

From: [OAIC - Legal](#)
To: s47F
Cc: [WHIP, Caren](#)
Subject: Instructions for service and RFQ - JAN MAREK ICANT v THE AUSTRALIAN INFORMATION
Date: Friday, 13 October 2023 9:58:00 AM
Attachments: [Affidavit filed on 0710.msg](#)
[image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)
[image004.jpg](#)

Dear s47F,

s47F

On behalf of the Australian Information Commissioner, can you please accept service of the originating application and affidavit of 9 October 2023?

Can you also please provide us with an initial fee estimate to act for the Australian Information Commissioner in this matter? s42

For the purposes of the estimate, I would suggest providing an estimate for the usual steps in a Federal Court matter up to (and including) the first direction hearing. We can then uplift once we know more about the matter. s47F

Thanks for your assistance.

Kind Regards,

s47



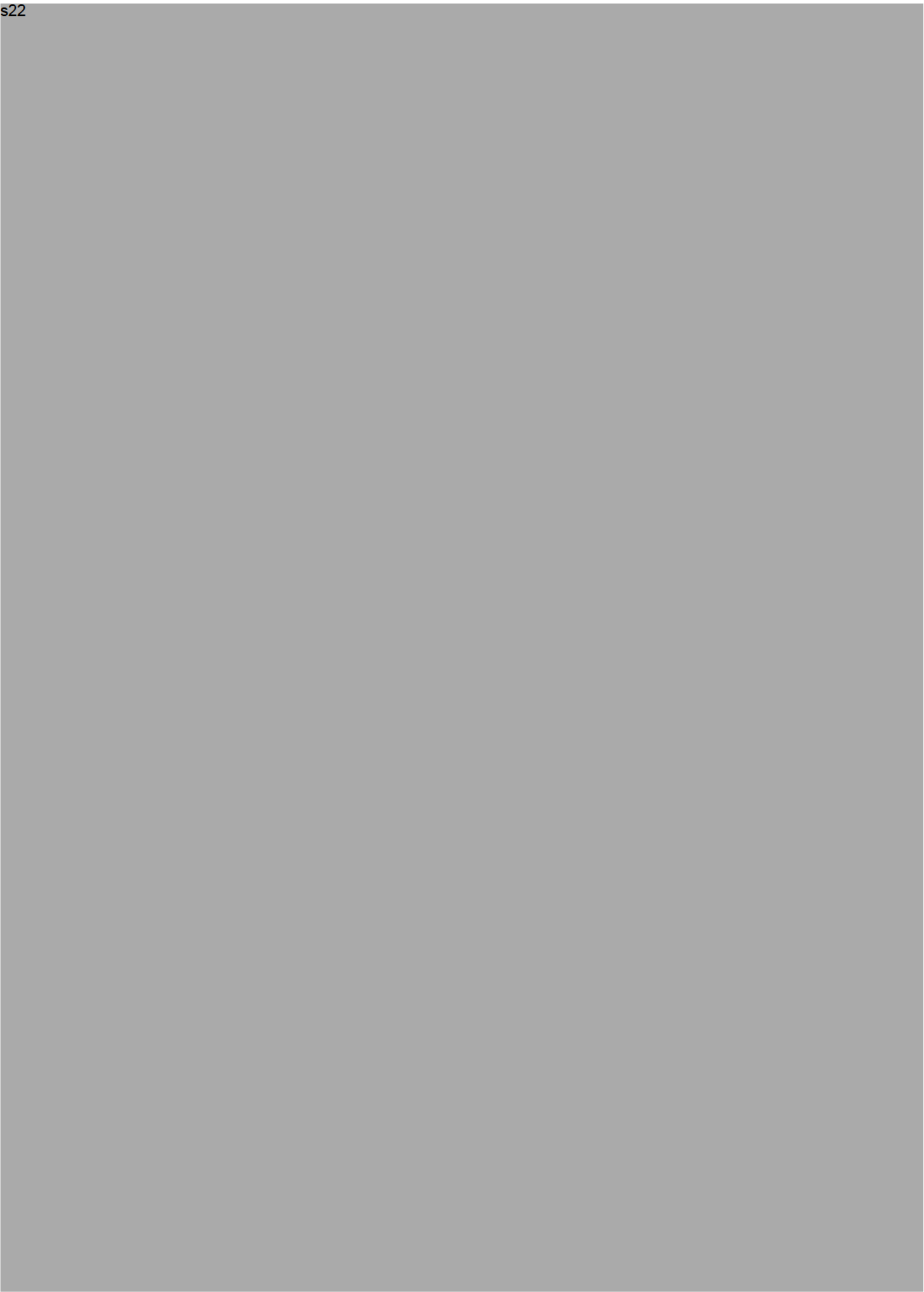
s47F (she/her)
Principal Lawyer
Office of the Australian Information Commissioner
Canberra | GPO Box 5288 Sydney NSW 2001
P s47E(d) E s47E(d) [@oaic.gov.au](mailto:s47E(d)@oaic.gov.au)

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s22





From: s47F
To: [OAIC - Legal](#); s47F
Cc: [WHIP,Caren](#)
Subject: RE: Instructions for service and RFQ - JAN MAREK ICANT v THE AUSTRALIAN INFORMATION [SEC=OFFICIAL, ACCESS=Legal-Privilege]
Date: Tuesday, 17 October 2023 12:13:42 PM
Attachments: [image005.jpg](#)
[image006.jpg](#)
[image007.jpg](#)
[image009.jpg](#)

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OFFICIAL
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Dear s47

Our quote to act for the OAIC up to up to (and including) the case management hearing is below.

s42

s42

My hourly rate is \$395 (no GST payable):

Read material, obtain instructions and advise on procedural steps	\$1500
Communications with the applicant and the Court	\$1000
Prepare for and appear at case management hearing when listed	\$1000
Total	\$3500

We may need to vary the quote once we have a clear understanding of the nature and scope of the application.

We look forward to hearing from you.

Kind regards

s47F

s47F

Senior Executive Lawyer
Australian Government Solicitor

T s47E(d)

s47E(d) @ags.gov.au

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From: OAIC - Legal <legal@oaic.gov.au>
Sent: Friday, 13 October 2023 9:59 AM
To: s47F s47E(d) @ags.gov.au>
Cc: Whip, Caren (OAIC) s47E(d) @oaic.gov.au>
Subject: Instructions for service and RFQ - JAN MAREK ICANT v THE AUSTRALIAN INFORMATION [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Dear s47F,

s47F

On behalf of the Australian Information Commissioner, can you please accept service of the originating application and affidavit of 9 October 2023?

Can you also please provide us with an initial fee estimate to act for the Australian Information Commissioner in this matter? s42

For the purposes of the estimate, I would suggest providing an estimate for the usual steps in a Federal Court matter up to (and including) the first direction hearing. We can then uplift once we know more about the matter. s47F

Thanks for your assistance.

Kind Regards,

s47

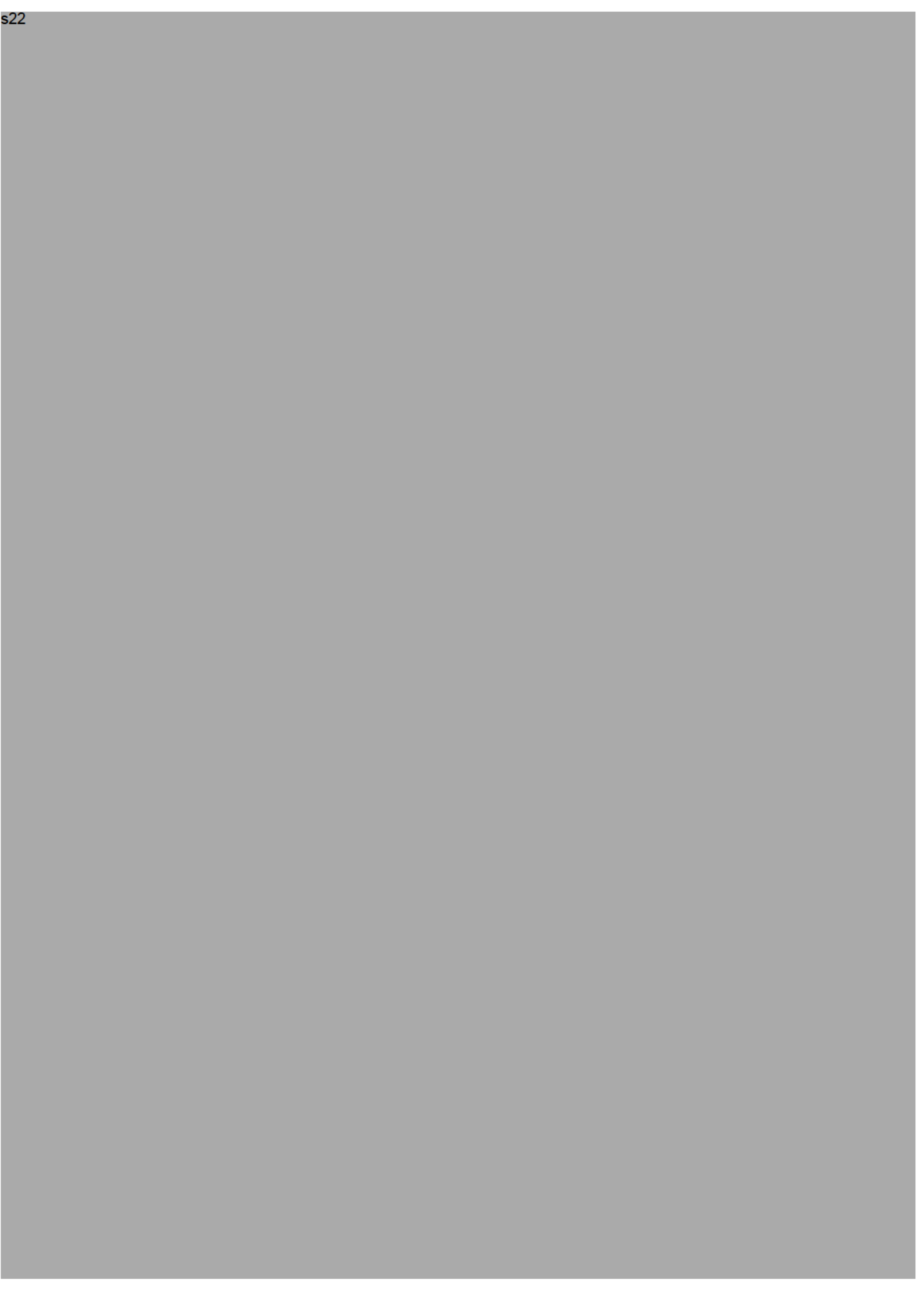


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P s47E(d) E s47E(d) @oaic.gov.au

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From: s47F
To: CASTALDI, Andre
Subject: [FOR IN-PRINCIPLE APPROVAL] VFMA - LIT23/00037 Jan Marek Kant v Australian Information Commissioner - AGS
Date: Wednesday, 18 October 2023 4:20:00 PM
Attachments: RE Instructions for service and RFQ - JAN MAREK ICANT v THE AUSTRALIAN INFORMATION SEC OFFICIAL ACCESS Legal-Privilege.msg
image001.jpg
image002.jpg
image003.jpg
Importance: High

VFMA Snapshot	
Due date	As soon as possible
Fixed or flexible	Flexible
If fixed, why?	
Topic for clearance	LIT23/00037 – engagement of Australian Government Solicitor
Product (e.g. brief / submission)	Procurement
Length / no. of pages	Not applicable
External party?	Australian Government Solicitor
Clearance & consultation	s47F Director of Legal Services
Responsible director	Director of Legal Services
Final Clearance by	Andre Castaldi, Assistant Commissioner Corporate

Our Reference: LIT23/00037

Dear Andre,

I am writing to you to seek your in-principle approval to engage the Australian Government Solicitor (AGS) to act for the Australian Information Commissioner in the Federal Court matter of *Jan Marek Kant v Australian Information Commissioner* (VID829/2023). The matter has not yet been listed for a directions hearing.

s42

Assistance sought

On 17 October 2023, AGS provided a cost estimate of **\$3,500 including disbursements (no GST payable)** (see attached and below). This fee estimate only covers fees and disbursements up until the first case management hearing.

