FEDERAL COURT OF AUSTRALIA

Knowles v Secretary, Department of Defence [2020] FCA 1328

File number:	VID 416 of 2017
Judgment of:	**SNADEN J**
Date of judgment:	17 September 2020
Catchwords:	**ADMINISTRATIVE LAW** – judicial review – decisions made by the respondent in relation to applications made under the *Privacy Act 1988* (Cth) (hereafter, the "**Privacy Act**") for access to and correction of certain information – various species of relief sought – whether Privacy Act mandates provision of access to information within 30 days – appropriateness of declaratory relief – whether existence of other remedies for the review of administrative decisions should incline the court against granting prerogative or other relief – whether private information might be corrected by associating or attaching other documents to it – whether a demand that information be destroyed qualifies as a request for correction under the Privacy Act – further amended originating application dismissed with costs
Legislation:	*Administrative Decisions (Judicial Review) Act 1977* (Cth) – ss 3, 5, 6, 7, 10 and 16 *Federal Court of Australia Act 1976* (Cth) – s 21 *Freedom of Information Act 1982* (Cth) *Judiciary Act 1903* (Cth) – s 39B *Privacy Act 1988* (Cth) – Sch 1; Pt V; Pt VIB; ss 6, 6A, 13, 15, 36, 40, 41, 52, 55A, 80W, 96 *Regulatory Powers (Standard Provisions) Act 2014* – Pt 7; ss 118, 119, 120 and 121
Cases cited:	*Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 *Australia Pty Ltd v Minister for Infrastructure and Transport* (2014) 221 FCR 165 *Australian Competition and Consumer Commission v MSY Technology Pty Ltd & Ors* (2012) 201 FCR 378 *Construction, Forestry, Maritime, Mining and Energy Union v Milin Builders Pty Ltd* [2019] FCA 1070 *Cruse v Multiplex Ltd & Ors* (2008) 172 FCR 279 *Dranichnikov v Minister for Immigration and Multicultural Affairs* (2003) 197 ALR 389

Knowles v Australian Information Commissioner [2018] FCA 1212

Saitta Pty Ltd v Commonwealth (2000) 106 FCR 554

SCAS v Minister for Immigration and Multicultural and Indigenous Affairs [2002] FCAFC 397

Tooth & Co Ltd v Council of the City of Parramatta (1955) 97 CLR 492

Warramunda Village v Pryde (2001) 105 FCR 437

Division:	General Division
Registry:	Victoria
National Practice Area:	Administrative and Constitutional Law and Human Rights
Number of paragraphs:	118
Date of hearing:	14 October 2019
Counsel for the Applicant:	The applicant appeared in person
Counsel for the Respondent:	Mr A D Pound
Solicitor for the Respondent:	HWL Ebsworth Lawyers

Knowles v Secretary, Department of Defence [2020] FCA 1328

ORDERS

VID 416 of 2017

BETWEEN:	**KIERAN JOHN MURRAY KNOWLES** Applicant
AND:	**SECRETARY, COMMONWEALTH DEPARTMENT OF DEFENCE** Respondent

ORDER MADE BY: **SNADEN J**

DATE OF ORDER: **17 SEPTEMBER 2020**

THE COURT ORDERS THAT:

1. The applicant's further amended originating application dated 30 September 2019 be dismissed.
2. The applicant pay the respondent's costs in a sum to be assessed in default of agreement, in accordance with the court's Costs Practice Note (GPN-COSTS).

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

SNADEN J:

1 For at least the last four years, the applicant, Mr Knowles, has been in dispute with the respondent—or, perhaps more broadly, with the commonwealth department that the respondent administers (hereafter, the "**Department**")—concerning Departmental records that pertain to him. The background to that dispute is not material; but it has spawned a raft of applications and related litigation under various commonwealth statutes. The present matter is the latest front upon which that private war rages.

2 By a further amended originating application dated 30 September 2019, Mr Knowles prosecutes a number of challenges to various decisions made (and other conduct or omissions engaged in) by or on behalf of the Department in connection with applications that he has made or purported to make under what are known as the Australian Privacy Principles (hereafter the "**APPs**"), for which sch. 1 of the *Privacy Act 1988* (Cth) (hereafter, the "**Privacy Act**") makes provision. Particulars of those applications, the relief that is sought in respect of them and the statutory sources of this court's power that Mr Knowles seeks to invoke in order to obtain that relief are identified below.

3 For the reasons set out herein, I decline to grant the relief that Mr Knowles seeks. His further amended originating application of 30 September 2019 will be dismissed with the usual order as to costs.

1. EVIDENCE AND BACKGROUND FACTS

4 The material facts are substantially (if not wholly) uncontroversial. They emerge from the evidence that the parties led, all of which was received (in some cases, eventually) without successful objection. Mr Knowles read an affidavit that he affirmed on 24 September 2019. The respondent read an affidavit of Ms Catherine Nicole Hooper, affirmed on 18 January 2018. Additionally, the parties prepared a statement of agreed facts, which was filed on 6 February 2018 and received into evidence at the hearing. A bundle of documents—the content of which was the subject of discussion and, ultimately, agreement at the hearing—was also received into evidence.

5 The following facts emerge without significant controversy from that body of evidence.

6 In 2011, Mr Knowles was the subject of a communication (or possibly multiple communications) between the Department and another Commonwealth government department (hereafter, "**the Other Department**"), the identity of which it is prudent not to reveal (as these reasons will later explain). It is not necessary to recite the substance of those communications (although some insight as to them emerges below). It suffices to note that they recorded some information or opinions about Mr Knowles to which Mr Knowles took (and continues to take) exception.

7 In May 2016, Mr Knowles sought to ascertain what records the Department possessed that contained information personal to him (including about the communications referred to in the previous paragraph). To that end, he made an application under the Privacy Act and, later, under the *Freedom of Information Act 1982*. Those applications are not presently relevant, except insofar as they provide some context for the events that are.

8 On Friday, 25 November 2016, Mr Knowles sent an email to the Department headed "PI Access under App12". That email (hereafter, the "**25 November APP 12 Request**") was relevantly in the following terms (errors original):

> Dear Defence Privacy Officer,
>
> Since Defence seems intent to stymie access under FOI, I now request access under the Privacy Act - APP12, to PI of mine.
>
> An APP entity that holds personal information about an individual must, on request, give that individual access to the information (APP 12.1).
>
> APP 12 operates alongside and does not replace other informal or legal procedures by which an individual can be given access to information. This includes FOI, which is a seperate process and does not impede on application via the Privacy Act.
>
> An APP entity 'holds' personal information 'if the entity has possession or control of a record that contains the personal information' (s 6(1)), and extends beyond physical possession of a record to include a record that an APP entity has the right or power to deal with.
>
> APP 12 requires an APP entity to provide access to 'personal information', as defined in s 6(1), being any information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not.
>
> APP 12 requires an APP entity to provide access to all of an individual's personal information it holds, even if that record may not exclusively deal with that individual's personal information.
>
> APP 12 requires that personal information be given to an individual 'on request'. APP 12 does not stipulate formal requirements for making a request, or require that a

request be made under signature. An entity cannot require an individual to follow a particular procedure, use a designated form or explain the reason for making the request.

APP 12.4(a)(i) provides that an agency must 'respond' to a request for access within 30 calendar days. The 30 day time period commences on the day after the day the agency receives the request. The agency must respond by giving access to the personal information that is requested, or by notifying its refusal to give access.

An APP entity must give access to personal information in the manner requested by the individual, if it is reasonable and practicable to do so (APP 12.4(b)). **I request supply via electronic email**

An agency cannot impose upon an individual any charge for providing access to personal information under APP 12 (APP 12.7). This includes a charge for the making of the request to access personal information and/or a charge for giving access to requested personal information, such as charges for copying costs, postage costs and costs associated with using an intermediary.

I therefore request all records, held by Defence, that contain my PI. I expect record search will be conducted for the periods *Oct 2011 to March 2012 and May 2016 to Oct 2016 inclusive*.

To help narrow the search for Defence, these would be records in CAF, DCAF, JHC, HQAC, and RAAF Security Police repositories, and relate to issues contained in [a document that was identified but need not here be repeated], *and may mention the following personnel as author, receiver, or sender of said documents:*

...[there then followed a list of names that need not be recited]…

This is not to say these records will include the personal information of the aforementioned, as where public servants' names or positions or other material that only reveal only a public servant performing their public duties does not involve the disclosure of information concerning their personal affairs. Essentially what is disclosed is that the person took part in the passage of official information, and constitutes official information, not personal information.

While not limiting what is recognised as personal information of mine, search terms that could be used to identify records include:

…[there then followed a list of search terms that need not here be repeated]…

I hope this will help resolve Defence's bad faith unethical stonewalling on access noting that nothing prevents these processes running concurrently (and still Defence is not lifting a finger to search under FOI still, at least this way you'll can get started doing under the Privacy Act, as is required on application).

I note that I previously verified my identity via this email address with Defence Privacy.

Regards

Kieran Knowles

9 The following week, Mr Ian Heldon—the Department's Assistant Director Administrative Review, Complaints and Resolution—acknowledged receipt of Mr Knowles's 25 November APP 12 Request. Mr Knowles then enquired of Mr Heldon as to "…the due date for [a] decision (just so we lock this down)". Mr Heldon relevantly responded as follow:

> Dear Kieran,
>
> While we will endeavour to action your request for access to information as soon as possible I am unable to provide an expected date for a response. We will keep you updated. If you are dissatisfied with Defence's handling of your request you can complain to the Office of the Australian Information Commissioner.
>
> …

10 Later that day (Thursday, 1 December 2016), Mr Knowles sent Mr Heldon another email, noting (relevantly, errors original):

> I believe Ian that legislation wise, the required processing period is 30 calendar days for APP 12 decisions. Certainly I will activate my review rights should neither response nor reasonable excuse not be received by 27 December 2016 (30 calendar days falls on 26th, but it'd be unreasonable to have due date on Boxing Day, so have added an extra day for you) - unless you can provide evidence as to why it should be some other date.
>
> …

11 On Thursday, 22 December 2016, Mr Heldon sent Mr Knowles another email, to which was attached some documentation provided in partial satisfaction of his 25 November APP 12 Request. In that email, Mr Heldon noted additionally as follows (relevantly, errors original):

> …
>
> I have asked the other areas in Defence which you nominated in your request to review their records and identify what relevant personal information they may hold. Further I have asked them to advise their agreement to release, including reasons if they consider documents should be redacted or not released.
>
> Unfortunately, I have not yet received responses to my requests. At this stage I am unable to provide an expected due date for a further response however I will keep you updated. Just to clarify, Defence is not refusing access.
>
> If your dissatisfied with Defence's handling of your request you can complain to the Office of the Australian Information Commissioner….

