed by Stella Majury

Lawyer for the Applicant