Details (all under one purchase order)	\$ Amount
Professional Fees	3,500.00
Counsel fee - Senior/Junior Gender - Barrister Name 1 (list separate barristers and fees)	0
Cyber Expertise Consultant Disbursement	0
Other disbursement (transcript costs / court fees / other experts)	0

VFMA

I recommend accepting AGS's estimate for the following reasons:

- **Relevant experience** – AGS is experienced in representing the OAIC in Federal Court matters and in privacy matters generally.
- **Understanding of our needs** – In my opinion the estimate demonstrates an understanding of the work that is required in this matter.
- **Cost** – AGS's quote is reasonable in light of the complexity of the matter.

Finance Requirements

For finance's requirements, I set out the following information as follows:

Procurement need	The matter cannot be completed in-house.
Panel	Legal Services Panel
VFM	AGS estimate has been assessed as representing value for money.
FY estimate	I estimate 100% will be undertaken in 2023/24 financial year.

Kind Regards,

s47F



s47F (she/her)
Director, Manager Legal Services
Office of the Australian Information Commissioner
Canberra | GPO Box 5288 Sydney NSW 2001
Ps47E(d) Es47E(d)@oaic.gov.au

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To: [OAIC - Legal](#); s47F
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Subject: RE: Instructions for service and RFQ - JAN MAREK ICANT v THE AUSTRALIAN INFORMATION [SEC=OFFICIAL, ACCESS=Legal-Privilege]
Date: Tuesday, 17 October 2023 12:13:42 PM
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We look forward to hearing from you.

Kind regards

s47F

s47F

Senior Executive Lawyer
Australian Government Solicitor

T s47E(d)

s47E(d) @ags.gov.au

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From: OAIC - Legal <legal@oaic.gov.au>
Sent: Friday, 13 October 2023 9:59 AM
To: s47F s47E(d) @ags.gov.au>
Cc: Whip, Caren (OAIC) s47E(d) @oaic.gov.au>
Subject: Instructions for service and RFQ - JAN MAREK ICANT v THE AUSTRALIAN INFORMATION [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

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Thanks for your assistance.

Kind Regards,

s47F



s47F (she/her)
Principal Lawyer
Office of the Australian Information Commissioner
Canberra | GPO Box 5288 Sydney NSW 2001
P s47E(d) E s47E(d) @oaic.gov.au

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From: CASTALDI,Andre
To: s47F
Subject: RE: [FOR IN-PRINCIPLE APPROVAL] VFMA - LIT23/00037 Jan Marek Kant v Australian Information Commissioner - AGS [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Thursday, 19 October 2023 11:07:39 AM
Attachments: RE Instructions for service and RFO - JAN MAREK ICANT v THE AUSTRALIAN INFORMATION SECOFFICIAL ACCESSLegal-Privilege.msg
image001.jpg
image002.jpg
image004.jpg

OFFICIAL: Sensitive//Legal Privilege

Hi s47

I provide in principal approval to engage AGS on this matter.

Kind regards

Andre



Andre Castaldi (he/him)
Assistant Commissioner, Corporate
Office of the Australian Information Commissioner
Sydney | GPO Box 5288 Sydney NSW 2001
P s47E(d) M s47F E s47E(d) @oaic.gov.au

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From: s47F s47E(d) oaic.gov.au>
Sent: Wednesday, October 18, 2023 3:42:21 PM
To: CASTALDI,Andre s47E(d) @oaic.gov.au>
Subject: [FOR IN-PRINCIPLE APPROVAL] VFMA - LIT23/00037 Jan Marek Kant v Australian Information Commissioner - AGS [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Importance: High

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VFMA Snapshot	
Due date	As soon as possible
Fixed or flexible	Flexible
If fixed, why?	
Topic for clearance	LIT23/00037 – engagement of Australian Government Solicitor
Product (e.g. brief / submission)	Procurement
Length / no. of pages	Not applicable
External party?	Australian Government Solicitor
Clearance & consultation	s47F Director of Legal Services
Responsible director	Director of Legal Services
Final Clearance by	Andre Castaldi, Assistant Commissioner Corporate

Our Reference: LIT23/00037

Dear Andre,

I am writing to you to seek your in-principle approval to engage the Australian Government Solicitor (AGS) to act for the Australian Information Commissioner in the Federal Court matter of *Jan Marek Kant v Australian Information Commissioner* (VID829/2023). The matter has not yet been listed for a directions hearing.

s42



Assistance sought

On 17 October 2023, AGS provided a cost estimate of **\$3,500 including disbursements (no GST payable)** (see attached and below). This fee estimate only covers fees and disbursements up until the first case management hearing.

Details (all under one purchase order)	\$ Amount
Professional Fees	3,500.00
Counsel fee - Senior/Junior Gender - Barrister Name 1 (list separate barristers and fees)	0
Cyber Expertise Consultant Disbursement	0
Other disbursement (transcript costs / court fees / other experts)	0

VFMA

I recommend accepting AGS’s estimate for the following reasons:

- **Relevant experience** –AGS is experienced in representing the OAIC in Federal Court matters and in privacy matters generally.
- **Understanding of our needs** – In my opinion the estimate demonstrates an understanding of the work that is required in this matter.
- **Cost** – AGS’s quote is reasonable in light of the complexity of the matter.

Finance Requirements

For finance’s requirements, I set out the following information as follows:

Procurement need	The matter cannot be completed in-house.
Panel	Legal Services Panel
VFM	AGS estimate has been assessed as representing value for money.
FY estimate	I estimate 100% will be undertaken in 2023/24 financial year.

Kind Regards,

s47F



s47F (she/her)
Director, Manager Legal Services
Office of the Australian Information Commissioner
Canberra | GPO Box 5288 Sydney NSW 2001
P s47E(d) E s47E(d) [oaic.gov.au](mailto:s47E(d)@oaic.gov.au)

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From: s47F
To:
Subject: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - further quote [AGSDMS-DMS.FID5009249]
Date: Tuesday, 23 January 2024 5:40:27 PM

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Dear s47F

Our previous quote up to the first case management hearing was \$3500.

s42

To date, in addition to the originating application and interlocutory applications, the applicant has filed and served an amended originating application, a further interlocutory application and notice to admit.

Our quote for the ongoing work relating to this matter follows:

Consider additional material filed by the applicant, provide advice, obtain instructions and advise on next steps	\$1500
Ongoing communications with the applicant and the Court	\$2000
s42	\$1000
Prepare bundle of documents for filing by 23 February 24	\$1500
Consider submissions of applicant and draft submissions for filing by 5 April 24	\$2000
Prepare for and appear at hearing (estimate one day)	\$3000
Total	\$11,000 (no GST payable)

Please let us know if you have any queries.

Kind regards

s47F

s47F

Senior Executive Lawyer
Australian Government Solicitor

T s47E(d)

s47E(d) @ags.gov.au

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From: s47F
To: s47F
Cc: s47F
Subject: FOR AC APPROVAL - VMA in Matter of Kant v Australian Information Commissioner (VID829/2023) (LIT23/00037). [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Wednesday, 31 January 2024 9:33:40 PM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[RE Jan Marek Kant v AIC Federal Court VID8292023 LIT2300037 Applicant's notice to admit and notice of dispute SECOFFICIAL Sensitive ACCESSLegal-Privilege AGSDMS-DMS.FID5009249.msg](#)
Importance: High

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VFMA Snapshot	
Due date	ASAP
Fixed or flexible	Flexible
If fixed, why?	
Topic for clearance	AGS request for uplift re LIT23/00037
Product (e.g. brief / submission)	Procurement
Length / no. of pages	1 page – see attached quote
External party?	Australian Government Solicitor (AGS)
Clearance & consultation	s47F Senior Lawyer, Legal
	s47F A/g Principal Lawyer, Legal
Responsible director	s47F Executive Director, Legal Services
Final Clearance by	Annamie Hale, Assistant Commissioner, Corporate.

Dear Annamie

I am writing to you in regard to *Kant v Australian Information Commissioner* (VID829/2023) (our ref: LIT23/00037). This matter is presently in the Federal Court of Australia and concerns the review of the AIC's decision to decline to investigate the applicant's privacy complaint.

We have engaged AGS to represent the AIC in this matter and seek your in-principle approval to increase AGS' approved spend from **\$3,500.00 (GST not payable)** to **\$14,500.00 (GST not payable)** – an uplift of **\$11,000.00**.

Background

s42

Estimate

The initial estimate of \$3,500 (GST not payable) – for legal services up to and including the first case management hearing – was approved by Assistant Commissioner Andre Castaldi.

As this matter has now progressed, AGS have provided a further cost estimate of \$11,000.00 (GST not payable) comprised of the following:

Consider additional material filed by the applicant, provide advice, obtain instructions and advise on next steps	\$1500
Ongoing communications with the applicant and the Court	\$2000
s42 [REDACTED] [REDACTED] [REDACTED]	\$1000
Prepare bundle of documents for filing by 23 February 24	\$1500
Consider submissions of applicant and draft submissions for filing by 5 April 24	\$2000
Prepare for and appear at hearing (estimate one day)	\$3000
Total	\$11,000 (no GST payable)

Approval for Uplift

I seek your approval of the uplift on the following basis:

- **Relevant experience** – AGS is experienced in providing legal representation for Commonwealth agencies in relation to matters of judicial and merit review. I consider that the lawyers, especially the SEL, s47F [REDACTED] have demonstrable proven skills, expertise and requisite practical experience relevant for a matter of this potential complexity.
- **Understanding of our needs** – AGS have demonstrated a clear understanding of the work that is required at this stage.
- **Cost** – AGS have provided a further estimate of **\$11,000.00** (GST not payable) for up to and including the substantive hearing. This uplift will bring the total spend to **\$14,500.00** (GST not payable). Given the extra work that has been required to be undertaken to date, and likely to be undertaken going forward, I consider the uplift is reasonable and represents value for money.

Finance Requirements

For Finance's requirements, I set out relevant information as follows:

Procurement need	The matter cannot be completed in house.
Panel	N/A
VFM	AGS's request for an uplift has been assessed as representing value for money for the reasons outlined above.
FY estimate	I estimate 100% will be undertaken in the 2023/24 financial year.

Please do not hesitate to contact me should you require further information in relation to this matter.

Regards

s47F



s47F

Senior Lawyer

Legal Services

Office of the Australian Information Commissioner

GPO Box 5288 Sydney NSW 2001 | oaic.gov.au

s47E(d)

oaic.gov.au



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From: s47F s47E(d) @oaic.gov.au>

Sent: Thursday, 25 January 2024 11:24 AM

To: s47F s47E(d) @ags.gov.au>

Cc: s47F s47E(d) @oaic.gov.au>; s47F s47E(d)

s47E(d) @oaic.gov.au>; s47F s47E(d) @oaic.gov.au>; s47F

s47E(d) @oaic.gov.au>

Subject: RE: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 – Applicant's notice to admit and notice of dispute [AGSDMS-DMS.FID5009249] [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

Importance: High

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Good morning,

Thank you.

s42

Further, I confirm I have escalated approval of the estimate you recently provided and will be in touch in this regard soon.

Kind regards

s47F



s47F

Senior Lawyer

Legal Services

Office of the Australian Information Commissioner

GPO Box 5288 Sydney NSW 2001 | [oaic.gov.au](https://www.oaic.gov.au)

s47E(d)

[@oaic.gov.au](mailto:s47E(d)@oaic.gov.au)



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From: s47F s47E(d) <[redacted]@oaic.gov.au>
Sent: Friday, 19 January 2024 1:55 PM
To: s47F s47E(d) <[redacted]@ags.gov.au>
Cc: s47F <[redacted]@oaic.gov.au>; s47F <[redacted]@oaic.gov.au>; s47F <[redacted]@oaic.gov.au>; s47F <[redacted]@oaic.gov.au>
Subject: RE: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 – Applicant's notice to admit [AGSDMS-DMS.FID5009249] [SEC=OFFICIAL]

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Dear s47F

Thank you for your email.