12 Later that evening, Mr Knowles sent an email to Mr Heldon in the following terms:

> Good Afternoon Ian,
>
> I'm pleased you have taken the opportunity to inform yourself of the obligations imposed by the Privacy Act under Australian Privacy Principle 12. It's a welcome about face compared to previous responses
>
> In recognition of this, I am happy to provide Defence - in recognition of the impact of the Christmas/New Years stand-down - an extension of two weeks, making the new deadline Monday 9th January to provide the outstanding material and to complete this PI access request.
>
> May you have a Merry Christmas and a Happy New Year, and I hope this more professional and ethical approach now taken, will continue.
>
> I will also provide copy of this to the OAIC desk officer handling the related FOI IC review, as I believe this will assist in progressing that matter too.
>
> Regards
>
> Kieran Knowles

13 On Friday, 23 December 2016, Mr Heldon sent a series of emails to various colleagues throughout the Department, by which he sought assistance in responding to Mr Knowles's 25 November APP 12 Request. Those emails (hereafter, the "**Assistance Request Emails**") assume some significance in this matter.

14 In the early morning of Monday, 30 January 2017, Mr Knowles sent another email to Mr Heldon. It is convenient to set out the terms of that email in full (errors original):

> Ian,
>
> It seems you deliberately wish to cause offence.
>
> I gave you an extended deadline to complete this outstanding APP12 process, for your "outstanding enquiries", which was required to be completed by Monday 9th January.
>
> That deadline passed without completion or update.
>
> I allowed the end of the month to run, to see if you made any effort to update or complete, and you did not do so.
>
> Defence has still deliberately failed to comply with its obligations under the APP12 provision of the Privacy Act - partial completion is still a breach of the Privacy Act, the obligation is that all relevant records must be provided.
>
> Do you have any excuse you wish to make, before this matter is actioned on?
>
> Disgusted by this unlawful behaviour by Defence.
>
> Kieran Knowles

15 Approximately an hour later, Mr Knowles made a complaint to the Office of the Australian Information Commissioner concerning the Department's response—or partial-response—to his 25 November APP 12 Request. By that complaint (hereafter, the "**OAIC Complaint**"), Mr Knowles charged the Department with having contravened an APP (and, thereby, with having interfered with his privacy for the purposes of the Privacy Act) insofar as it did not answer his 25 November APP 12 Request within 30 days. The OAIC Complaint made reference to the Department having, in the past, "…repeatedly and deliberately interfered with [Mr Knowles's] privacy and [his] right to see how it has dealt with [his personal information]" and concluded as follows:

> I request formal acknowledgement of this privacy complaint against Defence, and that it be dealt with promptly, noting the numerous refusals by Defence to adhere to privacy and FOI law.
>
> Let me be crystal clear - I will use all legal means to ensure the legislation is complied with, and that further intentional delays are given the judicial scrutiny they deserve. I would think you would be aware that playing games with me, has a history of not working out so well for you (even when you stack the deck).

16 By a series of emails sent in early February, Mr Heldon provided to Mr Knowles the remaining information that he had sought by his 25 November APP 12 Request. In reply to one of those emails, Mr Knowles responded in the following terms (errors original):

> Dear Ian,
>
> It is rather appalling that Defence clearly hoped I would just forget and that you sat on this material - from the limited records provided (which do not contain any material between CAF Office and the other involved areas of Defence, despite repeated reference to said records, including a HIB which can not have "disappeared" given archive practices for such material), some redacted without specific explanation (contrary to Defence standard practice of specifying for each redaction the claimed grounds for doing so) this material has been in Defence's immediate possession following internal enquiries back mid-2016 - rather than release it as you were obligated to do within a reasonable time period (which as per the OAIC rules, was still 30 days within request made).
>
> The missing records (not missing as in actually missing, but clearly being withheld unlawfully), which cannot be missing due to record keeping practices for correspondence between CAF Office and other areas of Defence (you forget I worked in the C Suite as SO to DCAF for a number of months - I am familiar with that office's practices and requirements here), in particular any records coming out of CAF's Office and any briefings or other related records back (which, by necessity, must contain my PI and therefore fall within scope) are required to be provided and there is no possibility they have simply "disappeared" from records (Archive Act requires such records are retained).

I specifically requested these records, yet none have been provided, nor has any explanation for their absence been given.

For just once, can you play this with a straight bat and provide the records required. I know you have them, you know you have them, and by sitting on them, you only give weight that wrongdoing was deliberately done at the time.

I should also advise you, given some of the factually untrue claims made in the some of these documents provided, I will seek correction under APP13 (or more accurately, annotation required to be placed on said records, based on evidence directly proving certain claims to be false, that those allegations were falsely made as part of a intentional harassment and defamatory campaign by [the Other Department] - that are repeated in the internal correspondence as facts when they are not - in breach of APP10) at a later date. Defence should, however, not wait given its obligations under the Privacy Act, and start to effect its own review as to the accuracy of said records, and make sure they are up to date (it's in your own interests given it's clear where this will end up, but this is just advice, and you can certainly ignore it if you want to dig your own hole further - frankly we could have had this done and dusted ages ago - but the irony of Defence trying to cover its backside is that it is actually leading you further towards scrutiny you clearly wish to avoid).

Now, are you going to provide the outstanding PI records, or do you want to spend yet more time and resources trying to hide them, when you would be well aware you'll have to hand them over eventually - all this unethical and illegal behaviour is doing is kicking the can down the road to delay the inevitable (if I was going to just give up in the face of Defence's unlawful obstructions, it would have happened months ago - but I have the time, money and will to stick with it, as I would have thought was pretty obvious by now).

For as long as it takes, I will have Defence account for all the ways it used my PI in these disgraceful breaches of privacy (I think Defence needs a refresher in PI and Privacy law - any opinion or comment about an identifiable individual, whether true or not, is PI – this idea that Defence never disclosed or used PI to multiple individuals both within and without Defence is simply unsustainable - false claims were repeatedly distributed, to the detriment of my standing within the Defence community, pretty widely, and Defence failed to retract these when those false claims were shown without substantive evidence - Defence conducted a witch hunt on little better than rumour and I was subjected to harassment by senior ADF personnel because of it, partially because of personal relationships senior ADF individuals had with senior staff at [the Other Department], who wanted to knock me down a whole clothesline of pegs for exposing their corrupt practices). The list of individuals who were communicated false claims (as if they were factually correct), without any notification or right of reply being given (in breach of administrative law) to me, now runs multiple pages - absolutely there will be multiple individuals (who only dealing with their part) who were never advised those claims were false and will still believe those false allegations are true, when senior Defence personnel knew they were not (but never did correct the record), is a massive travesty.

I am just not going to give up. So why don't you exercise some common sense and just supply all the records required, prove there is nothing to cover up, and avoid future escalating embarrassment (it is not my objective to damage the ADF or the ADO, but by god, I am not going to protect you, and if you force things down that path of ever increasing scrutiny, you are going to have to cop the exposure and liability that comes with it).

> Again Ian, Defence has nothing to lose by dealing with this ethically, but much risk in not doing so (ask [the Other Department] how their illegal behaviour is going for them - one officer even got her previous lying under oath uncovered, these things tend to kick up linked stuff people would rather wish hidden).
>
> Regards
>
> Kieran Knowles

17 In reply to another of Mr Heldon's early-February 2017 emails, Mr Knowles responded as follows (errors original):

> Hi Ian,
>
> Given you've breached the Act/IPPs multiple times already, I'm sure you are aware I already have [lodged a complaint with the office of the Australian Information Commissioner].
>
> There is a set period for providing the required records, Defence cannot ignore that. It's not a case of providing what you want, when you want, when you feel like it.
>
> It might take years (maybe even a decade), but I will progress this matter through the OAIC, the AAT and the Federal Court if that's what it takes (and indeed there is some benefit of doing so, given that the only way such unlawful conduct will cease is if continuously reinforced that such conduct is unlawful).
>
> You know the obligations here, I know the obligations here, and that any short term benefits you think you are deriving by acting unlawfully now, will be insignificant to the long term losses you are exposing Defence to.
>
> I know I would quite appreciate the opportunity to force certain Defence personnel involved here to give evidence under oath - perjury is a risky business for individuals, especially those knowingly acting unlawfully.
>
> Given you made no mention of waiting on other material, and passed off your earlier email today as closure of this matter, until this point was pressed, you'll be pressed to sell that con.
>
> You should be aware that when a respondent acts in a high-handed, malicious, oppressive or insulting manner, especially when warned by the Applicant prior, it exposes further liabilities. Honestly, the incredible arrogance of Defence here will be costly for you.
>
> Regards
>
> Kieran Knowles

18 In the evening of Thursday, 2 March 2017, Mr Knowles wrote again to Mr Heldon. Again, it is prudent to set out the terms of that email (hereafter, the "**2 March APP 13 Request**") in full (errors original):

Dear Ian,

As you should be aware the Privacy Commissioner issued a Determination in my favour a few years back upholding a privacy complaint against [the Other Department] in relation to a number of false claims [the Other Department] made about me to Defence about me being a serious and imminent risk to self and others, and falsely alleging I was in a psychotic state.

As stated in that Determination:

* "The [Other Department] (the Department) interfered with the complainant's privacy by disclosing his personal information, in breach of Information Privacy Principle (IPP) 11.1 of the Privacy Act 1988 (Cth) (the Privacy Act)"

* " 'Personal information' is defined in s 6(1) of the Privacy Act as: information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion." [these uncorrected opinions about me that Defence has recorded in multiple records, without qualification or annotation, based on [the Other Department]'s fraudulent and malicious claims constitute personal information about me, held on record by Defence, and come within the scope of the Privacy Act]

* The Commissioner rejected that these false allegations/disclosures by [the Other Department] to Defence were covered by or justified by IPP 11.1(a), saying 'the Department has not provided any explanation or information demonstrating how the complainant was aware, or was reasonably likely to have been aware, that information of that kind was usually passed to the ADF or the Department of Defence."

* The Commissioner rejected that these false allegations/disclosures by [the Other Department] to Defence were covered or justified by IPP 11.1(c) saying "If I were to accept that the complainant's communications could be characterised as a serious and imminent threat to either the life or health of himself or that of another person, I am nevertheless not satisfied that the disclosure of that conduct to the Department of Defence was necessary to protect him or any other person from that threat. It is particularly unclear how the Department could have considered it was necessary to disclose the complainant's personal information to his employer in order to prevent or lessen the serious and imminent threat to the life or health of a…staff member [of the Other Department], when the security assessment report recommended the Department consider mediation and/or the appointment of a specialised single point of contact as soon as practically possible. If the Department considered the threat to be serious and imminent, then disclosure to the police, in accordance with reported standard Departmental practice, would seem the appropriate course of action to address the situation. It is also unclear why when making such a disclosure it would be relevant to disclose details of the complainant's compensation claims. I am not persuaded on the information before me, that any threat that may have existed at that time mandated disclosure to ADF medical staff or Defence's Head of Joint Health Command in order to prevent or lessen it... I am satisfied that the complainant's conduct did not constitute a serious and imminent threat. In my view, on the totality of the information before me, any belief that the Department may have held that the complainant's conduct posed a serious and imminent threat was not reasonable. The circumstances presented here do not meet the threshold required for IPP 11.1(c) to be applicable and the Department was therefore not entitled to rely on it."

* The Commissioner rejected that these false allegations/disclosures by [the Other

Department] to Defence were covered or justified by IPP 11.1(d) saying "The Department submitted that its disclosure of the complainant's personal information was at a minimum authorised, if not required, by the Work Health and Safety Act 2011 (WHS Act)... The WHS Act did not commence until 1 January 2012 and was therefore not in effect at the time of the Department's disclosure. As the WHS Act does not operate retrospectively, it cannot be relied on by the Department. The Occupational Health and Safety Act 1991 was in place at the time of the Department's disclosure. I am not satisfied that any obligations the Department may have under that legislation may be relied on to permit the disclosure under IPP 11.1(d). Even if a duty of care existed as asserted by the Department and that duty of care could have been categorised as a law for the purposes of IPP 11.1(d), it is not clear that authorisation to disclose would permit disclosure to the complainant's employer under the exception in IPP 11.1 (d) of the Privacy Act. No specific legislative reference to the range of persons personal information may be disclosed to in the discharge of such a duty of care has been identified. Nor it seems was this disclosure in keeping with standard practice (the Department's standard practice would normally involve disclosure to the police). In my view, the Department's actions were not consistent with the notion that it was discharging a perceived duty of care. Accordingly, on the information available to me, I am satisfied that the Department cannot rely on the exemption contained in IPP 11.1(d)."

* The Commissioner rejected that these false allegations/disclosures by [the Other Department] to Defence were covered or justified by IPP 11.1(e) saying "The Department submitted on 28 March 2012 that the disclosures were reasonably necessary for the enforcement of the Defence Force Disciplinary Act 1982 (DFDA) and referred in particular to sections 33 and 60, which deal with 'assault, insulting or provocative words' and prejudicial conduct respectively. If I were to accept that the term 'enforcement of criminal law' or 'enforcement of a law involving pecuniary penalty' in IPP 11.1(e) includes disciplinary action taken by the Department of Defence under the Defence Force Discipline Act 1982 (DFDA), I am not aware of any type of arrangement between the Department and Defence, that existed at the time of the alleged improper disclosures, to the effect that these agencies shared information relevant to Defence's law enforcement functions under the DFDA. Nor has any information been presented to me to indicate that the complainant was the subject of an investigation of a service offence at the time of the disclosures. I am not satisfied that disclosure of the complainant's information to ADF medical officers could reasonably be expected to be necessary for the enforcement of any disciplinary action under the DFDA. The Head of Joint Health Command is, amongst other things, responsible for the provision of health care to members of the ADF. The ADF Senior Medical Officer also has a role in the provision of health care to ADF personnel. Even if there was an intention to disclose for the purpose of law enforcement, I am not satisfied that it was reasonably necessary to disclose that personal information to ADF and Department of Defence medical staff... Accordingly, I am satisfied that the exception contained in IPP 11.1(e) was not available to the Department in relation to its disclosures to an ADF Senior Medical Officer and the Head of Joint Health Command. "

* "The Department was not entitled to rely on the exceptions in IPP 11.1 (a), (c), (d) or (e) in disclosing the complainant's personal information to an ADF Senior Medical Officer on 20 October 2011... The Department was not entitled to rely on the exceptions in IPP 11.1 (a), (c), (d) or (e) in disclosing the complainant's personal information to the Department of Defence's Head of Joint Health Command on 20 October 2011"

* "I declare in accordance with s 52(1)(b)(i)(B) of the Privacy Act that the complainant's complaint is substantiated and that the Department breached IPP 11.1 by disclosing the personal information of the complainant."

As these false allegations by [the Other Department] were found without merit (Defence health personnel, after conducting intrusive review by multiple medical staff, found no substantiation of [the Other Department]'s false and malicious claims) and were held to be unlawful, these false claims recorded without qualification or annotation by Defence in multiple records held by them, across Security, Medical, Personnel and Executive records, are well overdue for correction. APP 13 requires an APP entity to take reasonable steps to correct personal information to ensure that, having regard to the purpose for which it is held, it is accurate, up-to-date, complete, relevant and not misleading. Despite the defamatory nature of these allegations and that a kangaroo court QA was done in secret against me, which all fizzled out due to the fraudulent nature of these allegations and the utter lack of evidentiary weight to back these abuses of power, not correction of these fraudulent claims recorded as if they were true by Defence had occurred - even though many years have passed.

I therefore now formally require Defence to correct these records to specifically annotate every record held by Defence where these defamatory and false claims are recorded by Defence, to specifically advise that these defamatory and false claims by [the Other Department] were not only unlawful but also found to be unsubstantiated. It is a malicious slur on my record that they have been left uncorrected, to the extent that someone not completely across the whole history, may see one of those records in isolation and be mislead as to thinking they actually had some merit. An annotation on each individual piece of these records where these defamatory and false claims (that was held to be unlawful for [the Other Department] to make) to specify that this is not the case is the minimum ethical requirement for Defence to do.

Failure of Defence to do so will initiate legal action.

These annotations should also explicitly note that a Determination found these claims by [the Other Department] a breach of the Privacy Act and therefore unlawful.

I will give you the reasonable period of 30 days to advise me of your decision, and 60 days to complete this task. Again, failure to do so will result in legal action. While my preference is destruction of these records that contain malicious and false claims by [the Other Department], that Defence not only made unlawful disclosures to [the Other Department] in return to but used to run an abuse of process because of personal relationships certain senior Defence staff had with certain senior…staff [of the Other Department] (bastardisation for a favour), I understand that such records will be the subject of ongoing legal action, so will accept comprehensive annotation (which is the absolute minimum required here).

I would advise you that playing games here just allows me to re-open the original breaches of the Privacy Act by Defence (despite claims by Defence, there was no legislative coverage for the disclosures by Defence to [the Other Department], of confidential medical information, as it was unrelated to any compensation claim and therefore outside any legal access arrangements and at that time not even a policy document covered the disclosures made by Defence), but since I receive a gain either way, feel free to be the unethical fuckhead you've been to date. I will take advantage of it.

Regards

Kieran Knowles

19 The following morning, Mr Heldon replied, requesting that Mr Knowles provide him with "…a copy of the determination which [was referred to in the 2 March APP 13 Request] or at least a reference which would allow [the Department] to make enquiries to obtain a copy."

20 Mr Knowles responded to that email that afternoon in the following terms:

> Ian,
>
> Determinations of the Privacy/Information Commission (OAIC) are all publicly available. The OAIC publishes them at https://www.oaic.gov.au/privacylaw/determinations/#pagelist
>
> There has only been one Determination against [the Other Department] [there then followed a hyperlinked URL that needn't be republished here]
>
> As a "Privacy Officer" it is inherent you must have a passing knowledge of the Privacy Act and the OAIC - both of which advise about the public publication of Determinations, and a quick Google search would have given you this information even if you were so ignorant of these facts. (although you appear to think your job is all about ignoring and subverting the Privacy Act and its obligations on Defence, not ensuring compliance).
>
> Furthermore Determinations are published on Austlii and the LexisNexis legal database.
>
> If you want me to be your administrative officer, because you are too lazy or ignorant to do your job, I suggest you start paying me.
>
> Stop fucking around - unless you eventually want a subpoena to be cross-examined and your disgraceful behaviour to be on permanent court record (tends not to go down so well if you ever want to do anything else in your life).
>
> Kieran Knowles

21 Mr Heldon responded later that evening in the following terms:

> Dear Kieran,
>
> Thank you for providing a link to the OAIC determination which I have now read.
>
> I apologise if you believe that I am being lazy, ignorant or behaving disgracefully. I'm not as you suggest a 'privacy officer' nor legally trained in privacy although by default I have ended up managing the Defence privacy inbox in addition to my role managing APS employee grievances. The directorate where I work co-ordinates responses to requests received across several complaint related inboxes.
>
> My previous interactions with you have been in this coordination role. In hindsight I should have been clear about this at the outset. I passed your complaints/requests to the relevant areas in Defence and then collected their responses and passed them to you. I have no decision making power in relation to Privacy or the ability to direct areas such as Air Force or Joint Health Command to take any particular action. I can't

see what records they hold and I rely on the information I am provided by them.

I understand that I am currently the focal point of your frustrations with Defence and you hold me personally responsible for Defence's responses to date - I assume your expletives and threats are only a reflection of this frustration and do not imply a serious or imminent threat to my health or safety.

I believe that I have always responded to you in a cordial and respectful manner although I acknowledge not always in your expected timeframe or with the outcome you are seeking. I have strived to balance your requests along with my core responsibility managing a small internal complaint handling team whose workload often impacts on timeliness. If you would prefer not to interact with me then I can try to identify an alternate point of contact within Defence for you.

I provide the above as explanation of my role and the actions I have taken to date when corresponding with you. None of what I have said should be construed as a reflection on Defence's broader responsibilities and obligations under the Privacy Act and Australian Privacy Principles.

You may well respond with further expletives and threats about taking some action against me. I'll just continue to try to coordinate a response to your requests - unless you advise that you want an alternate point of contact.

In response to your current request I intend forwarding a copy of the OAIC determination to Air Force (Personnel and Executive records), Joint Health Command (Medical records), Australian Government Security Vetting Agency (Security records) and Service Police (Policing Records) and request they annotate their records as you have requested including attaching a copy of the OAIC determination

Regards,

Ian Heldon
Acting Director Complaints and Resolution
HR Services Branch
Defence People Group
Department of Defence

22 Half an hour later, Mr Knowles responded as follows (errors and emphasis original):

Stop being hysterical Ian - you'd be hard pressed to make out a criminal threat or threatening behaviour, and you are welcome to try arsehole.

You have continually taken the piss, been intentionally obstructionist, and delibrately dragged your heels and been unhelpful. Damn right I hold you accountable for that.

If you continue to make defamatory comments about me making threats or exhibiting anything other than frustration to be expected from your deliberately obstructionist behaviour, I warn you now that I will commence legal action against you personally for intentional defamation. You should be aware that as per the Legal Services Directive, the Commonwealth will not fund defamation action on your part, so it'll be you personally responsible for your disgusting unethical behaviour.

Anyone can be fake token forms of address while being deeply disrespectful and offensive in their conduct - you can fuck off with your claims you have treated me

"respectfully", because the evidence proves otherwise. You have ignored your legal obligations on multiple occasions, on the few times you have given token lip service I have treated you with respect, in all other cases where you have acted fraudulently or with intentional disrespect by action, you have also been treated accordingly.