Quote

Firstly, I note that we have not yet received a quote from you in this matter for next steps. Could we please receive this quote as a matter of priority, and by no later than COB Monday 22 January 2024? Any delay in this regard will impact our ability to pay invoices for your ongoing work on this matter. Noting my secondment status, I would kindly request that the quote be sent to s47F and s47F (both copied into this email), who can assess and progress the quote accordingly.

Instructions

s42

Please let me know if you have any questions today, otherwise, please direct any questions to s47F from Monday 22 January 2024, noting that I will be on leave.

Kind regards,

s47F



s47F

Lawyer (Seconded)

Office of the Australian Information Commissioner

Sydney | GPO Box 5288 Sydney NSW 2001

P s47E(d) M s47F E s47E(d) @oaic.gov.au

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From: s47F <s47E(d) @ags.gov.au>

Sent: Thursday, January 18, 2024 5:48 PM

To: s47F s47E(d) @oaic.gov.au>

Cc: s47F s47E(d) @oaic.gov.au>

Subject: FW: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 – Applicant's notice to admit [SEC=OFFICIAL] [AGSDMS-DMS.FID5009249]

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear s47F

s42

We will provide you with our updated quote tomorrow.

Kind regards

s47F

s47F

Senior Executive Lawyer
Australian Government Solicitor

T s47E(d)

s47E(d) [@ags.gov.au](mailto:s47E(d)@ags.gov.au)

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From: s47F s47E(d) @oaic.gov.au>
Sent: Wednesday, January 31, 2024 9:33 PM
To: HALE,Annamie <s47E(d) @oaic.gov.au>
Cc: s47F s47E(d) @oaic.gov.au>; s47F <s47E(d) @oaic.gov.au>
Subject: FOR AC APPROVAL - VMA in Matter of Kant v Australian Information Commissioner (VID829/2023) (LIT23/00037). [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Importance: High

OFFICIAL: Sensitive//Legal Privilege

VFMA Snapshot	
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Length / no. of pages	1 page – see attached quote
External party?	Australian Government Solicitor (AGS)
Clearance & consultation	s47F [REDACTED], Senior Lawyer, Legal Services s47F [REDACTED], A/g Principal Lawyer, Legal Services
Responsible director	s47F [REDACTED], Executive Director, Legal Services
Final Clearance by	Annamie Hale, Assistant Commissioner, Corporate.

Dear Annamie

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Ongoing communications with the applicant and the Court	\$2000
s42 [REDACTED] [REDACTED] [REDACTED]	\$1000
Prepare bundle of documents for filing by 23 February 24	\$1500
Consider submissions of applicant and draft submissions for filing by 5 April 24	\$2000

Prepare for and appear at hearing (estimate one day)	\$3000
Total	\$11,000 (no GST payable)

Approval for Uplift

I seek your approval of the uplift on the following basis:

- **Relevant experience** – AGS is experienced in providing legal representation for Commonwealth agencies in relation to matters of judicial and merit review. I consider that the lawyers, especially the SEL, s47F, have demonstrable proven skills, expertise and requisite practical experience relevant for a matter of this potential complexity.
- **Understanding of our needs** – AGS have demonstrated a clear understanding of the work that is required at this stage.
- **Cost** – AGS have provided a further estimate of **\$11,000.00** (GST not payable) for up to and including the substantive hearing. This uplift will bring the total spend to **\$14,500.00** (GST not payable). Given the extra work that has been required to be undertaken to date, and likely to be undertaken going forward, I consider the uplift is reasonable and represents value for money.

Finance Requirements

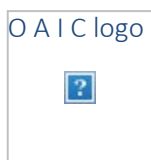
For Finance's requirements, I set out relevant information as follows:

Procurement need	The matter cannot be completed in house.
Panel	N/A
VFM	AGS's request for an uplift has been assessed as representing value for money for the reasons outlined above.
FY estimate	I estimate 100% will be undertaken in the 2023/24 financial year.

Please do not hesitate to contact me should you require further information in relation to this matter.

Regards

s47F



s47F

Senior Lawyer

Legal Services

Office of the Australian Information Commissioner

GPO Box 5288 Sydney NSW 2001 | oaic.gov.au

s47E(d) | s47E(d) [@oaic.gov.au](mailto:s47E(d)@oaic.gov.au)



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From: s47F
To: s47F
Cc: s47F
Subject: RE: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - next steps [AGSDMS-DMS.FID5009249]
Date: Thursday, 29 February 2024 4:28:11 PM
Attachments: [VID8292023 - Kant v OAIC - notice of dispute AGSDMS-DMS.FID5009249.msg](#)

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Dear s47F

s42

Please let us know if you are content for us to brief junior counsel. Subject to their availability, we recommend s47F (daily rate:\$1250 /Melbourne bar) or s47F (daily rate:\$1200/Brisbane bar).

We note you will respond to our in relation to our revised quote, also noting it will need to be revisited given the additional applications and material filed by the applicant and to account for counsel disbursements should you agree counsel should be briefed.

We attach email to the applicant enclosing notice of dispute dated 12 February 2024 and apologise for not sending it earlier.

Kind regards

s47F

s47F

Senior Executive Lawyer
Australian Government Solicitor

T s47E(d)

s47E(d) @ags.gov.au

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From: s47F

Sent: Tuesday, 23 January 2024 5:40 PM

To: s47F s47E(d) @oaic.gov.au; s47F
s47E(d) @oaic.gov.au>

Subject: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - further quote [AGSDMS-DMS.FID5009249]

Dear s47F

Our previous quote up to the first case management hearing was \$3500.

s42

To date, in addition to the originating application and interlocutory applications, the applicant has filed and served an amended originating application, a further interlocutory application and notice to admit.

Our quote for the ongoing work relating to this matter follows:

Consider additional material filed by the applicant, provide advice, obtain instructions and advise on next steps	\$1500
Ongoing communications with the applicant and the Court	\$2000
s42	\$1000
Prepare bundle of documents for filing by 23 February 24	\$1500
Consider submissions of applicant and draft submissions for filing by 5 April 24	\$2000
Prepare for and appear at hearing (estimate one day)	\$3000
Total	\$11,000 (no GST payable)

Please let us know if you have any queries.

Kind regards
s47F

s47F

Senior Executive Lawyer
Australian Government Solicitor

s47E(d)
s47E(d) ags.gov.au

Find out more about AGS at <http://www.ags.gov.au>

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From: s47F
To: s47F
Cc: s47F
Subject: RE: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - amended quote [AGSDMS-DMS.FID5009249]
Date: Tuesday, 26 March 2024 6:29:22 PM

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Dear s47F

We have updated our quote below to include additional fees to consider s42

Consider additional material filed by the applicant, provide advice, obtain instructions and advise on next steps	\$1500
Ongoing communications with the applicant and the Court	\$2000
s42	\$1000
Prepare bundle of documents for filing by 23 February 24	\$1500
Draft brief to counsel	\$2000
Consider submissions of applicant and confer with counsel as needed	\$2000
Consider multiple affidavits and notices from applicant and advise on approach as needed	\$2000
Prepare for and appear at hearing (estimate one day)	\$3000
Total professional fees	\$15,000
Counsel disbursements: \$1,250 per day \$208.33 per hour 5 days to include reading into brief, attend conferences with instructing lawyer and client; drafting submissions on interlocutory and substantive applications and appearing at hearing.	\$6,250
Total costs	\$21,250

Please let us know if you have any questions.

Kind regards

s47F

s47F

Senior Executive Lawyer
Australian Government Solicitor

T s47E(d)

s47E(d) @ags.gov.au

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From: s47F
Sent: Tuesday, 23 January 2024 5:40 PM
To: s47F s47E(d) @oaic.gov.au>; s47F
s47E(d) @oaic.gov.au>
Subject: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - further quote [AGSDMS-DMS.FID5009249]

Dear s47F

Our previous quote up to the first case management hearing was \$3500.

s42

To date, in addition to the originating application and interlocutory applications, the applicant has filed and served an amended originating application, a further interlocutory application and notice to admit.

Our quote for the ongoing work relating to this matter follows:

Consider additional material filed by the applicant, provide advice, obtain instructions and advise on next steps	\$1500
Ongoing communications with the applicant and the Court	\$2000
s42	\$1000
Prepare bundle of documents for filing by 23 February 24	\$1500
Consider submissions of applicant and draft submissions for filing by 5 April 24	\$2000
Prepare for and appear at hearing (estimate one day)	\$3000
Total professional fees	\$11,000 (no GST payable)

Please let us know if you have any queries.

Kind regards

s47F

s47F

Senior Executive Lawyer
Australian Government Solicitor

T s47E(d)

s47E(d) @ags.gov.au

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From: s47F
To: s47F
Cc: s47F
Subject: RE: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - amended quote [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AGSDMS-DMS.FID5009249]
Date: Tuesday, 2 April 2024 12:31:51 PM
Attachments: [image006.jpg](#)
[image007.jpg](#)
[image002.jpg](#)
[image003.jpg](#)

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Dear s47F

We provide further request for uplift in this matter to cover work anticipated or not covered in the amount approved under our current purchase order (\$14,500). We have explained the reason for the uplift for each task in the table below.

We seek uplift of \$10,250 to cover the following tasks:

Draft brief to counsel (not previously quoted for)	\$2000
Consider submissions of applicant on interlocutory application and substantive application; confer with counsel as needed (to take into account directions for filing of additional set of submissions for interlocutory application)	\$1000
Consider multiple affidavits and notices from applicant and advise on approach as needed s47F	\$1000
Total professional fees	\$4,000
Counsel disbursements: \$1,250 per day \$208.33 per hour 5 days to include reading into brief, attend conferences with instructing lawyer and client; drafting submissions on interlocutory and substantive applications and appearing at hearing.	\$6,250 (GSTi)
Total uplift costs	\$10,250

Kind regards
s47F

s47F
Senior Executive Lawyer
Australian Government Solicitor
Ts47E(d)
s47E(d) @ags.gov.au

Find out more about AGS at <http://www.ags.gov.au>

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From: s47F <s47E(d)@oaic.gov.au>
Sent: Thursday, 28 March 2024 2:40 PM
To: s47F s47E(d)@ags.gov.au
Cc: s47F s47E(d)@oaic.gov.au
Subject: RE: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - amended quote [AGSDMS-DMS.FID5009249] [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

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Dear s47F

Many thanks for your below email.

In terms of AGS' request for an uplift to the current PO, and for our internal purposes, we would be grateful if you could please provide us with a new uplift quote (rather than an amended quote that relates to a previously approved uplift) that sets out:

1. The current amount of the PO (i.e. \$14,500 for AGS' legal services only), the required uplift (e.g. for AGS' legal services and Counsel disbursements), and the total value of the new PO sought (i.e. \$24,750);
2. The anticipated work / work not covered by the existing PO which substantiates the uplift amount. For example, the table in the below quote dated 26 March 2024 itemises work that was already completed (e.g. 'Prepare bundle of documents for filing by 23 February 24') and which was already referred to / accounted for in the below quote dated 23 January 2024 and which was subsequently approved.

Having a quote that sets out the above information (particularly that itemises the work not covered by the existing PO) will help the Assistant Commissioner in assessing the uplift, especially as the current quote dated 26 March 2024 does not have the original \$3,500 accounted for.

Thanks very much s47F and please do not hesitate to contact me if you would like to discuss further.

Kind regards
s47F



s47F

Lawyer
Office of the Australian Information Commissioner
Perth | GPO Box 5288 Sydney NSW 2001
P s47E(d) E s47E(d) [oaic.gov.au](mailto:s47E(d)@oaic.gov.au)

The OAIC acknowledges Traditional Custodians of Country across Australia and their continuing connection to land, waters and communities. We pay our respect to First Nations people, cultures and Elders past and present.