If you what to put it to the test, feel free to debate it in a court room, because you'll come out smarting.

So pull your head in dickhead - you want respect, you had to act with integrity and honesty. You are not entitled to any, if you do not give any - and you are well aware as I am you have been constantly playing games with intentional infliction of unethical behaviour below the standards required by the APS Code of Conduct.

As Dr Jeremy E Sherman said:

“You’re being disrespectful!” is an arresting accusation made as though you should never be disrespectful, as though everyone always deserves total respect. Being respectful is treated as synonymous with being nice, disrespectful as with sinning.

And yet none of us can or should respect everything and everybody equally. To do so would be to surrender our powers of discernment, of evaluating the quality of one person’s views and actions as cleaner or better than another’s.

Some say the way out is to disrespect ideas and actions but not people, and yet, as you may have noticed, we can’t draw a clean line between people and their behavior, at least not one they’ll regard as clean. Snubbing my thoughts and actions could easily snub me. When the citizens of Syria voice their opposition to Bashar a-Assad, their president for using Scud missiles against them, he’ll feel personally snubbed, disrespected as a person, and well he should. The extreme proves the problem. A pure ban on disrespect is unworkable. We need a different approach to disrespect. Disrespect is not the sin it’s made out to be.

I reserve for me and everyone else our powers of discernment, the right to employ the full spectrum from the highest respect to the lowest, from honoring a person as inherently credible, to taking their word and actions with a grain of salt, to monitoring them skeptically, to doubting them outright, to ignoring them, to fighting them, to fighting them to the death as I think befits Assad, the ultimate show of disrespect.

It is more dishonest and unethical to be fake polite, while intentionally being immoral, unethical or disrespectful by action, than it is just to be plainly so. This is the act of the psychopath who games the system of social interaction, the "Mean Girl" who pretends butter doesn't melt in her mouth, while being the biggest bully in the school.

Actions speak louder than words, and those who hide their unethical behaviour behind tokenistic platitudes deserve all the scorn such immoral fakery deserves.

If you don't retract your defamatory statements, I will follow up on them.

Under APP13 I require you to destroy these defamatory claims from Defence records about threatening behaviour you just made (note [the Other Department] tried the same stunt and lost, so try your luck dickhead), such comments are opinions about me that constitute personal information about me, and therefore fall within the scope of the Privacy Act. Furthermore they are defamatory and any distribution or repetition make you personally liable.

> You want to dance with me snake, you better make sure you are fully covered, and I am telling you you are not. But thanks for giving me the opportunity to open action against you personally if you fail to remedy.
>
> Kieran Knowles

That email (hereafter, the "**3 March Demand Email**") also assumes significance in the present matter.

23 I pause to note that there is nothing in the evidence to suggest that Mr Knowles and Mr Heldon had any particular history beyond the various requests or complaints that Mr Knowles had made concerning his access to Departmental records. Although Mr Knowles plainly appears to have felt a sense of frustration about the manner in which Mr Heldon (or the Department more generally) had managed his requests, there is nothing in the evidence that explains why Mr Knowles was driven to send Mr Heldon such obviously and wildly inappropriate communications. For present purposes, nothing turns upon the relationship between Mr Knowles and Mr Heldon, nor upon the regrettable—frankly, astonishing—language that Mr Knowles chose to employ in the prosecution of his grievances. Nonetheless, I offer those observations lest it be thought that there is some hitherto unexplored evidence about the relationship between Mr Knowles and Mr Heldon that might contextualise Mr Knowles's gratuitous incivility. There is not.

24 Perhaps appropriately after the exchanges outlined above, Mr Heldon played no further role of significance—certainly none that the evidence discloses—in the Department's responses to Mr Knowles's 2 March APP 13 Request and 3 March Demand Email. Responsibility in that regard seems to have vested instead in Mr Peter Bavington, the Department's Director of Complaints and Resolution.

25 By email dated 6 March 2017, Mr Bavington distributed throughout various areas within the Department a copy of Mr Knowles's 2 March APP 13 Request and requested that steps be taken to address it. Relevantly, Mr Bavington's email was in the following terms (errors original):

> Mr Knowles request is below (the determination he refers to is attached).
>
> I request you review records you hold concerning ex-FLTLT Knowles and make any necessary corrections or annotations. If you do not consider that the records held are inaccurate, out-of-date, incomplete, irrelevant or misleading you may consider it appropriate to add a copy of the attached determination and a note (or a copy of this

email) containing Mr Knowles APP13 request. Alternatively you may decide that no action is required in which case I request you provide reasons for that decision.

Your response is requested by Mon 28 March 2017 to enable a consolidated response to be provide within the 30 day timeframe.

26 That request was the subject of various responses over subsequent weeks, to the substance of which I shall shortly return.

27 On Sunday, 9 April 2017, Mr Knowles sent a follow up email to Messrs Bavington and Heldon. Again, it is convenient to set out the content of that email in full (errors original):

Attn Defence Privacy/Ian Heldon,

On the 2nd March 2017 and, subsequently on the 3rd March 2017 (following the highhanded, malicious, insulting & oppressive conduct of Defence EL2 employee Ian Heldon, who made the same fraudulent defamation that [the Other Department] was criticised by the Information Commissioner for, which he was aware of at the time of making said comments), two seperate but related APP13 Correction applications were made to Defence.

Defence was required to deal with both these APP13 Correction applications within 30 calendar days (so Monday 3 April 2027, given the weekend, for both application), under the Privacy Act and related Guideline requirements.

To date, no formal decision and correction has been made/notified by Defence (it is not acceptable to simply forward the matter to another area of Defence, to be left up to them, without any further confirmation that this has actually been carried out - just as an FOI decision requires a formal response/confirmation, so too does these actions under the Privacy Act).

Given Defence has not formally responded to either APP13 correction application, and this matter is now overdue a number of days, this is legally a deemed refusal by Defence to deal with these applications as required by the legislation and related guidelines.

I now have 30 days in which to seek review of this breach of the Privacy Act by Defence, which I advise you of my intent to do so. It is certainly apparent from the ongoing highhanded, malicious, insulting & oppressive conduct by Defence, who have gone to great lengths to frustrate and prevent lawful access to, and correction of, Defence records relating to my PI, that this will be the only mechanism to force Defence to comply with its legal obligations.

Suffice to say, it is disgusting behaviour by Defence, and the irony of a powerful and deeply unethical cohort in Defence, who act unlawfully in extreme prejudice to the legal rights of others, demanding they be treated with obsequious forelock tugging, when their actions have been anything but respectful (and indeed are breaches of the APS Code of Conduct) is noted (it is nothing more than a fraudulent manipulation, a poisoning of the well, a shield to the powerful - much like Assad or Putin criticise the West for its hostility to its repeated breaches of international law, respect is not a right, and it is hypocritical to demand respect when you act in such a unethical and unlawful way).

28 Mr Bavington replied the following day, summarising the responses that he had collated from the various areas within the Department whose assistance he had enlisted for the purposes of addressing the 2 March APP 13 Request. Again, it is convenient to set out the text of Mr Bavington's email in full (errors original):

> Dear Mr Knowles
>
> I apologise for the delay in resolving your concerns. I asked four areas of Defence to annotate your records by including a copy of the OAIC determination. Those four areas are Air Force (Personnel and Executive records), Joint Health Command (Medical records), the Australian Government Security Vetting Agency (Security records) and Service Police (Policing Records). I have received confirmation that Joint Health Command and the Service Police have annotated your records. The Australian Government Security Vetting Agency has advised me that they have no records relating incident that resulted in the OAIC determination and therefore they have not annotated their records. Air Force is still working through some issues. I am following that up and I will get back to you when that matter is finalised.
>
> Please note I will be the point of contact for any future privacy matters you may wish to raise with Defence.
>
> Your sincerely
>
> Peter

29 Twenty minutes later, Mr Knowles responded in the following terms (errors original):

> Peter,
>
> Again, an APP13 decision, required under the legislation, is not some soft serve "we will ask other internal areas of the Department to see if they wish to update" type of response as if this was an optional activity/mere suggestion, as given here, but a requirement to give an actual decision and amend records accordingly.
>
> I also note you did not address at all the second APP13 submission, also overdue, requiring the removal of the defamatory claims of Ian Heldon from the records.
>
> The outcomes requires are no different from that for an FOI decision, a formal letter from an authorised decision maker, granting the APP13 correction sought, or denying it, and giving a statement of reasons.
>
> No such activity has taken place, despite the statutory deadline having passed and this constitute a deemed refusal to deal with the matter and a breach of the Act.
>
> No apology for Ian Heldon's disgraceful behaviour (which insultingly was lifted from the Determination cited, that being making knowingly fraudulent inferences/claims of serious risk to self or others) has been provided either.
>
> It seems rather clear that Defence do not intend to deal ethically with these matters,

and won't do so short of being reminded of the law, in a courtroom.

30 Later in 2017, Mr Knowles commenced a proceeding in this court against the Australian Information Commissioner. That proceeding appears to have concerned, amongst other things, the OAIC Complaint. It was ultimately the subject of a successful application for summary dismissal: *Knowles v Australian Information Commissioner* [2018] FCA 1212 (Tracey J). The court's reasons in support of that outcome contain the following factual summary:

> 19 On 27 June 2017 the Assistant Commissioner gave Mr Knowles a notice stating that he intended to dismiss his APP 12 complaint under s 41(1)(e) and s 41(2)(a) of the Privacy Act ("the proposed s 41 decision"). Mr Knowles was invited to comment by 11 July 2017.
>
> 20 Although Mr Knowles indicated that he would comment on the notice he did not, ultimately, do so. Instead, on 30 June 2017, he varied his application to the Court to seek relief in relation to the proposed s 41 decision.
>
> 21 The proposed s 41 decision has been put on hold pending the outcome of this proceeding.

31 The reference to the "APP 12 complaint" is a reference to a complaint that Mr Knowles directed to the Office of the Australian Information Commissioner on 30 January 2017 concerning a request that he made of the Department on 25 November 2016 for access to information under APP 12: *Knowles v Australian Information Commissioner* [2018] FCA 1212, [12]-[16] (Tracey J). I infer—and it is plainly the case—that that request was the 25 November APP 12 Request (above, [8]); and that that complaint was the OAIC Complaint (above, [15]).

32 By correspondence sent to Mr Bavington and dated 23 May 2019—after the summary dismissal of Mr Knowles's earlier proceeding in this court and after the commencement of the present proceeding—the Office of the Australian Information Commissioner gave notice that it had decided to exercise its discretion under s 41(2)(a) of the Privacy Act to not investigate Mr Knowles's OAIC Complaint.

33 There is no evidence that Mr Knowles has sought to challenge that determination, nor that he has complained to the Australian Information Commissioner in respect of the Department's response (or failure to respond) to his 2 March APP 13 Request or his 3 March Demand Email.

2. LEGISLATIVE FRAMEWORK

34 The relief that Mr Knowles presently seeks is said to be authorised under various commonwealth enactments. It is prudent to map out in some detail the legislative bases upon which his application rests.

2.1. The Privacy Act

35 The Privacy Act regulates, amongst other things, certain ways in which Commonwealth agencies must handle particular types of information. Sch 1 to that act contains the APPs. By s 15 of the Privacy Act, "APP Entities" are prohibited from conducting themselves in ways that amount to breaches of an APP. Such conduct is the subject of further definition, into which it is not presently necessary to delve: Privacy Act, s 6A. It is not disputed that the respondent qualifies as an "APP Entity" and, more specifically, as an "agency": Privacy Act, s 6.

36 By s 13 of the Privacy Act, an APP Entity is deemed to have "interfered with the privacy of an individual" if it engages in an act or adopts a practice that, in either case, breaches an APP in relation to personal information about that individual. "Personal information" is defined to mean "…information or an opinion about an identified individual, or an individual who is reasonably identifiable…whether the information or opinion is true or not [and] whether the information or opinion is recorded in material form or not": Privacy Act, s 6.

37 There are two APPs that are relevant to this proceeding: APP 12 and APP 13. APP 12 is relevantly in the following terms:

> **12 Australian Privacy Principle 12—access to personal information**
>
> *Access*
>
> 12.1 If an APP entity holds personal information about an individual, the entity must, on request by the individual, give the individual access to the information.
>
> …
>
> *Dealing with requests for access*
>
> 12.4 The APP entity must:
>
> (a) respond to the request for access to the personal information:
>
> (i) if the entity is an agency—within 30 days after the request is made; or
>
> (ii) if the entity is an organisation—within a reasonable period

after the request is made; and

(b) give access to the information in the manner requested by the individual, if it is reasonable and practicable to do so.

…

38 APP 13 is relevantly in the following terms:

13 Australian Privacy Principle 13—correction of personal information

Correction

13.1 If:

(a) an APP entity holds personal information about an individual; and

(b) either:

(i) the entity is satisfied that, having regard to a purpose for which the information is held, the information is inaccurate, out of date, incomplete, irrelevant or misleading; or

(ii) the individual requests the entity to correct the information;

the entity must take such steps (if any) as are reasonable in the circumstances to correct that information to ensure that, having regard to the purpose for which it is held, the information is accurate, up to date, complete, relevant and not misleading.

…

Refusal to correct information

13.3 If the APP entity refuses to correct the personal information as requested by the individual, the entity must give the individual a written notice that sets out:

(a) the reasons for the refusal except to the extent that it would be unreasonable to do so; and

(b) the mechanisms available to complain about the refusal; and

(c) any other matter prescribed by the regulations.

Request to associate a statement

13.4 If:

(a) the APP entity refuses to correct the personal information as requested by the individual; and

(b) the individual requests the entity to associate with the information a statement that the information is inaccurate, out-of-date, incomplete, irrelevant or misleading;

the entity must take such steps as are reasonable in the circumstances to

associate the statement in such a way that will make the statement apparent to users of the information.

Dealing with requests

13.5 If a request is made under subclause 13.1 or 13.4, the APP entity:

(a) must respond to the request:

(i) if the entity is an agency—within 30 days after the request is made…

39 Part V of the Privacy Act is headed "Investigations". Section 36 provides that an individual may complain to the Australian Information Commissioner about an act or practice that he or she feels has resulted in an interference with his or her privacy. By s 40 (and subject to exceptions not presently relevant), the Australian Information Commissioner is required to investigate such complaints. That requirement is subject to the discretions conferred upon the Australian Information Commissioner by s 41 of the Privacy Act, which include a discretion not to investigate a complaint made against an APP entity if satisfied that the entity has adequately dealt with it.

40 Section 52 of the Privacy Act deals with the determination of complaints. Relevantly, it provides as follows:

52 Determination of the Commissioner

(1) After investigating a complaint, the Commissioner may:

(a) make a determination dismissing the complaint; or

(b) find the complaint substantiated and make a determination that includes one or more of the following:

(i) a declaration:

(A) where the principal executive of an agency is the respondent—that the agency has engaged in conduct constituting an interference with the privacy of an individual and must not repeat or continue such conduct; or

(B) in any other case—that the respondent has engaged in conduct constituting an interference with the privacy of an individual and must not repeat or continue such conduct;

(ia) a declaration that the respondent must take specified steps within a specified period to ensure that such conduct is not repeated or continued;

(ii) a declaration that the respondent must perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;

(iii) a declaration that the complainant is entitled to a specified amount by way of compensation for any loss or damage suffered by reason of the act or practice the subject of the complaint;

(iv) a declaration that it would be inappropriate for any further action to be taken in the matter.

41 Division 3 of Part V of the Privacy Act concerns (amongst other things) the enforcement of determinations made under s 52. A complainant may apply for orders in this court or the Federal Circuit Court to enforce such a determination: Privacy Act, s 55A. A complainant who is unhappy about a determination made under s 52 of the Privacy Act may apply to the Administrative Appeals Tribunal to have it reviewed: Privacy Act, s 96(1)(c).

42 Part VIB of the Privacy Act deals with enforcement of the obligations that the act otherwise imposes. Section 80W concerns enforcement by means of injunctions. It relevantly provides as follows:

80W Injunctions

Enforceable provisions

(1) The provisions of this Act are enforceable under Part 7 of the Regulatory Powers Act.

…

Authorised person

(2) For the purposes of Part 7 of the Regulatory Powers Act, each of the following persons is an authorised person in relation to the provisions mentioned in subsection

(a) the Commissioner;

(b) any other person.

Relevant court

(3) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection

(a) the Federal Court;

(b) the Federal Circuit Court.

2.2. The ADJR Act

43 The *Administrative Decisions (Judicial Review) Act 1977* (hereafter, the "**ADJR Act**") confers upon this court jurisdiction to review certain administrative decisions.

44 Section 5 of the ADJR Act relevantly provides as follows:

> 5 Applications for review of decisions
>
> (1) A person who is aggrieved by a decision to which this Act applies that is made after the commencement of this Act may apply to the Federal Court or the Federal Circuit Court for an order of review in respect of the decision on any one or more of the following grounds:
>
> (a) that a breach of the rules of natural justice occurred in connection with the making of the decision;
>
> (b) that procedures that were required by law to be observed in connection with the making of the decision were not observed;
>
> (c) that the person who purported to make the decision did not have jurisdiction to make the decision;
>
> (d) that the decision was not authorized by the enactment in pursuance of which it was purported to be made;
>
> (e) that the making of the decision was an improper exercise of the power conferred by the enactment in pursuance of which it was purported to be made;
>
> (f) that the decision involved an error of law, whether or not the error appears on the record of the decision;
>
> (g) that the decision was induced or affected by fraud;
>
> (h) that there was no evidence or other material to justify the making of the decision;
>
> (j) that the decision was otherwise contrary to law.
>
> (2) The reference in paragraph (1)(e) to an improper exercise of a power shall be construed as including a reference to:
>
> (a) taking an irrelevant consideration into account in the exercise of a power;
>
> (b) failing to take a relevant consideration into account in the exercise of a power;
>
> (c) an exercise of a power for a purpose other than a purpose for which the power is conferred;
>
> (d) an exercise of a discretionary power in bad faith;
>
> (e) an exercise of a personal discretionary power at the direction or behest of another person;

(f) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case;

(g) an exercise of a power that is so unreasonable that no reasonable person could have so exercised the power;

(h) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and

(j) any other exercise of a power in a way that constitutes abuse of the power.

45 Section 6 is in similar terms, save that it relates to (amongst other things) conduct in which a person has engaged for the purposes of making a decision to which the ADJR Act applies.

46 Section 7 of the ADJR Act relates to failures to make decisions to which the ADJR Act applies. It provides as follows:

7 Applications in respect of failures to make decisions

(1) Where:

(a) a person has a duty to make a decision to which this Act applies;

(b) there is no law that prescribes a period within which the person is required to make that decision; and

(c) the person has failed to make that decision;

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

(2) Where:

(a) a person has a duty to make a decision to which this Act applies;

(b) a law prescribes a period within which the person is required to make that decision; and

(c) the person failed to make that decision before the expiration of that period;

a person who is aggrieved by the failure of the first mentioned person to make the decision within that period may apply to the Federal Court or the Federal Circuit Court for an order of review in respect of the failure to make the decision within that period on the ground that the first mentioned person has a duty to make the decision notwithstanding the expiration of that period.

47 Section 3 of the ADJR Act defines what qualifies as a "decision to which this Act applies". It is not in dispute that the decisions made (or not made) by or on behalf of the Department in

connection with each of the 25 November APP 12 Request and the 2 March APP 13 Request were decisions to which the ADJR Act applied. For reasons that will become apparent, I do not consider that the Department's response (or failure to respond) to the 3 March Demand Email was conduct that related to, or was otherwise a failure to make, a decision to which the ADJR Act applied.

48 The rights of review conferred by ss 5, 6 and 7 of the ADJR Act are in addition to any other rights that a person has to seek review of a relevant decision, relevant conduct engaged in for the purposes of making a decision, or a relevant failure to make a decision: ADJR Act, s 10(1). This court may, in its discretion, refuse to grant an application under any of those sections in circumstances where another law makes adequate provision for a process or processes by which a person may apply to a tribunal to have the decision, conduct or failure in question reviewed: ADJR Act, s 10(2).

49 Section 16 of the ADJR Act confers upon this court various powers that, in its discretion, it may exercise by way of review of an impugned decision, impugned conduct or an impugned failure to make a decision. It provides as follows:

> 16 Powers of the Federal Court and the Federal Circuit Court in respect of applications for order of review
>
> (1) On an application for an order of review in respect of a decision, the Federal Court or the Federal Circuit Court may, in its discretion, make all or any of the following orders:
>
> (a) an order quashing or setting aside the decision, or a part of the decision, with effect from the date of the order or from such earlier or later date as the court specifies;
>
> (b) an order referring the matter to which the decision relates to the person who made the decision for further consideration, subject to such directions as the court thinks fit;
>
> (c) an order declaring the rights of the parties in respect of any matter to which the decision relates;
>
> (d) an order directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court considers necessary to do justice between the parties.
>
> (2) On an application for an order of review in respect of conduct that has been, is being, or is proposed to be, engaged in for the purpose of the making of a decision, the Federal Court or the Federal Circuit Court may, in its discretion, make either or both of the following orders:
>
> (a) an order declaring the rights of the parties in respect of any matter to which the conduct relates;

(b) an order directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court considers necessary to do justice between the parties.