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From: s47F s47E(d) <s47E(d)@ags.gov.au>

Sent: Wednesday, March 27, 2024 2:11 PM

To: s47F <s47E(d)@oaic.gov.au>

Cc: s47F s47E(d) <s47E(d)@oaic.gov.au>

Subject: RE: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - amended quote [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AGSDMS-DMS.FID5009249]

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Hi s47F

s42

The PO (attached) is for \$14,500 (\$11,000 quoted below, plus the original \$3500 quote). The quote below does not include the original \$3,500. This means the total uplift will be \$10,250. We confirm counsel rates are inclusive of GST.

Kind regards

s47F

s47F

Senior Executive Lawyer
Australian Government Solicitor

T s47E(d)

s47E(d) <s47E(d)@ags.gov.au>

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From: s47F s47E(d) <s47E(d)@oaic.gov.au>

Sent: Wednesday, 27 March 2024 10:46 AM

To: s47F <s47E(d)@ags.gov.au>

Cc: s47F <s47E(d)@oaic.gov.au>

Subject: RE: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - amended quote [AGSDMS-DMS.FID5009249] [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

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Dear s47F

Many thanks for sending through the request for an uplift to the existing PO.

We would be grateful if you could please confirm:

1. While GST does not apply to AGS' professional fees, is the \$6,250 in counsel disbursements GST inclusive or exclusive?
2. The current PO is \$11,000 GST exc. – the uplift sought is \$10,250, which brings the total PO up to \$21,250. The uplift comprises of \$4,000 in AGS' fees (GST not payable) and \$6,250 in counsel disbursements (GST incl.)

Kind regards

s47F



s47F

Lawyer

Office of the Australian Information Commissioner

Perth | GPO Box 5288 Sydney NSW 2001

P s47E(d)

E s47E(d)

[oaic.gov.au](mailto:s47E(d)@oaic.gov.au)

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From: s47F <s47E(d)@ags.gov.au>

Sent: Tuesday, March 26, 2024 3:29 PM

To: s47F <s47E(d)@oaic.gov.au>

Cc: s47F <s47E(d)@oaic.gov.au>

Subject: RE: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - amended quote [AGSDMS-DMS.FID5009249]

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Dear s47F

We have updated our quote below to include additional fees to consider s42

Consider additional material filed by the applicant, provide advice, obtain instructions and advise on next steps	\$1500
Ongoing communications with the applicant and the Court	\$2000
s42	\$1000
Prepare bundle of documents for filing by 23 February 24	\$1500
Draft brief to counsel	\$2000
Consider submissions of applicant and confer with counsel as needed	\$2000
Consider multiple affidavits and notices from applicant and advise on approach as needed	\$2000
Prepare for and appear at hearing (estimate one day)	\$3000
Total professional fees	\$15,000
Counsel disbursements: \$1,250 per day \$208.33 per hour 5 days to include reading into brief, attend conferences with instructing lawyer and client; drafting submissions on interlocutory and substantive applications and appearing at hearing.	\$6,250
Total costs	\$21,250

Please let us know if you have any questions.

Kind regards
s47F

s47F

Senior Executive Lawyer
Australian Government Solicitor

T s47E(d)

s47E(d) [@ags.gov.au](mailto:s47E(d)@ags.gov.au)

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From: s47F

Sent: Tuesday, 23 January 2024 5:40 PM

To: s47F s47E(d) [@oaic.gov.au](mailto:s47E(d)@oaic.gov.au); s47F
s47E(d) [@oaic.gov.au](mailto:s47E(d)@oaic.gov.au)

Subject: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - further quote

Dea s47F

Our previous quote up to the first case management hearing was \$3500.

s42

To date, in addition to the originating application and interlocutory applications, the applicant has filed and served an amended originating application, a further interlocutory application and notice to admit.

Our quote for the ongoing work relating to this matter follows:

Consider additional material filed by the applicant, provide advice, obtain instructions and advise on next steps	\$1500
Ongoing communications with the applicant and the Court	\$2000
s42	\$1000
Prepare bundle of documents for filing by 23 February 24	\$1500
Consider submissions of applicant and draft submissions for filing by 5 April 24	\$2000
Prepare for and appear at hearing (estimate one day)	\$3000
Total professional fees	\$11,000 (no GST payable)

Please let us know if you have any queries.

Kind regards

s47F

s47F

Senior Executive Lawyer
Australian Government Solicitor

T s47E(d)

s47E(d) @ags.gov.au

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If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.

From: s47F
To: WHIP,Caren
Cc: s47F
Subject: [FOR IN-PRINCIPLE APPROVAL] Uplift VMA - LIT23/00037 - Kant v Australian Information Commissioner (VID829/2023) - AGS [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Tuesday, 2 April 2024 12:45:29 PM
Attachments: RE Jan Marek Kant v AIC Federal Court VID8292023 LIT2300037 - amended quote SECOFFICIAL Sensitive ACCESSLegal-Privilege AGSDMS-DMS.FID5009249.msg
image001.jpg
image002.jpg
image004.jpg

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Snapshot	
Due date	As soon as possible, but preferably within two business days please (i.e. by Thursday 4 April) s42
Fixed or flexible	Flexible
If fixed, why?	N/A
Topic for clearance	LIT23/00037 – Approval of uplift in <i>Kant v Australian Information Commissioner</i> (VID829/2023)
Product (e.g., brief / submission)	Please find attached an uplift request from AGS for \$10,250 total concerning disbursements (Counsel fees) in the amount of \$6,250 GST incl. and \$4,000 GST not payable for AGS’ fees. This brings the cost estimate to be approved to \$24,750 total.
Clearance & Consultation	s47F Principal Lawyer
Responsible Director	s47F Executive Director
Final Clearance by	Caren Whip, A/Assistant Commissioner Corporate

Our reference: LIT23/00037

Dear Caren

We are seeking your in-principle approval for an uplift of **\$10,250 total** to the current purchase order of \$14,500 GST not payable, to account for Counsel’s disbursements (**\$6,250 GST incl.**) and AGS’ professional fees (**\$4,000 GST not payable**) in the Federal Court (Victoria Registry) matter of *Kant v Australian Information Commissioner*, which concerns an application for judicial review of the Commissioner’s decision to decline to investigate the applicant’s privacy complaint. This brings the cost of the revised estimate to **\$24,750 total.**

Background

s42

As to junior counsel, AGS suggested s47F (daily rate of \$1,250) or s47F (daily rate of \$1,200). We conducted a brief search on both barristers and while their experience and rates are relatively comparable, we are inclined to instruct AGS to brief s47F as she is based in Melbourne (and therefore, we would not need to pay travel costs for in-person hearings) and she has a very strong administrative law background, having worked at AGS for many years.

Uplift

An uplift in the amount of \$10,250 total is needed to cover the additional work on the matter. The uplift relates to disbursements (Counsel fees) in the amount of **\$6,250 GST incl.** and **\$4,000 GST not payable** for AGS' fees. This brings the total cost estimate to be approved to **\$24,750**. AGS have advised that the uplift accounts for the further material and affidavits filed by the applicant, briefing counsel, and counsel disbursements to draft submissions on the interlocutory application and the substantive matter as follows:

Draft brief to counsel (not previously quoted for)	\$2000
Consider submissions of applicant on interlocutory application and substantive application; confer with counsel as needed (to take into account directions for filing of additional set of submissions for interlocutory application)	\$1000
Consider multiple affidavits and notices from applicant and advise on approach as needed s47F	\$1000
Total professional fees	\$4,000
Counsel disbursements: \$1,250 per day \$208.33 per hour 5 days to include reading into brief, attend conferences with instructing lawyer and client; drafting submissions on interlocutory and substantive applications and appearing at hearing.	\$6,250 (GSTi)
Total uplift costs	\$10,250

Value for money assessment

We consider that the uplift amount is warranted and represents value for money, noting the following:

1. **Relevant experience and expertise** – AGS are skilled and experienced in providing legal advice and representation to the Commissioner in judicial review matters before the Federal Court. Further, s47F specialises in public and administrative law and was a Senior Lawyer at AGS in the Administrative Law and Law Enforcement teams before being called to the Bar in 2022.
2. **Team** – we consider it appropriate for the matter to be briefed to junior counsel given that the matter is not particularly legally complex (although there are practical complexities given the applicant is self-represented).
3. **Understanding of our needs** – AGS are familiar with providing legal advice to the Commissioner and we consider that AGS have demonstrated a clear understanding of the work required at this stage (including which barristers would be appropriate to act as junior counsel for this matter).
4. **Cost** –this uplift reflects the anticipated further work for AGS and junior counsel right up to, and including, representing the Commissioner at both the substantive and interlocutory hearings. The rate is generally commensurate with other rates at this level of skill and experience.

Finance requirements

For Finance’s requirements, we set out the relevant information as follows:

Procurement needs	The matter cannot be completed in-house given the requirements of the Legal Services Directions.
Panel Or Off Panel	In relation to AGS, this is N/A Legal Services Panel –s47F has an approved Commonwealth rate.
VFM	The quote has been assessed as representing value for money for the reasons outlined above.
FY estimate	We estimate 50% will be undertaken in the 2023/24 financial year.

Please do not hesitate to contact us should you require further information in relation to this matter.

Kind regards

s47F



s47F

Lawyer

Office of the Australian Information Commissioner

Perth | GPO Box 5288 Sydney NSW 2001

p s47E(d)

E s47E(d)

[oaic.gov.au](https://www.oaic.gov.au)

The OAIC acknowledges Traditional Custodians of Country across Australia and their continuing connection to land, waters and communities. We pay our respect to First Nations people, cultures and Elders past and present.

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From: s47F
To: s47F
Cc: s47F
Subject: RE: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - amended quote [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AGSDMS-DMS.FID5009249]
Date: Tuesday, 2 April 2024 12:31:51 PM
Attachments: [image006.jpg](#)
[image007.jpg](#)
[image002.jpg](#)
[image003.jpg](#)

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Dear s47F

We provide further request for uplift in this matter to cover work anticipated or not covered in the amount approved under our current purchase order (\$14,500). We have explained the reason for the uplift for each task in the table below.

We seek uplift of \$10,250 to cover the following tasks:

Draft brief to counsel (not previously quoted for)	\$2000
Consider submissions of applicant on interlocutory application and substantive application; confer with counsel as needed (to take into account directions for filing of additional set of submissions for interlocutory application)	\$1000
Consider multiple affidavits and notices from applicant and advise on approach as needed s47F	\$1000
Total professional fees	\$4,000
Counsel disbursements: \$1,250 per day \$208.33 per hour 5 days to include reading into brief, attend conferences with instructing lawyer and client; drafting submissions on interlocutory and substantive applications and appearing at hearing.	\$6,250 (GSTi)
Total uplift costs	\$10,250

Kind regards

s47F

s47F

Senior Executive Lawyer
Australian Government Solicitor
T s47E(d)
s47E(d) @ags.gov.au

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From: s47F s47E(d) oaic.gov.au>
Sent: Thursday, 28 March 2024 2:40 PM
To: s47F s47E(d) @ags.gov.au>
Cc: s47F s47E(d) oaic.gov.au>
Subject: RE: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - amended quote [AGSDMS-DMS.FID5009249] [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

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Dear s47F

Many thanks for your below email.

In terms of AGS' request for an uplift to the current PO, and for our internal purposes, we would be grateful if you could please provide us with a new uplift quote (rather than an amended quote that relates to a previously approved uplift) that sets out:

1. The current amount of the PO (i.e. \$14,500 for AGS' legal services only), the required uplift (e.g. for AGS' legal services and Counsel disbursements), and the total value of the new PO sought (i.e. \$24,750);
2. The anticipated work / work not covered by the existing PO which substantiates the uplift amount. For example, the table in the below quote dated 26 March 2024 itemises work that was already completed (e.g. 'Prepare bundle of documents for filing by 23 February 24') and which was already referred to / accounted for in the below quote dated 23 January 2024 and which was subsequently approved.