(3) On an application for an order of review in respect of a failure to make a decision, or in respect of a failure to make a decision within the period within which the decision was required to be made, the Federal Court or the Federal Circuit Court may, in its discretion, make all or any of the following orders:

(a) an order directing the making of the decision;

(b) an order declaring the rights of the parties in relation to the making of the decision;

(c) an order directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court considers necessary to do justice between the parties.

(4) The Federal Court or the Federal Circuit Court may at any time, of its own motion or on the application of any party, revoke, vary, or suspend the operation of, any order made by it under this section.

2.3. The Regulatory Powers Act

50 The *Regulatory Powers (Standard Provisions) Act 2014* (Cth) establishes (amongst other things) a framework for the enforcement of certain legislative provisions by means of injunctive relief. Part 7 of that act (hereafter, the "**RP Act**") is headed "Injunctions". Section 121 of the RP Act provides as follows:

121 Grant of injunctions

Restraining injunctions

(1) If a person has engaged, is engaging or is proposing to engage, in conduct in contravention of a provision enforceable under this Part, a relevant court may, on application by an authorised person, grant an injunction:

(a) restraining the person from engaging in the conduct; and

(b) if, in the court's opinion, it is desirable to do so—requiring the person to do a thing.

Performance injunctions

(2) If:

(a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do a thing; and

(b) the refusal or failure was, is or would be a contravention of a provision enforceable under this Part;

the court may, on application by an authorised person, grant an injunction requiring the person to do that thing.

51 Other provisions of the RP Act define what is contemplated by provisions that are "enforceable" under Part 7 (RP Act, s 118), who qualifies as an "authorised person" (RP Act, s 119) and what is an "authorised court" (RP Act, s 120). It suffices presently to note that the provisions of the Privacy Act are provisions that are enforceable under Part 7 of the RP Act, and that, for that purpose, Mr Knowles is an "authorised person" and this court is an "authorised court": Privacy Act, s 80W (above, [42]).

2.4. The Judiciary Act 1903

52 The *Judiciary Act 1903* (Cth) (hereafter, the "**Judiciary Act**") confers upon this court jurisdiction to determine matters in which injunctive relief, or writs of mandamus or prohibition are sought against an officer or officers of the commonwealth, or which otherwise arise under commonwealth laws: *Judiciary Act 1903* (Cth), s 39B(1) and (1A)(c).

3. MR KNOWLES'S CASE

53 There are three distinct aspects to the case that Mr Knowles prosecutes. They align with the three requests that he made (or purported to make) under the Privacy Act, namely: the 25 November APP 12 Request, the 2 March APP 13 Request and the 3 March Demand Email. It is convenient to deal separately with each of those three aspects of Mr Knowles's case.

3.1. The 25 November APP 12 Request

3.1.1. Summary of the contentions advanced

54 As the factual summary above sets out, the 25 November APP 12 Request concerned an attempt by Mr Knowles to access certain personal information that the Department held about him. Although the information that he sought was provided to him, Mr Knowles was and remains unhappy about the manner in which the Department handled that request.

55 There are two dimensions to his discontent. First, he says that the Department failed to afford him access to the information that he sought within 30 days of his request, which, he says, was required under APP 12. Second, he maintains that the Department's conduct in handling his request was attended by bad faith on the part of Mr Heldon. That alleged bad faith is itself comprised of multiple parts, in that it is said that Mr Heldon:

(1) did not take steps to address the 25 November APP 12 Request until nearly 30 days from the time that he received it;

(2) indicated to Mr Knowles that he (Mr Heldon) was awaiting responses from within the Department when, in truth, he had not initiated any process to elicit the information that Mr Knowles had sought; and

(3) provided to Mr Knowles, in partial satisfaction of the request, documents that he (Mr Heldon) knew had already been provided pursuant to another request that Mr Knowles had earlier made.

56 Mr Knowles seeks declaratory relief to record that the Department contravened APP 12 by not providing him with access to his personal information within 30 days of his request, and that Mr Heldon acted in bad faith in attending to that request in the manner that he did.

3.1.2. Appropriateness of declaratory relief

57 The court's power to grant declaratory relief in matters that it has jurisdiction to determine is not in question. For present purposes, it exists at least by dint of s 16(c) of the ADJR Act and s 21 of the *Federal Court of Australia Act 1976* (Cth), if not inherently by reason of this court's status as a superior court of record: *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 ("***Ainsworth***"), 581 (Mason CJ, Dawson, Toohey and Gaudron JJ).

58 Mr Knowles did not identify the terms in which he hoped that the court might grant declaratory relief. Respectfully, the submissions that he advanced—which I pause to note were otherwise cogent and well-structured—did not clearly articulate the right or rights whose existence he sought to make the subject of declarations. He contended that he had a right to have his 25 November APP 12 Request addressed within 30 days and in a manner unpolluted by bad faith. Those rights were, he says, infringed by the manner in which the Department addressed his request. Logically, declaratory relief could assume one or both of two forms: it could state that Mr Knowles possessed the rights that he has identified and/or that the Department infringed them by addressing his request in the manner that it did.

59 Either way, what Mr Knowles seeks in respect of his 25 November APP 12 Request is not an appropriate exercise of the court's power to grant declaratory relief. In *Ainsworth* (at 582), the majority made the following observations about declaratory relief (references omitted):

> [D]eclaratory relief must be directed to the determination of legal controversies and not to answering abstract or hypothetical questions. The person seeking relief must have "a real interest" and relief will not be granted if the question "is purely hypothetical", if relief is "claimed in relation to circumstances that [have] not occurred and might never happen" or it "the Court's declaration will produce no

foreseeable consequences for the parties".

60 Although I have had occasion to express some doubt about the point (see, for example, *Construction, Forestry, Maritime, Mining and Energy Union v Milin Builders Pty Ltd* [2019] FCA 1070, [80]-[85] (Snaden J)), it seems to be accepted in this court that declaratory relief *may* be granted simply to record the basis upon which a proceeding resolves: *Cruse v Multiplex Ltd & Ors* (2008) 172 FCR 279, 298 [53] (Goldberg and Jessup JJ, Gray J dissenting). Unhelpfully, there is other full court authority to the contrary effect: *Warramunda Village v Pryde* (2001) 105 FCR 437, 440 [8] (Gray, Branson and North JJ); *Australian Competition and Consumer Commission v MSY Technology Pty Ltd & Ors* (2012) 201 FCR 378, 388 [35] (Greenwood, Logan and Yates JJ).

61 Assuming, momentarily, that the Department's conduct in respect of the 25 November APP 12 Request was engaged in in contravention of the law (in that the request was not addressed within 30 days and/or that the manner in which it *was* addressed was tainted by bad faith), and that the court might properly "record" as much by making a declaration or declarations to that effect (or otherwise so as to record what Mr Knowles's rights are or were), the court's attention naturally turns to whether there is any utility in doing so.

62 I am not persuaded that there is any utility in granting declaratory relief in respect of the 25 November APP 12 Request (supposing, as I do for the sake of argument, that the Department's relevant conduct was unlawful in either or both of the ways that Mr Knowles alleged). The 25 November APP 12 Request was addressed. Mr Knowles received what he was entitled to receive and, for obvious reasons, he does not challenge his successful prosecution of the request. He simply seeks to validate his view that it was not handled as it ought to have been. Even assuming that he is right about that, it is difficult to see how declaratory relief from this court might benefit him in any legal sense.

63 It is unfair to describe Mr Knowles's prosecution of this aspect of his present claim as a personal vanity project; but, equally, it is difficult to see how declaratory relief might vindicate any presently existing legal right to which he lays claim. On that front, Mr Knowles noted that he intends to lodge further requests for information under APP 12 and that the relief sought presently would (or might) serve to inform the manner in which the Department responds to them. Respectfully, those are hypothetical propositions into which

this court cannot properly be drawn. Declaratory relief is granted to resolve justiciable controversies; not as a means of providing advice to future or potential litigants: *Porter v OAMPS Ltd* (2005) 215 ALR 327, 337 [34] (Goldberg J).

64 Even assuming that Mr Knowles is right to draw the criticisms that he draws about the Department's responses to his 25 November APP 12 Request, I am not satisfied that the circumstances that here present warrant an exercise of the court's discretion to grant declaratory relief (under any of the various sources of the court's power to grant it). However much it might vindicate Mr Knowles's criticisms of the Department, declaratory relief would be legally pointless.

3.1.3. Validity of Mr Knowles's complaints

65 In any event, I am not persuaded that Mr Knowles's criticisms of the Department's conduct—namely that it contravened the Privacy Act by failing to address his 25 November APP 12 Request within 30 days and that its handling of the request was tainted by bad faith—are well-founded. I address each contention in turn.

The 30-day timeframe

66 The requirement in APP 12 is not that access to requested personal information must be granted within 30 days; it is that the request must be responded to within that timeframe. It is not in dispute that the Department did that. Mr Heldon acknowledged the request not long after Mr Knowles made it; and provided documents in partial satisfaction of it within 30 days (above, [9], [11]).

67 The terms of APP 12 reinforce that bifurcation. Paragraph 12.4 (above, [37]) is headed "Dealing with requests for access". It mandates two measures by which an APP Entity must *deal with* requests for access to information under APP 12: first, by the provision of a response to the request; and, second, by the provision of access to the information as requested (subject to notions of reasonableness and practicality that are not presently relevant). The instrument draws a distinction between "dealing with" a request by responding to it and "dealing with" a request by granting access to what is requested. The 30-day deadline applies only in respect of the former.

68 Even had I taken a different view about the appropriateness of declaratory relief to address this aspect of Mr Knowles's complaint, I would not have been persuaded that the Department

(or the respondent on its behalf) contravened APP 12 (or any other part of the Privacy Act) by failing to provide to Mr Knowles access within 30 days to the information that was the subject of his 25 November APP 12 Request.

Bad faith

69 Similarly, I would not have been persuaded that the Department's response to the 25 November APP 12 Request was attended by bad faith. To stigmatise its conduct in that way, Mr Knowles would need to show that Mr Heldon (through whom the Department's—and the respondent's—response was actioned) did not honestly or genuinely set out to discharge the obligations that the Privacy Act imposed: *SCAS v Minister for Immigration and Multicultural and Indigenous Affairs* [2002] FCAFC 397, [19] (Heerey, Moore and Kiefel JJ).

70 I do not accept that Mr Heldon's failure prior to 23 December 2016 to make the internal inquiries necessary to address the 25 November APP 12 Request sinks to the depths of bad faith. There may be any number of innocent explanations for such a failure (for example, the need to attend to other matters). Indeed, the evidence does not safely permit the court to infer that such a failure even occurred: the fact that Mr Heldon sent the Assistance Request Emails on 23 December (above, [13]) is not proof that no other steps had been taken prior to that point to compile the information that Mr Knowles had requested. The evidence simply does not disclose what, if anything, Mr Heldon did between 25 November 2016 and 23 December 2016. It is possible that he didn't do anything, which would be consistent with the tone of the Assistance Request Emails. But that consistency alone is not a sufficient basis upon which to infer that that, in fact, was what occurred.

71 Mr Heldon's knowing provision of documents of which Mr Knowles was already in possession (above, [11] and [55]) is not sufficient to constitute bad faith either. It is difficult to see what else Mr Heldon was meant to do with those documents. There is no suggestion that they were outside the scope of the 25 November APP 12 Request. Had he not provided them, he would have contravened the Department's obligation to do so. That he provided them already knowing that Mr Knowles possessed them (if, indeed, he had such knowledge) is neither here nor there. The suggestion (if it was made) that he did so as some kind of ruse to disguise a degree of inactivity to that point in time (assuming that there *was* some degree of inactivity) is also insufficient to ground a finding of bad faith. It is not disputed that the

documents answered the description of what Mr Knowles had requested. Mr Heldon was right to provide them.

72 In any event, this aspect of Mr Knowles's bad faith allegation does not find clear expression within his further amended originating application of 30 September 2019 (nor any prior variant of that document). It was raised for the first time at the hearing. Although I would have dismissed it on its merits, it would have been dismissed in any event on the basis that it was not part of the case of which Mr Knowles gave prior notice.

73 Mr Knowles also attributes to Mr Heldon bad faith manifest in his indication of 22 December 2016 that he had "…asked other areas in Defence…to review their records [etc but had] not yet received responses" (above, [11]). Mr Knowles contends that that representation was untrue: that, in reality, Mr Heldon had not made any internal inquiries to that point in time and that he lied about having done so. I reject that contention. As has already been explored, there is simply insufficient evidence to conclude that Mr Heldon had not made any internal inquiries prior to 23 December 2016.

74 Again, even had I taken a different view about the appropriateness of declaratory relief to address this aspect of Mr Knowles's complaint, I would not have been persuaded that the Department (or the respondent on its behalf) had acted unlawfully (or had otherwise done something that engaged either of ss 5(1)(e) or 6(1)(e) of the ADJR Act) by responding to the 25 November APP 12 Request in a manner that bespoke bad faith.

3.1.4. Conclusion in respect of the 25 November APP 12 Request

75 Insofar as it pertains to his 25 November APP 12 Request, Mr Knowles's further amended originating application of 30 September 2019 should (and will) be dismissed. The relief that is sought—namely, declaratory relief—should (and will) be declined in the court's discretion on the basis that there is no utility in granting it. Even were that otherwise, it would be declined on the basis that the respondent's (or the Department's) conduct, insofar as it pertained to that request, was not engaged in in contravention of the Privacy Act and did not otherwise amount to an improper exercise (or improper exercises) of statutory power.

3.2. The 2 March APP 13 Request

3.2.1. Summary of the contentions advanced

76 In 2014, the Australian Information Commissioner ruled on a complaint that Mr Knowles had made against the Other Department. It held that the Other Department had interfered with Mr Knowles's privacy by disclosing personal information about him to the Department. That information contained (or assumed the form of) statements of opinion about Mr Knowles, including about his mental health and the level of threat that he posed to the physical safety of himself and others. Those opinions appear to have stemmed at least partly from what were considered aggressive or obnoxious communications that Mr Knowles had directed toward an officer or officers of the Other Department. The particulars of those communications and the opinions that were formed (and, ultimately, disclosed to the Department) in consequence of them need not here be recited. It suffices to note that the Other Department made certain disclosures to the Department at least in part on the strength of the opinions that had been formed about Mr Knowles. The Australian Information Commissioner determined that those opinions neither warranted nor authorised the disclosures that were made (that determination is referred to, hereafter, as the "**OAIC Determination**").

77 By his 2 March APP 13 Request, Mr Knowles sought the correction of Departmental records insofar as they chronicled statements of opinion that were inconsistent with the OAIC Determination. It is in respect of the Department's conduct in response to that request that he now seeks various remedies.

78 The OAIC Determination has since been the subject of an application for review before the Administrative Appeals Tribunal. That review resulted in the determination being set aside; and a subsequent appeal of that decision to this court was dismissed. In both of those proceedings, Mr Knowles was referred to by a pseudonym. It is for that reason that the Other Department has not been identified in these reasons. In order to preserve Mr Knowles's anonymity in those other proceedings, neither of the decisions that they generated will be cited.

79 The conduct engaged in by the Department in response to Mr Knowles's 2 March APP 13 Request is not in contest: certain Departmental records were annotated by having attached to them a copy of the OAIC Determination. Mr Knowles maintains that that course (hereafter, the "**Annotation Decision**") was not one that was open to the Department. Instead, he

maintains that the Department ought first to have made a decision one way or the other whether or not it would correct the personal information that it retained about him. In the event that it determined not to correct that information, Mr Knowles maintains that the Department was obliged to tell him as much and to provide him with reasons justifying that course. Then and only then, so Mr Knowles maintains, was it open to him to request that the Department associate a copy of the OAIC Determination with the relevant records in which his personal information was contained.

80 By way of relief, Mr Knowles seeks:

(1) under the ADJR Act:

(a) an order under s 16(1)(a) setting aside the Annotation Decision; and

(b) an order under s 16(1)(b) referring the 2 March APP 13 Request back to the Department for further consideration; or, alternatively,

(2) under the Judiciary Act, that there issue:

(a) a writ of certiorari that removes into this court and quashes the Annotation Decision; and

(b) a writ of mandamus that requires the Department to reconsider the 2 March APP 13 Request; or, further in the alternative,

(3) injunctions under s 121 of the RP Act requiring that the Department refrain from relying upon or giving effect to the Annotation Decision, and that it otherwise reconsider its response to the 2 March APP 13 Request.

81 Mr Knowles also complains that the Department did not respond to his 2 March APP 13 Request within 30 days, as APP 13 required. In respect of that failure, he seeks declaratory relief to record the existence of his right to such a response within that timeframe and the Department's breach of that right.

3.2.2. Appropriateness of declaratory relief

82 I will deal, first, with Mr Knowles's request for declaratory relief. It is not necessary that I should replicate what has already been said about the appropriateness of that species of relief, nor about the circumstances in which it might be withheld on discretionary grounds. For reasons equivalent to those outlined in section 3.1.2 of these reasons, I do not consider that the circumstances here warrant an exercise of the court's discretion to grant declaratory relief.

There is no utility in granting what is sought. Declaratory relief is granted to record the existence or otherwise of a particular state of affairs and, thereby, to resolve a justiciable controversy. Here, Mr Knowles seeks little (if anything) more than an advisory opinion from the court. That is not an appropriate exercise of the remedy.

83 That notwithstanding, I confess some sympathy for the submission that Mr Knowles advanced. APP 13 required that the Department respond to the 2 March APP 13 Request within 30 days. Although the statutory requirement could be clearer, there is force in Mr Knowles's submission that that required, within that timeframe, some indication from the Department as to whether it would or would not correct what Mr Knowles had asked it to correct. That does not appear to have happened. Had the Department indicated to Mr Knowles within the 30-day timeframe the intention to which it subsequently gave effect, the complexion of the present matter might well have been different.

84 Even assuming that Mr Knowles's criticisms of the Department's response (or non-response) to his 2 March APP 13 Request are well-founded, I am not satisfied that that suffices to warrant an exercise of the court's discretion to grant declaratory relief. Although doing so would undoubtedly validate those criticisms, it would nonetheless be legally inutile.

85 The analyses that follow concern the remaining claims for relief (that is to say, claims for relief other than declaratory relief) that arise in respect of the 2 March APP 13 Request.

3.2.3. Existence of alternative remedies

86 As is outlined above, the Privacy Act establishes mechanisms by which a complainant might seek to review conduct engaged in by an APP Entity. At first instance, it provides for the making, investigation and determination of complaints about acts or practices that amount to an interference or interferences with an individual's privacy: Privacy Act, Part V (above, [39]-[40]). Determinations so made may themselves be reviewed by the Administrative Appeals Tribunal: Privacy Act, s 96(1)(c) (above, [41]).

87 Despite his apparent familiarity with those provisions, Mr Knowles has not availed himself of them insofar as concerns his 2 March APP 13 Request. The mechanisms established by the Privacy Act afford Mr Knowles adequate rights of review in respect of Departmental conduct that he considers constitutes an interference or interferences with his privacy. Insofar as concerns the 2 March APP 13 Request, the existence of those mechanisms warrants the

court's refusing to grant relief under the ADJR Act as a matter of discretion: ADJR Act, s 10(2)(b).

88 The existence of those mechanisms also informs the court's discretion to grant relief under the alternative sources of power that Mr Knowles seeks to invoke, namely s 39B(1) of the Judiciary Act and s 121(1) of the RP Act. A court may, in its discretion, withhold prerogative relief in the nature of certiorari and mandamus on the basis that a party has chosen not to avail him or herself of convenient alternative remedies: see *Dranichnikov v Minister for Immigration and Multicultural Affairs* (2003) 197 ALR 389, 395-396 [33] (Gummow and Callinan JJ); *CSL Australia Pty Ltd v Minister for Infrastructure and Transport* (2014) 221 FCR 165, 212-213 [219] (Allsop CJ, with whom Mansfield J agreed). Doing so has been described as the "general rule": *Tooth & Co Ltd v Council of the City of Parramatta* (1955) 97 CLR 492, 498 (Dixon CJ, with whom McTiernan, Webb, Fullagar and Kitto JJ agreed). Where relevant, equivalent considerations guide the exercise of the court's power to grant injunctive relief under s 121 of the RP Act and, indeed, all discretionary relief, whatever be the court's power to grant it: *Saitta Pty Ltd v Commonwealth* (2000) 106 FCR 554, 575 [104] (Weinberg J).

89 Insofar as concerns his 2 March APP 13 Request, there is no evidence that Mr Knowles has availed himself of the processes for which Part V of the Privacy Act provides. If the Department's conduct in connection with that request involved improper exercises (or non-exercises) of statutory power under the Privacy Act, then the review mechanisms to which Part V and s 96(1) of the Privacy Act gives effect offer adequate and convenient means of correction. That alone is basis enough to decline to grant the relief that Mr Knowles seeks under s 39B(1) of the Judiciary Act and s 121(1) of the RP Act.

3.2.4. Annotation of records is not unlawful

90 In any event, I do not accept Mr Knowles's submission that the Department's Annotation Decision was beyond what the Privacy Act sanctioned. Upon receiving the 2 March APP 13 Request, the Department was compelled to take reasonable steps to correct personal information that it retained about Mr Knowles. "Correction", in that sense, required the taking of steps to ensure that that information was "accurate, up-to-date, complete, relevant and not misleading": APP 13.1.