Having a quote that sets out the above information (particularly that itemises the work not covered by the existing PO) will help the Assistant Commissioner in assessing the uplift, especially as the current quote dated 26 March 2024 does not have the original \$3,500 accounted for.

Thanks very much s47F and please do not hesitate to contact me if you would like to discuss further.

Kind regards
s47F



s47F
Lawyer
Office of the Australian Information Commissioner
Perth | GPO Box 5288 Sydney NSW 2001
p s47E(d) s47E(d) oaic.gov.au

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From: s47F s47E(d) <[redacted]@ags.gov.au>

Sent: Wednesday, March 27, 2024 2:11 PM

To: s47F s47E(d) <[redacted]@oaic.gov.au>

Cc: s47F s47E(d) <[redacted]@oaic.gov.au>

Subject: RE: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - amended quote [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AGSDMS-DMS.FID5009249]

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Hi s47F

s42

The PO (attached) is for \$14,500 (\$11,000 quoted below, plus the original \$3500 quote). The quote below does not include the original \$3,500. This means the total uplift will be \$10,250. We confirm counsel rates are inclusive of GST.

Kind regards

s47F

s47F

Senior Executive Lawyer
Australian Government Solicitor

T s47E(d)

s47E(d) <[redacted]@ags.gov.au>

Find out more about AGS at <http://www.ags.gov.au>

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From: s47F s47E(d) <[redacted]@oaic.gov.au>

Sent: Wednesday, 27 March 2024 10:46 AM

To: s47F s47E(d) <[redacted]@ags.gov.au>

Cc: s47F s47E(d) <[redacted]@oaic.gov.au>

Subject: RE: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - amended quote [AGSDMS-DMS.FID5009249] [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

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Dear s47F

Many thanks for sending through the request for an uplift to the existing PO.

We would be grateful if you could please confirm:

1. While GST does not apply to AGS' professional fees, is the \$6,250 in counsel disbursements GST inclusive or exclusive?
2. The current PO is \$11,000 GST exc. – the uplift sought is \$10,250, which brings the total PO up to \$21,250. The uplift comprises of \$4,000 in AGS' fees (GST not payable) and \$6,250 in counsel disbursements (GST incl.)

Kind regards

s47F



s47F

Lawyer

Office of the Australian Information Commissioner

Perth | GPO Box 5288 Sydney NSW 2001

P s47E(d) E s47E(d) <[redacted]@oaic.gov.au>

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From: s47F s47E(d) <[redacted]@ags.gov.au>

Sent: Tuesday, March 26, 2024 3:29 PM

To: s47F s47E(d) <[redacted]@oaic.gov.au>

Cc: s47F s47E(d) <[redacted]@oaic.gov.au>

Subject: RE: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - amended quote [AGSDMS-DMS.FID5009249]

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Dear s47F

We have updated our quote below to include additional fees to consider s42

Consider additional material filed by the applicant, provide advice, obtain instructions and advise on next steps	\$1500
Ongoing communications with the applicant and the Court	\$2000
s42	\$1000
Prepare bundle of documents for filing by 23 February 24	\$1500
Draft brief to counsel	\$2000
Consider submissions of applicant and confer with counsel as needed	\$2000
Consider multiple affidavits and notices from applicant and advise on approach as needed	\$2000
Prepare for and appear at hearing (estimate one day)	\$3000
Total professional fees	\$15,000
Counsel disbursements: \$1,250 per day \$208.33 per hour 5 days to include reading into brief, attend conferences with instructing lawyer and client; drafting submissions on interlocutory and substantive applications and appearing at hearing.	\$6,250
Total costs	\$21,250

Please let us know if you have any questions.

Kind regards

s47F

s47F

Senior Executive Lawyer
Australian Government Solicitor

T s47E(d)

s47E(d) [@ags.gov.au](mailto:s47E(d)@ags.gov.au)

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From: s47F

Sent: Tuesday, 23 January 2024 5:40 PM

To: s47F s47E(d) [@oaic.gov.au](mailto:s47E(d)@oaic.gov.au); s47F
s47E(d) [@oaic.gov.au](mailto:s47E(d)@oaic.gov.au)

Subject: Jan Marek Kant v AIC Federal Court VID829/2023 LIT23/00037 - further quote

[AGSDMS-DMS.FID5009249]

Dear s47F

Our previous quote up to the first case management hearing was \$3500.

s42

To date, in addition to the originating application and interlocutory applications, the applicant has filed and served an amended originating application, a further interlocutory application and notice to admit.

Our quote for the ongoing work relating to this matter follows:

Consider additional material filed by the applicant, provide advice, obtain instructions and advise on next steps	\$1500
Ongoing communications with the applicant and the Court	\$2000
s42	\$1000
Prepare bundle of documents for filing by 23 February 24	\$1500
Consider submissions of applicant and draft submissions for filing by 5 April 24	\$2000
Prepare for and appear at hearing (estimate one day)	\$3000
Total professional fees	\$11,000 (no GST payable)

Please let us know if you have any queries.

Kind regards

s47F

s47F

Senior Executive Lawyer
Australian Government Solicitor

T s47E(d)

s47E(d) @ags.gov.au

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From: WHIP,Caren
To: s47F
Cc: s47F
Subject: [REDACTED] OVAL] Uplift VMA - LIT23/00037 - Kant v Australian Information Commissioner (VID829/2023) - AGS [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Tuesday, 2 April 2024 4:01:34 PM
Attachments: image001.jpg
image002.jpg
image003.jpg

OFFICIAL: Sensitive//Legal Privilege

Thanks s47F

I approve the uplift of \$10,250 to bring the overall approved cost to \$24,750.

Just note, re table for Finance requirements. Barristers are not part of the Legal Services Panel, which is limited to law firms; nor do barristers form part of the off-panel arrangement.

Therefore you could simply note as follows:

Panel	In relation to AGS, this is N/A
Or	
Off Panel	

Regards
Caren



Caren Whip (she/her)
a/Asst Commissioner, Corporate
Office of the Australian Information Commissioner
Sydney | GPO Box 5288 Sydney NSW 2001
p s47E(d) E s47E(d) @oaic.gov.au

*Note: I am not in the office on Fridays.
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From: s47F s47E(d) @oaic.gov.au>
Sent: Tuesday, April 2, 2024 12:45 PM
To: WHIP,Caren s47E(d) @oaic.gov.au>
Cc: s47F s47E(d) @oaic.gov.au>; s47F s47E(d) @oaic.gov.au>
S [REDACTED] R IN-PRINCIPLE APPROVAL] Uplift VMA - LIT23/00037 - Kant v Australian Information Commissioner (VID829/2023) - AGS [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

Snapshot	
Due date	As soon as possible, but preferably within two business days please (i.e. by Thursday 4 April) s42 [REDACTED] [REDACTED] [REDACTED]
Fixed or flexible	Flexible
If fixed, why?	N/A
Topic for clearance	LIT23/00037 – Approval of uplift in <i>Kant v Australian Information Commissioner</i> (VID829/2023)
Product (e.g., brief / submission)	Please find attached an uplift request from AGS for \$10,250 total concerning disbursements (Counsel fees) in the amount of \$6,250 GST incl. and \$4,000 GST not payable for AGS' fees. This brings the cost estimate to be approved to \$24,750 total.
Clearance & Consultation	s47F [REDACTED] Principal Lawyer
Responsible Director	s47F [REDACTED] Executive Director
Final Clearance by	Caren Whip, A/Assistant Commissioner Corporate

Our reference: LIT23/00037

Dear Caren

We are seeking your in-principle approval for an uplift of **\$10,250 total** to the current purchase order of \$14,500 GST not payable, to account for Counsel's disbursements (**\$6,250 GST incl.**) and AGS' professional fees (**\$4,000 GST not payable**) in the Federal Court (Victoria Registry) matter of *Kant v Australian Information Commissioner*, which concerns an application for judicial review of the Commissioner's decision to decline to investigate the applicant's privacy complaint. This brings the cost of the revised estimate to **\$24,750 total.**

Background

s42



As to junior counsel, AGS suggested **s47F** (daily rate of \$1,250) or **s47F** (daily rate of \$1,200). We conducted a brief search on both barristers and while their experience and rates are relatively comparable, we are inclined to instruct AGS to brief **s47F** as she is based in Melbourne (and therefore, we would not need to pay travel costs for in-person hearings) and she has a very strong administrative law background, having worked at AGS for many years.

Uplift

An uplift in the amount of \$10,250 total is needed to cover the additional work on the matter. The uplift relates to disbursements (Counsel fees) in the amount of **\$6,250 GST incl.** and **\$4,000 GST not payable** for AGS' fees. This brings the total cost estimate to be approved to **\$24,750**. AGS have advised that the uplift accounts for the further material and affidavits filed by the applicant, briefing counsel, and counsel disbursements to draft submissions on the interlocutory application and the substantive matter as follows:

Draft brief to counsel (not previously quoted for)	\$2000
Consider submissions of applicant on interlocutory application and substantive application; confer with counsel as needed (to take into account directions for filing of additional set of submissions for interlocutory application)	\$1000
Consider multiple affidavits and notices from applicant and advise on approach as needed s47F	\$1000
Total professional fees	\$4,000
Counsel disbursements: \$1,250 per day \$208.33 per hour 5 days to include reading into brief, attend conferences with instructing lawyer and client; drafting submissions on interlocutory and substantive applications and appearing at hearing.	\$6,250 (GSTi)
Total uplift costs	\$10,250

Value for money assessment

We consider that the uplift amount is warranted and represents value for money, noting the following:

1. **Relevant experience and expertise** – AGS are skilled and experienced in providing legal advice and representation to the Commissioner in judicial review matters before the Federal Court. Further, **s47F** specialises in public and administrative law and was a Senior Lawyer at AGS in the Administrative Law and Law Enforcement teams before being called to the Bar in 2022.
2. **Team** – we consider it appropriate for the matter to be briefed to junior counsel given that the matter is not particularly legally complex (although there are practical complexities given the applicant is self-represented).

3. **Understanding of our needs** – AGS are familiar with providing legal advice to the Commissioner and we consider that AGS have demonstrated a clear understanding of the work required at this stage (including which barristers would be appropriate to act as junior counsel for this matter).
4. **Cost** –this uplift reflects the anticipated further work for AGS and junior counsel right up to, and including, representing the Commissioner at both the substantive and interlocutory hearings. The rate is generally commensurate with other rates at this level of skill and experience.

Finance requirements

For Finance’s requirements, we set out the relevant information as follows:

Procurement needs	The matter cannot be completed in-house given the requirements of the Legal Services Directions.
Panel Or Off Panel	In relation to AGS, this is N/A Legal Services Panel – s47F has an approved Commonwealth rate.
VFM	The quote has been assessed as representing value for money for the reasons outlined above.
FY estimate	We estimate 50% will be undertaken in the 2023/24 financial year.

Please do not hesitate to contact us should you require further information in relation to this matter.

Kind regards

s47F



s47F

Lawyer
Office of the Australian Information Commissioner
Perth | GPO Box 5288 Sydney NSW 2001
P s47E(d) E s47E(d) @oaic.gov.au

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Details of Filing

Document Lodged:	Outline of Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	12/04/2024 3:54:06 PM AEST
Date Accepted for Filing:	12/04/2024 3:54:13 PM AEST
File Number:	VID829/2023
File Title:	JAN MAREK KANT v THE AUSTRALIAN INFORMATION COMMISSIONER
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

s47F



Registrar

Important Information

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

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

JAN MAREK KANT
Applicant

AUSTRALIAN INFORMATION COMMISSIONER
Respondent

**RESPONDENT'S OUTLINE OF SUBMISSIONS REGARDING APPLICANT'S AMENDED
INTERLOCUTORY APPLICATION DATED 14 FEBRUARY 2024**

PART I INTRODUCTION

1. By amended interlocutory application dated 14 February 2024 (the **review application**), the applicant seeks review of an order of Registrar Luxton dated 20 December 2023 (the **Registrar's order**) to dismiss the applicant's interlocutory applications dated 22 and 26 November 2023.
2. For the reasons that follow, the applicant's interlocutory applications dated 22 and 26 November 2023 should be dismissed, with costs.

PART II BACKGROUND

Complaint to the respondent

3. On 22 August 2023, the applicant wrote to the Office of the Australian Information Commissioner (**OAIC**) requesting that the respondent "investigate an interference, by multiple regulated entities, with [the applicant's] rights as prescribed by the *International Covenant on Civil and Political Rights* (ICCPR)".¹ The request attached:
 - 3.1. an email from the applicant to the Central Intelligence Agency dated 18 April 2023;
 - 3.2. a letter from the applicant to the Australian Security Intelligence Organisation (**ASIO**) dated 18 May 2023 seeking access to ASIO records about him;
 - 3.3. an online complaint form from the applicant lodged with the Inspector-General of Intelligence and Security (**IGIS**) dated 2 July 2023 complaining of "multiple and

¹ Respondent's bundle of relevant documents (**RB**) 1-7.

repeated interferences with [his] privacy by one or more intelligence agencies”;
and

- 3.4. a letter from the IGIS to the applicant regarding his correspondence to the IGIS regarding the alleged actions of ASIO.²
4. On 12 September 2023, the delegate of the respondent wrote to the applicant about his complaint.³ The letter indicated that the complaint was that ASIO had mishandled the applicant’s personal information. The letter advised that s 7(1A)(a) of the *Privacy Act 1988* (Cth) (the **Act**) states that any act or practice done by ASIO is excluded from coverage of the Act, and, as an exempt agency, the actions of ASIO cannot be considered an interference with privacy as defined in the Act. Accordingly, the delegate decided that the complaint did not meet the requirements of s 36(1) of the Act and declined to investigate.
5. Between 12 and 21 September 2023, the applicant and the respondent exchanged further correspondence about his request that the respondent conduct an investigation concerning ASIO.⁴

Proceedings before this Court

6. The applicant commenced judicial review proceedings in this Court on 25 September 2023. The applicant has confirmed that the decision that he seeks judicial review of is the decision given by the respondent’s delegate on 12 September 2023.⁵
7. By amended originating application dated 24 January 2024, the applicant seeks:
 1. Investigation by the Information Commissioner of the matter described in the applicant’s letter sent on 22 August 2023.
 2. Further action by the Information Commissioner as described in the applicant’s letter sent on 22 August 2023, as amended to omit the original first reference to NACC on its second page and with the same reinserted immediately under the subsequent reference to IBAC.
 3. Orders commanding the Information Commissioner to refrain from taking action as in (1) or (2), unless and until the Applicant requests the Information Commissioner to commence doing so.
 4. Damages, including exemplary damages, claimed against the Commonwealth in respect of tortious conduct of intentional nature in mens rea.
 5. Further damages in lieu of costs.
8. On 22 November 2023, the applicant filed an interlocutory application seeking an injunction under s 80W(1) of the Act and orders commanding the respondent to produce to the applicant all information about him as is reasonably accessible to the OAIC.

² RB 8-12.

³ RB 14.

⁴ RB 15-27.

⁵ Affidavit of Jan Marek Kant affirmed 26 February 2024, exhibit JMK-33.

9. On 26 November 2023, the applicant filed an interlocutory application seeking suppression orders under 37AG(1) of the *Federal Court of Australia Act 1976* (Cth) (the **FCA Act**) in respect of submissions and documents filed in this proceeding on the ground that such orders are necessary to prevent prejudice to the proper administration of justice.
10. On 20 December 2023, at the first case management hearing, Registrar Luxton dismissed the interlocutory applications dated 22 and 26 November 2023.

The review application

11. The review application seeks:
 - 11.1. An order affirming the dismissal of the applicant's application filed on 26 November 2023;
 - 11.2. An order granting the relief sought in the applicant's application filed on 22 November 2023;
 - 11.3. Reasons for decisions on the above; and
 - 11.4. The review application to be heard on the papers.
12. This Court has power under s 35A(5)-(6) of the FCA Act to review the Registrar's order and may make such order or orders as it thinks fit with respect to the matter with respect to which the Registrar's power was exercised. The review is in the nature of a rehearing de novo.⁶

PART III THE 26 NOVEMBER 2023 INTERLOCUTORY APPLICATION

13. The review application seeks for the Registrar's order dismissing the 26 November 2023 interlocutory application to be affirmed. s47F
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
14. In light of the applicant's position, the respondent respectfully submits that it would be appropriate to affirm the dismissal of the 26 November 2023 interlocutory application.

⁶ *Guildford International Group Pty Ltd, Aviation 3030 Pty Ltd, Re v Aviation 3030 Pty Ltd* [2018] FCA 600 at [1].

Section 80W(1)

15. Section 80W(1) is a part of the enforcement regime of the Act⁷ and confers power on this Court to enforce provisions of the Act by way of injunction. Section 80W is given operative effect by ss 118, 121 and 122 in Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) (the **RP Act**).⁸ Those provisions empower the Court to grant performance injunctions and interim injunctions in relation to provisions of an Act enforceable under the RP Act.
16. Grounds 2(a)-(b) of the review application seek to attach s 80W(1) to the applicant's right to access information about him under Schedule 1 of the Act. Schedule 1 of the Act contains the Australian Privacy Principles (**APP**). APP 12 requires an APP entity⁹ that holds personal information about an individual to, upon request, give the individual access to the information. The OAIC is an APP entity.
17. The flaw in the applicant's position is that he has not applied to the OAIC for access to information that it holds about him. There is no extant access request under APP 12 that can be enforced by way of injunction in a proceeding before this Court (let alone by way of interlocutory injunction as part of a proceeding that does not concern the respondent's compliance with APP 12).
18. The 22 November 2023 interlocutory application should be dismissed because it seeks orders that this Court is not presently empowered to make.

No prima facie case and the balance of convenience does not favour the orders

19. Even if there is some power in s 80W(1) of the Act or elsewhere to require the production of the information sought by the applicant, the applicant has not made out a prima facie case for the orders, and the balance of convenience does not favour the making of the order.¹⁰
20. The issues strictly arising in the substantive review of the respondent's 12 September 2023 decision are very narrow. They turn on whether the respondent has misconstrued the applicant's request for an investigation, and whether the complaint did not meet the requirements of s 36(1) of the Act. There is sufficient material presently before the Court to enable it to determine those issues. The information accessible to the OAIC about the applicant would not shed any light on the issues arising and would not assist the resolution of this proceeding.
21. The applicant has also sought a variety of other relief including damages. Whether such relief is available in an application under s 39B of the *Judiciary Act 1903* (Cth) is a matter that will be addressed in the respondent's submissions on the substantive

⁷ See Part VIB generally.

⁸ *Medibank Private Limited v Australian Information Commissioner* [2024] FCA 117 at [172].

⁹ APP entity is defined in s 6 of the Act to mean "an agency or organisation".

¹⁰ *Beecham Group Limited v Bristol Laboratories Pty. Limited* (1968) 118 CLR 618.

application. Assuming such relief were within the Court's power, it is entirely unclear how production of the information sought by the applicant would advance his case for this relief.

22. Finally, there is a mismatch between the order sought and the provision of the Act the applicant is attempting to rely upon. APP 12 does not extend to requiring an APP entity to produce documents "reasonably accessible" to it. APP 12 is limited to documents the APP entity "holds". The applicant has not made out any prima facie case for requiring the respondent to produce documents "reasonably accessible" to it (whatever that may mean).

PART V OTHER MATTERS RAISED IN THE APPLICANT'S SUBMISSIONS

23. s47F

24.

PART VI COSTS

25. The respondent seeks its costs if the review application is dismissed.

Date: 12 April 2024

KYLIE MCINNES
Counsel for the Respondent

s47F

Elena Arduca
AGS lawyer
for and on behalf of the Australian Government Solicitor
Solicitor for the Respondent

NOTICE OF FILING

Details of Filing

Document Lodged:	Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	16/04/2024 4:01:17 PM AEST
Date Accepted for Filing:	16/04/2024 4:01:21 PM AEST
File Number:	VID829/2023
File Title:	JAN MAREK KANT v THE AUSTRALIAN INFORMATION COMMISSIONER
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

s47F



Registrar

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

JAN MAREK KANT
Applicant

AUSTRALIAN INFORMATION COMMISSIONER
Respondent

RESPONDENT'S OUTLINE OF SUBMISSIONS

PART I INTRODUCTION

1. By amended originating application for relief under s 39B of the *Judiciary Act 1903* (Cth) dated 24 January 2024, the applicant seeks judicial review of the decision given by the respondent's delegate on 12 September 2023.¹
2. These submissions address the facts and relevant legal principles applicable to the delegate's decision. The submissions also address why the applicant's associated damages claims are not made out.

PART II BACKGROUND

3. The factual background to this proceeding is set out at [3] to [7] of the respondent's submissions filed on 12 April 2024.
4. The grounds of review are as given in the applicant's correspondence with the Office of the Australian Information Commissioner (**OAIC**).² That correspondence, in summary, contends that:
 - 4.1. the applicant's request to the OAIC was a request, under s 12B(2) of the *Privacy Act 1988* (Cth) (the **Privacy Act**), to investigate interferences with the applicant's rights as prescribed by the International Covenant on Civil and Political Rights (**ICCPR**);³

¹ Affidavit of Jan Marek Kant affirmed 26 February 2024, exhibit JMK-33.

² Amended originating application, particular (i).

³ Respondent's bundle of documents (**RB**) 15 [2].

- 4.2. the ICCPR applies to the conduct of security agencies because any provisions excluding those agencies from the Privacy Act are void by virtue of s 12B(2) of the Act;⁴
- 4.3. the OAIC has the authority to investigate the actions and general conduct of the Australian Security Intelligence Organisation (**ASIO**).⁵

PART III THE PRIVACY ACT

5. Part V of the Privacy Act deals with complaints and investigations about acts or practices that may be an interference with the privacy of an individual. If a complaint is made in accordance with s 36(1) or (2), the respondent is required to investigate the act or practice except in certain circumstances.
6. Section 36(1) permits the making of an individual complaint about an “act or practice that may be an interference with” the privacy of the individual. That concept — interference with the privacy of an individual — is the subject of s 13 of the Act, which relevantly provides:

13 Interferences with privacy

- (1) An act or practice of an APP entity is an interference with the privacy of an individual if:
 - (a) the act or practice breaches an Australian Privacy Principle in relation to personal information about the individual; or
 - (b) the act or practice breaches a registered APP code that binds the entity in relation to personal information about the individual.

7. The acts and practices to which the Privacy Act applies or disapplies are clarified in s 7. Section 7(1) provides:

Except so far as the contrary intention appears, a reference in the Act (other than section 8) to an act or to a practice is a reference to:

- (a) ... an act done, or a practice engaged in, as the case may be, by an agency ... other than:
 - (i) an agency specified in any of the following provisions of the *Freedom of Information Act 1982*:

...

(B) Division 1 of Part I of Schedule 2;

...
 - (b) [paras (b) to (ee) specify certain acts or practices]

...
but does not include a reference to an act done, or a practice engaged in, in relation to a record that has originated with, or has been received from:

- (f) an intelligence agency...

⁴ RB 15 [4].

⁵ RB 15 [5].

8. ASIO is an “exempt agency” listed in Division 1 of Part 1 of Schedule 2 to the *Freedom of Information Act 1982* (Cth). ASIO is also an “intelligence agency” as defined in s 6(1) of the Privacy Act.
9. Section 7(1A)(a) of the Privacy Act provides that the Act (other than s 8) does not apply to acts or practices involving disclosure of information to certain agencies, including ASIO.
10. Section 7(2) provides for the application of the Act otherwise than in respect of the Australian Privacy Principles (**APPs**):

Except so far as the contrary intention appears, a reference in this Act (other than section 8) to an act or to a practice includes, in the application of this Act otherwise than in respect of the Australian Privacy Principles, ..., a reference to an act done, or a practice engaged in, as the case may be, by an agency specified in Part I of Schedule 2 to the *Freedom of Information Act 1982* or in Division 1 of Part II of that Schedule other than:

(a) an intelligence agency; ...
11. Section 12B(1) provides that, without limiting the effect of the Privacy Act apart from s 12B, the Privacy Act also has effect as provided by each of sub-ss 12B(2) to (8) in relation to an agency.⁶ Relevantly, s 12B(2)(a) provides that the Privacy Act has the effect it would have if its operation in relation to an agency was “expressly confined to an operation to give effect to ... the [ICCPR], and in particular Articles 17 and 24(1) of the Covenant”.
12. Article 17 of the ICCPR states:
 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
 2. Everyone has the right to the protection of the law against such interference or attacks.

PART IV SUBMISSIONS CONCERNING THE DECISION UNDER REVIEW

ASIO’s acts and practices are exempt from the Privacy Act

13. The applicant contends that the decision is flawed as the respondent has narrowly interpreted his complaint, which did not involve disclosing information to ASIO.⁷
14. The delegate characterised the applicant’s complaint as being about ASIO’s handling of the applicant’s personal information.⁸ The delegate considered that ASIO is an exempt agency for the purposes of the Privacy Act and referred to s 7(1A)(a) of the Act, which exempts acts or practices involving disclosure of information to ASIO.

⁶ “Agency” is defined in s 6(1) to relevantly mean “a body (whether incorporated or not), or a tribunal, established or appointed for a public purpose by or under a Commonwealth law...”. ASIO is established under a law of the Commonwealth.

⁷ Applicant’s submissions dated 12 March 2024 (**AS**) [10].

⁸ RB 14.

15. Several subsections together provide a comprehensive exemption for ASIO, covering its acts (s 7(1)(a)(i)(B)) (including in respect of the application of the Privacy Act otherwise than in respect of the APPs: s 7(2)(a)), information originating from ASIO (s 7(1)(f)), and information provided to ASIO (s 7(1A)(a)).
16. As a matter of principle, the delegate's ultimate assessment of whether the Privacy Act applies to acts or practices of ASIO was correct by reason of sub-ss 7(1)(a)(i)(B) and 7(2)(a). The applicant's complaint accordingly did not meet s 36(1) of the Act, because it did not relate to an act or practice to which the Privacy Act applies.
17. Any error of the delegate in referring to an incorrect sub-section was not material and did not constitute a jurisdictional error because the decision could not realistically have been any different had the correct section been referred to.⁹

The ICCPR does not provide an alternative avenue

18. The applicant contends that despite ASIO's exemption from the Privacy Act under s 7, s 12B(2)(a) provides alternative jurisdiction for the respondent to investigate the conduct of ASIO.
19. Section 12B is titled 'Severability – additional effect of this Act'. A severability clause generally establishes "a presumption in favour of the independence, one from another, of the various provisions of an enactment, to which effect should be given unless some positive indication of interdependence appears from the text, context, content or subject matter of the provisions".¹⁰ This is consistent with the explanation of s 12B in the explanatory memorandum to the *Privacy Amendment (Enhancing Privacy Protection) Bill 2012*, which indicates that s 12B is intended to ensure that the Privacy Act is given the widest possible operation consistent with Commonwealth constitutional legislative power.¹¹
20. The respondent advances two reasons for why s 12B does not empower it to investigate ASIO's acts or practices.

ASIO's exemption from the Privacy Act is consistent with the application of the ICCPR

21. On its face, s 12B(2) appears to provide some separate avenue for the conduct of an investigation into the conduct of ASIO. However, the Full Court of the Federal Court has considered the interaction between the ICCPR and the former Information Privacy Principles (IPPs) in a way that tends against the ICCPR overriding exemptions in the Act.

⁹ *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12 at [7] (Gageler CJ, Gordon, Edelman, Steward, Gleeson and Jagot JJ, with whom Beech-Jones J agreed, [38]).

¹⁰ *Fraser Henleins Pty Ltd v Cody* (1945) 70 CLR 100 at 127 (Dixon J). See also *Bank of New South Wales v The Commonwealth* (1948) 76 CLR 1 at 370 (Dixon J).

¹¹ Explanatory memorandum to the Privacy Amendment (Enhancing Privacy Protection) Bill 2012, item 35.

22. In *AIT18 v Australian Information Commissioner* (2018) 267 FCR 93, the Court observed that the Act reflects Parliament's concern to "recognise and protect individual privacy within the framework of a complex statutory regime" and it does so by "a series of statutory provisions which protect the privacy of individuals from unlawful or arbitrary interference but also by specifying circumstances (or "exceptions") which reflect the Parliament's concern to strike an appropriate balance between competing community interests."¹² The Court accepted that:
- ...the exceptions [in the IPPs] should be interpreted carefully so as to preserve the balance which the legislation strikes between the competing community interests, noting also the relevance of the fact that Art 17(1) ICCPR is not expressed in unqualified terms. It does not confer an absolute "right to privacy", but rather creates a right not to be subjected to arbitrary or unlawful interference with one's privacy. The exceptions in the Privacy Act reflect the Parliament's identification of circumstances in which interference with a person's privacy is not arbitrary or unlawful.¹³
23. Section 2A(f) of the Privacy Act states that an object of the Act is "to implement Australia's international obligation in relation to privacy." The Act as a whole, including its exceptions, gives effect to Australia's international obligation.
24. Just as the exceptions in specific privacy principles (whether the IPPs or APPs) reflect the Parliament's identification of circumstances in which interference with a person's privacy is not arbitrary or unlawful, so does the exemption of ASIO from the operation of the Act as a whole. The ICCPR right not to be subjected to arbitrary or unlawful interference with one's privacy is only incorporated by the Act in relation to the entities that the Act otherwise applies to.

Section 36(1) does not empower the investigation of ICCPR rights in respect of ASIO

25. While the Privacy Act gives effect to certain ICCPR rights, the ICCPR does not confer any power on the respondent to investigate any alleged breach of privacy. The provision to "give effect" to an ICCPR right by way of investigation is still the power in s 36 of the Privacy Act.
26. Section 36(1) does not apply to complaints about acts or practices of ASIO *otherwise* than in respect of the APPs by reason of s 7(2)(a) of the Privacy Act. It follows that any complaint about acts or practices of ASIO breaching an ICCPR right are still excluded from the power in s 36(1) of the Privacy Act.

PART V OTHER RELIEF SOUGHT

27. The applicant also seeks damages against the Commonwealth in respect of tortious conduct¹⁴ and damages in lieu of costs.¹⁵ His grounds for seeking these orders variously contend that:

¹² *AIT18 v Australian Information Commissioner* (2018) 267 FCR 93 at [85].

¹³ *Ibid.*

¹⁴ Amended originating application, claim [4].

¹⁵ Amended originating application, claim [5].

- 27.1. the respondent has manufactured this review application and is abusing the Court's processes by continuing to participate in the review;¹⁶ and
- 27.2. the respondent has attempted to seriously interfere with the privacy of the applicant by continuing this proceeding.¹⁷
28. It is theoretically possible to seek damages in conjunction with a claim for relief under s 39B of the *Judiciary Act 1903* (Cth).¹⁸ The claim would, in any event, fall within the Court's associated jurisdiction if it arises from the same substratum of facts.¹⁹ However, the basis for the claims is misconceived and the respondent is not liable for those claims.

Damages for abuse of process

29. The principles concerning the tort of collateral abuse of process are conveniently summarised in *Martin v Norton Rose Fulbright Australia* (2021) 289 FCR 369 at [190] to [195]. In summary, the tort of abuse of process involves using legal proceedings for a purpose beyond their intended scope, resulting in damage. This tort requires proving that the process was employed for a purpose other than achieving the claim in the action. Simply identifying an improper purpose is not enough; there must be evidence of an overt act or threat distinct from pursuing the proceedings themselves. The essence of the tort lies in abusing civil proceedings to obtain a wholly extraneous benefit not reasonably connected with the relief sought, such as using court processes as a tool of extortion.
30. There has been no abuse of process in this proceeding.

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- 30.2. The respondent became a party to the proceeding because her delegate was the original decision maker. There is no other respondent to the proceeding, so the respondent has taken the role of making submissions as to the facts and legal principles relevant to the delegate's decision. This is an appropriate role, consistent with the flexible application of the principle articulated in *R v Australian Broadcasting Tribunal; Ex parte Hardiman* (1980) 144 CLR 13.

- 30.3. s47F

¹⁶ Amended originating application, particulars (ii), (iv), (v)

¹⁷ Amended originating application, particulars (vi), (vii) and (ix).

¹⁸ See *Scott v Handley* (1997) 79 FCR 236; *Giddings v Australian Information Commissioner* [2017] FCAFC 225 at [40].

¹⁹ *Federal Court of Australia Act 1976* (Cth), s 32.

30.4. The respondent indicated that she would seek her costs if the applicant did not discontinue the proceeding.²⁰ The applicant contends that this amounts to coercion: AS [24]. Liability for costs on discontinuance is the standard position reflected in rule 26.12(7) of the Rules. The applicant has not explained how invoking the standard position in the Court's rules can be an abuse of process and the respondent submits that it cannot.

Damages for interference with privacy

31. The applicant contends his privacy has been or is being seriously interfered with by the respondent by "failing or refusing to allow him to access his own personal information when requested" (AS [34]) or intentionally procuring and using his personal information via this proceeding (AS [36]), and that this is actionable as a tort of 'disprivacy'.

32. Neither of these allegations establishes a basis for any award of damages in the circumstances of this case.

32.1. The complaints about the respondent generally failing or refusing to allow the applicant access to his own information (AS [34]) appear unconnected to the subject matter of the s 39B review application. The applicant does not claim that failure to investigate his complaint under the Privacy Act resulted in some interference with his privacy. The applicant may instead be referring to his other matters with the OAIC.²¹ The lawfulness of the other matters is not challenged as part of this proceeding. The claim for damages is not properly 'associated' with the s 39B application because it does not arise out of the same substratum of facts.²²

32.2. s47F

Interference with privacy is not firmly established as a tort.²³ In any event, the applicant has not established that the respondent has procured or used his personal information via this proceeding (see [30.3] above), nor has he established that anything done in this proceeding amounts to interfering with privacy.

32.3. s47F

²⁰ Affidavit of Jan Marek Kant affirmed 5 January 2024, exhibit JMK-8.

²¹ E.g. affidavit of Jan Marek Kant affirmed 31 January 2024, exhibit JMK-11, page 35-46 refers to an FOI request to the OAIC.

²² *Fencott v Muller* (1983) 152 CLR 570 at 606-607.

²³ *Dye v Commonwealth Securities Limited* [2010] FCA 720 at [289]; *Kalaba v Commonwealth of Australia* [2004] FCA 763 at [6]; *Sands v State of South Australia* [2013] SASC 44 at [614]. The debate on whether a tort exists has been left open by the High Court: see *Smethurst v Commissioner of the Australian Federal Police* (2020) 272 CLR 177 at [48].

²⁴ The respondent is the authorised applicant for such a proceeding: s 80U of the Privacy Act.

Damages in lieu of costs

33. For the reasons set out above, the applicant is not entitled to the relief he seeks in pleas [1] to [4] of his amended originating application. It follows that he is not entitled to any costs. But for completeness the respondent makes the following submissions about the availability of an order for damages in lieu of costs.
34. First, s 80 of the *Judiciary Act 1903* (Cth) does not apply in the way the applicant contends. That section provides:
- So far as the laws of the Commonwealth are not applicable or so far as their provisions are insufficient to carry them into effect, or to provide adequate remedies or punishment, the common law in Australia as modified by the Constitution and by the statute law in force in the State or Territory in which the Court in which the jurisdiction is exercised is held shall, so far as it is applicable and not inconsistent with the Constitution and the laws of the Commonwealth, govern all Courts exercising federal jurisdiction in the exercise of their jurisdiction in civil and criminal matters.
35. The conditions necessary to engage the operation of s 80 are not met. There are applicable laws of the Commonwealth providing for the award of costs in this Court. This Court's power to award costs derives from s 43 of the *Federal Court of Australia Act 1976* (Cth) . It confers jurisdiction "to award costs in all proceedings before the Court", and provides that "the award of costs is in the discretion of the Court," except as provided by any other Act. There is no need to resort to the common law.
36. Second, even if the common law is picked up, there is no common law rule that unrepresented litigants may claim damages in lieu of costs. A successful litigant who is not represented by a lawyer is not entitled to be recompensed for work done in the preparation and conduct of his or her case.²⁵ Costs are also unable to be recovered by way of damages.²⁶
37. If the applicant is successful in this proceeding, he would be entitled to the ordinary costs recoverable by a litigant in person.

PART VI COSTS

38. The respondent seeks its costs if the amended originating application is dismissed.

Date: 16 April 2024

KYLIE MCINNES

s47F

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Elena Arduca
AGS Lawyer

For and on behalf of the Australian Government Solicitor
Solicitor for the Respondent

²⁵ *Cachia v Hanes* (1994) 176 CLR 403 at 417 (Mason CJ, Brennan, Deane, Dawson and McHugh JJ).

²⁶ *Gray v Sirtex Medical Ltd* [2011] FCAFC 40 at [15] and [16].

NOTICE OF FILING

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Registrar

Important Information

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

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

JAN MAREK KANT
Applicant

AUSTRALIAN INFORMATION COMMISSIONER
Respondent

**RESPONDENT'S OUTLINE OF SUBMISSIONS REGARDING APPLICANT'S AMENDED
INTERLOCUTORY APPLICATION DATED 18 JULY 2024**

PART I INTRODUCTION

1. These submissions address the third interlocutory application filed by the applicant in this proceeding. The first two applications have been dismissed.¹
2. The current interlocutory application should be dismissed because, in summary, the orders sought by the applicant are unnecessary. The respondent seeks its costs if the interlocutory application is dismissed.

PART II BACKGROUND

3. The relevant background to this proceeding is set out at [3] to [7] of the respondent's submissions filed on 12 April 2024.

PART III THE INTERLOCUTORY APPLICATION

4. The interlocutory application dated 18 July 2024 seeks the following interlocutory orders:
 1. The Respondent is to investigate the alleged interference with the rights of the Applicant as are recognised in the *International Covenant on Civil and Political Rights* (ICCPR).
 2. The Respondent is to find, secure, and make discoverable all information about said interference, coordinating with the government bodies identified in the Applicant's 22 Aug 2023 letter S47F [REDACTED]

¹ *Kant v Australian Information Commissioner* [2024] FCA 599.

3. The Respondent is to refrain taking action pursuant to (1) and (2), unless and until the Applicant requests the Respondent to commence doing so.
4. Further orders as mentioned in *Applicant's Submissions* dated 12 Mar 2024, including all of:
 - a. An order causing that no person may intervene or be otherwise joined as a party to this proceeding except on further application by the Applicant; and,
 - b. An order causing this proceeding, s47F be stayed pending further application by the Applicant; and,
 - c. An order causing this proceeding, s47F be transferred to the Supreme Court of Victoria; and,
 - d. An order withdrawing the directions which limit authorities in this proceeding to those at *legislation.gov.au*.
5. The Judge's *Reasons for judgement* in the *Interlocutory application* are to be published; or if the *Interlocutory application* is decided by a Registrar, the Registrar's *Reasons for decision* are to be published.
6. The costs of the *Interlocutory application* are reserved.

PART IV SUBMISSIONS

Proposed orders 1 and 3

5. Proposed order 1, when read with the applicant's submissions dated 24 September 2024 at [6]–[9], appears to seek a writ of mandamus requiring the respondent to conduct an investigation. It effectively reflects the final relief sought by the applicant in these proceedings. Both parties have filed their submissions, and the matter is ready for hearing (subject to the resolution of the present application). The question of whether a writ of mandamus should be issued is one that ought to be determined at the final hearing. There is no justification for granting interlocutory relief at this stage.

6. s47F

Proposed orders 2 and 3

7. Proposed order 2 appears to be, in substance, an application for discovery. As this Court held in relation to the applicant's interlocutory application dated 22 November

2023, an application for discovery of this kind would constitute an impermissible fishing expedition² and should not be permitted.

8. Like with proposed order 1, the applicant has sought for proposed order 2 not to be actioned until he requests the respondent to commence doing so. How discovery could assist the respondent in this proceeding if that discovery is not required now is entirely unclear. The seeking of proposed order 3 suggests that proposed order 2 is unnecessary.

Proposed order 4(a)

9. The respondent is not aware of any application for joinder by any party. An order of this kind is unnecessary.

Proposed order 4(b)

10. The Court has a general power to control its own proceedings pursuant to s 23 of the *Federal Court of Australia Act 1976* (Cth), which enables the Court to order a temporary stay of proceedings.
11. The applicant contends at [19]-[21] that this proceeding should be temporarily stayed because the applicant's access to legal information is (according to him) being interfered with. The applicant's submissions rely heavily on speculative assertions, and the evidence he relies upon does not substantiate the serious allegations he is making. The applicant has identified no sound basis to support the claims made that would warrant the granting of a temporary stay of proceedings.

Proposed order 4(c)

12. Section 5(4) of the *Jurisdiction of Courts (Cross-Vesting) Act 1987* (Cth) (the **Cross-Vesting Act**) relevantly provides:

Where:

- (a) a proceeding (in this subsection referred to as the relevant proceeding) is pending in the Federal Court ... (in this subsection referred to as the first court); and
- (b) it appears to the first court that:
 - (i) the relevant proceeding arises out of, or is related to, another proceeding pending in the Supreme Court of a State or Territory and it is more appropriate that the relevant proceeding be determined by that Supreme Court;

...

the first court shall transfer the relevant proceeding to that Supreme Court.

² *Kant v Australian Information Commissioner* [2024] FCA 559 at [27].

13. The applicant appears to rely on s 5(4)(b)(i), by contending that he is “also a Plaintiff in another proceeding, pending in the Supreme Court, that arises out of similar matter.”³
14. Two proceedings are related for the purposes of s 5(4)(b)(i) if they are “associated or connected”, such as where a substantial common question arises in both proceedings, or where the facts and circumstances in the two proceedings appear to be intertwined.⁴
15. The applicant’s proceeding in the Supreme Court is a proceeding against the Inspector-General of Intelligence and Security seeking to pursue allegations of violations of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).⁵ On the other hand, this proceeding concerns whether the delegate of the respondent erred in finding that the applicant’s complaint was not a complaint pursuant to s 36 of the *Privacy Act 1988* (Cth) because ASIO is excluded from the operation of that Act. There is no common legal question arising between the two proceedings, nor are the facts and circumstances in the two proceedings intertwined. Section 5(4)(b)(i) of the Cross-Vesting Act is not enlivened and this proceeding should not be transferred to the Supreme Court of Victoria.

Proposed order 4(d)

16. Proposed order 4(d) is unnecessary. The applicant may have interpreted something Registrar Luxton said on 20 December 2023 as being a ‘direction’ that limits authorities in this proceeding to those at *legislation.gov.au*, but no order of that kind was made on 20 December 2023 (or at any other time in this proceeding).

Proposed order 5

17. The respondent makes no submissions in respect of proposed order 5.

Proposed order 6

18. The respondent seeks her costs if the interlocutory application is dismissed. There are no special circumstances justifying a departure from the usual rule that costs follow the event.
19. The applicant’s submission at [30] that the *Legal Services Directions 2017* (Cth) (**LSDs**) requires the respondent to pay his costs is misconceived. None of the obligations in the LSDs are enforceable except on the application of the Attorney-

³ Applicant’s submissions at [25], citing exhibit JMK-47 to the applicant’s affidavit filed on 8 March 2024.

⁴ *Civil & Civic Corporation Pty Ltd v Nova Builders Pty Ltd* [2022] FCA 1515 at [13]; *Amalia Investments Ltd v Virgtel Global Networks NV (No 2)* (2011) 198 FCR 248 at [41].

⁵ See JMK-47, page 5.

General,⁶ and nothing in the LSDs requires an entity bound by the LSDs to pay costs if any part of a proceeding is a public interest test case.

Date: 18 October 2024

KYLIE MCINNES
Counsel for the Respondent

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Elena Arduca
AGS Lawyer
For and on behalf of the Australian Government Solicitor
Solicitor for the Respondent

⁶ *Judiciary Act 1903* (Cth), s 55ZG(2).

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JAN MAREK KANT
Applicant

AUSTRALIAN INFORMATION COMMISSIONER
Respondent

RESPONDENT'S FURTHER SUBMISSIONS

1. The Court has invited further submissions on whether it was reasonably open to the delegate to characterise the applicant's complaint as being exclusively about ASIO's handling of his personal information, and whether that characterisation is significant.
2. Although the complaint of 22 August 2023 referred to an "interference by multiple regulated entities", the documents attached to it suggest that the relevant conduct was confined to ASIO. These documents included:
 - 2.1. A letter dated 18 May 2023 from the applicant to ASIO requesting records;¹ and
 - 2.2. A letter from the Office of the Inspector General of Intelligence and Security (IGIS) to the applicant dated 21 August 2023 stating that it had investigated his complaint about ASIO and decided to close the matter as further inquiry was not warranted.²
3. While other documents were attached to the complaint, they did not clearly indicate which entities were the subject of the complaint.
 - 3.1. A 2 July 2023 letter to IGIS referred vaguely to "multiple and repeated interferences" by "one or more intelligence agencies", without identifying any specific agency;³ and
 - 3.2. s47F
4. The applicant's subsequent conduct supports the conclusion that the complaint was confined to ASIO, or at least that he acquiesced in it being treated that way.

¹ RB 9-10.

² RB 12.

³ RB 11.

⁴ RB 8.

5. On 12 September 2023, the OAIC wrote to the applicant acknowledging receipt of the complaint and stated that it related to ASIO, “in which you claim ASIO has mishandled your personal information.”⁵ The delegate found that the complaint did not meet the requirements of s 36(1) of the Act and declined to investigate.
6. On the same day, the applicant responded, stating that complaint CP23/02755 was, as he understood it, “limited to the privacy aspect of EN23/09186 as it relates to ASIO.”⁶ The email stated that “the OAIC **does** have authority to investigate the handling of [his] personal information by ASIO”⁷ and requested that the OAIC review its decision accordingly. The applicant did not assert that the scope of the complaint had been misunderstood but instead argued that the OAIC had jurisdiction to investigate ASIO’s handling of personal information under the ICCPR.
7. The applicant’s response further supports that it was reasonably open to the delegate to treat the complaint as being about ASIO alone. Even if the complaint, properly characterised, was directed at “multiple regulated entities”, any mischaracterisation by the delegate is immaterial.⁸ Under s 36(5) of the *Privacy Act 1988*, a complaint must “specify the respondent to the complaint.” Where multiple respondents are identified, each gives rise to a separate complaint.⁹
8. In this case, the complaint that is the subject of the present judicial review proceeding is the one finalised by the respondent’s letter dated 12 September 2023, which was characterised as being against ASIO. If the applicant intended to pursue complaints against other entities arising from his correspondence of 22 August 2023, those would be separate complaints, which are not the subject of the 12 September 2023 decision, and are not within the scope of this proceeding.

Date: 17 October 2025

KYLIE MCINNES
Counsel for the Respondent

s47F



.....
Elena Arduca
AGS Lawyer
For and on behalf of the Australian Government Solicitor
Solicitor for the Respondent

⁵ RB 13.

⁶ RB 15.

⁷ RB15 (emphasis in original).

⁸ *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 280 CLR 321 at [7].

⁹ *Rana v Australian Information Commissioner* [2023] FCAFC 17 at [15].

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