91 Here, Mr Knowles's request was aimed at the opinions that the Other Department formed about him and, more precisely, the Departmental records in which the expression of those opinions was chronicled. Even in the face of the OAIC Determination, it is difficult to see how records that contained (or otherwise referred to) expressions of those opinions might be thought to have been inaccurate, out of date, incomplete or irrelevant. Mr Knowles's complaint, of course, was that the opinions were unsubstantiated: a view that the OAIC Determination validated (at least until it was set aside). But to observe as much is not to demonstrate that the Department's records inaccurately recorded the opinions that were communicated to it, or that those opinions had since been altered or qualified such that the records in question were no longer up-to-date or were otherwise incomplete, or were irrelevant in some way. Mr Knowles did not allege as much (either by his 2 March APP 13 Request or by his submissions before this court). He simply wished (and wishes) for it to be known—that is, for the Department's records to reflect—that the opinions that had been communicated to it were unsubstantiated in light of the OAIC Determination. He sought to ensure that the Department's records were not misleading (in the sense that a person having occasion to review them might be drawn to conclude that opinions expressed about him were well-founded).

92 APP 13 does not require that an APP entity take any particular steps by way of correction of information. There is, in my view, no reason why a record that is misleading because it records an opinion that has subsequently been the subject of judicial or quasi-judicial criticism or repudiation might not be "corrected"—that is to say, rendered not misleading—by annexing to it a record of that criticism or repudiation.

93 Mr Knowles does not here submit that there were other steps that the Department ought reasonably to have taken in order to correct the personal information that it held about him. He says, instead, that the association of the OAIC Determination to existing records was something that could only be done at his request, and only following (first) a determination by the Department that it would not take steps to correct its records and (second) the provision of written reasons explaining that determination. Mr Knowles contends that, by acting as it did, the Department misunderstood—and failed properly to discharge—its statutory obligation. That, in turn, is said to warrant relief under s 16(1) of the ADJR Act, prerogative relief under s 39B(1) of the Judiciary Act and/or injunctive relief under s 121(1) of the RP Act.

94 I do not accept that the Department misunderstood its obligations or otherwise acted inconsistently with them vis-à-vis the 2 March APP 13 Request. It is apparent that the Department resolved to correct the records that Mr Knowles asked it to correct. That it did so is hardly surprising given the existence at the time of the OAIC Determination, which rendered the opinions about Mr Knowles (or at least some of them) unsustainable. The Department did not communicate its resolution to Mr Knowles and it probably should have. But, regardless, it was entitled to see to that correction by the means that it adopted (namely, by annexing the OAIC Determination to the relevant, existing records). Indeed, doing so was at least superficially consistent with what Mr Knowles had requested. Having opted to take that course, the Department was not obliged to provide Mr Knowles with a notice under paragraph 13.3 of APP 13, and Mr Knowles was not entitled to initiate the process for which paragraph 13.4 of APP 13 provides.

3.2.5. Utility of relief

95 There is another basis upon which the court should, in its discretion, decline to grant the relief that Mr Knowles has sought in respect of his 2 March APP 13 Request. As is set out above, the OAIC Determination is no longer extant: it was set aside by the Administrative Appeals Tribunal and an appeal from that decision was dismissed by a full court of this court. Both of those events occurred after the 2 March APP 13 Request was made.

96 That the 2 March APP 13 Request was premised upon the existence of the OAIC Determination is not readily in doubt. It was by the OAIC Determination that the opinions communicated to the Department by the Other Department were held not to be substantiated. Mr Knowles's demand was that the Department annotate the records in which the Other Department's opinions were expressed to "…specifically advise that these defamatory and false claims by [that Other Department] were not only unlawful but also found to be unsubstantiated" and to "explicitly note that a Determination found these claims by [the Other Department] a breach of the Privacy Act and therefore unlawful". In context, Mr Knowles's reference to what had been "found" or determined can only be understood as a reference to the OAIC Determination.

97 Given that the foundation upon which the 2 March APP 13 Request was erected has since been washed away, it is impossible to see what utility there might be in setting aside the Annotation Decision and requiring that the Department reconsider its response. The court's

discretion to grant relief in that nature—whether under the ADJR Act, the Judiciary Act or the RP Act—is properly informed by that want of utility. Even had I come to a different view about the availability of alternative remedies and the propriety of the Department's conduct in answer to the 2 March APP 13 Request, I would, nonetheless and in the exercise of the court's discretion, have declined to grant the relief that Mr Knowles seeks on the basis that granting it would almost certainly be pointless.

3.2.6. Conclusion in respect of the 2 March APP 13 Request

98 Insofar as it pertains to his 2 March APP 13 Request, Mr Knowles's further amended originating application of 30 September 2019 should (and will) be dismissed. The declaratory relief that is sought should (and will) be declined in the court's discretion on the basis that there is no utility in granting it. The other relief that is sought should (and will) be declined:

(1) in the court's discretion on the basis that the Privacy Act adequately provides for an alternative, convenient means of review of the Department's conduct; and, alternatively,

(2) on the basis that the respondent (or the Department) did not, in any event, misconstrue or fail to comply with the requirements of APP 13, nor otherwise err by conducting itself as it did in response to the 2 March APP 13 Request.

Had I reached different conclusions on those fronts, I would nonetheless have declined to grant that other relief on the basis that there would be no utility in doing so given that the OAIC Determination is no longer extant.

3.3. The 3 March Demand Email

3.3.1. Summary of the contentions advanced

99 Mr Knowles's contentions relating to his 3 March Demand Email are straightforward. He maintains that, by that communication, he requested under APP 13 that the Department correct personal information about him that was contained in Mr Heldon's email of that evening (above, [21]). It is not in contest that the Department did not respond to that request and did not make any correction as requested. Mr Knowles contends that those failures were in contravention of APP 13 and, thereby, amount to an interference with his privacy for the purposes of the Privacy Act.

100 Mr Knowles moves the court for the following relief, namely:

(1) under the ADJR Act:

(a) an order under s 16(3)(a) compelling the Department to consider his 3 March Demand Email; and

(b) declaratory relief under s 16(3)(b) to record or state his rights and/or the Department's obligations in respect of that communication; or, alternatively,

(2) under s 39B(1) of the Judiciary Act:

(a) that there issue a writ of mandamus that requires the Department to consider the 3 March Demand Email; and

(b) declaratory relief to record or state his rights and/or the Department's obligations in respect of that communication; or, further and alternatively,

(3) an injunction under s 121(2) of the RP Act to compel that Department to consider his 3 March Demand Email.

3.3.2. Nature of the 3 March Demand Email

101 In order to properly appreciate the character of the 3 March Demand Email, it is appropriate to rehearse the exchange that preceded it. That exchange began the previous day with Mr Knowles's 2 March APP 12 Request (above, [18]). On any view, that communication—in which, amongst other things, Mr Knowles referred to Mr Heldon as an "unethical fuckhead"—was needlessly petulant and obnoxious.

102 Mr Heldon responded by requesting a copy of the OAIC Determination to which the 2 March APP 12 Request referred. He sensibly did not react to Mr Knowles's gratuitous disrespect.

103 Later that afternoon, Mr Knowles emailed Mr Heldon an internet link to the OAIC Determination. In that email, he intimated that Mr Heldon ought already to have been aware of the determination, or otherwise ought to have been able to locate it himself. He threatened to "eventually" subpoena Mr Heldon, to subject him to cross-examination and, thereby, to expose Mr Heldon's "disgraceful behaviour" on a "permanent court record", which he suggested would "not go so well if [Mr Heldon] ever want[ed] to do anything else in [his] life". He suggested that Mr Heldon was "lazy or ignorant" and invited him to "[s]top fucking around".

104 It was in response to those bizarre provocations that Mr Heldon sent the response upon which the 3 March Demand Email fixed. By his email of that evening (above, [21]), Mr Heldon began by apologising to Mr Knowles for any appearance of laziness or ignorance, and pointed out that he was, in fact, not a "privacy officer" nor "legally trained in privacy". Instead, he pointed out, his role was one of coordination: it fell to him to coordinate the Department's responses to Mr Knowles's request, requiring, as they inevitably did, input from a range of personnel across the various different parts of the Department. He noted that he did not have any decision-making power and that, in the absence of a request from Mr Knowles that somebody else should coordinate the Department's response, he would continue to do so, including in the face of Mr Knowles's "expletives and threats about taking some action against [him]."

105 Of particular significance was the following passage of Mr Heldon's email:

> I understand that I am currently the focal point of your frustrations with Defence and you hold me personally responsible for Defence's responses to date - I assume your expletives and threats are only a reflection of this frustration and do not imply a serious or imminent threat to my health or safety.

106 By his 3 March Demand Email, Mr Knowles described those comments as "defamatory" and demanded that they be "destroy[ed]…from Defence records". He again threatened Mr Heldon with "action against [Mr Heldon] personally" in the event that his demand was not met.

107 This aspect of Mr Knowles's cases turns, in part, upon whether or not Mr Heldon's remark (about Mr Knowles's obnoxious language not reflecting a serious or imminent threat to his [Mr Heldon's] health or safety) constitutes personal information about Mr Knowles. The Department submits that it does not. Before me, Mr Knowles conceded that he didn't "necessarily know…if that falls into the definition of personal information". There is at least some basis for supposing that the remark was more interrogatory than a statement of opinion personal to Mr Knowles.

108 On balance—and not without some hesitation—I accept that Mr Heldon's remark (or the email that contained it) amounted to personal information (as the Privacy Act defines that concept) concerning Mr Knowles. It was a statement of opinion about what Mr Heldon understood was conveyed by the intemperate language of Mr Knowles's earlier emails:

specifically, that Mr Knowles was frustrated; but not to the point that he posed a threat to Mr Heldon's health or safety. That conclusion appears very much to align with reality: Mr Knowles was plainly frustrated with the manner in which the Department had responded to his prior requests for information but there is no evidence that that frustration risked expression in the form of physical threats or aggression aimed at Mr Heldon. It is difficult to see how Mr Heldon's opinion was wrong, much less defamatory.

109 That accepted, it is necessary to consider whether the 3 March Demand Email amounted to a request for correction under APP 13. It is plain enough that Mr Knowles clothed his 3 March Demand Email in the language of the Privacy Act. His demand that Mr Heldon "destroy these defamatory claims from Defence records about threatening behaviour" was expressly said to be required "[u]nder APP13". Those words alone, however, are not sufficient to constitute the email as a request for correction under APP 13.

110 There are two ways in which an APP entity might be obliged to correct (or consider correcting) personal information held about a person. The first is if it has occasion to consider, of its own volition, that that information is inaccurate, out-of-date, incomplete, irrelevant or misleading. The second is that it receives a request for correction from the person to whom the information pertains. Plainly, the circumstances of this case involve that second trigger. At issue is whether the 3 March Demand Email amounted to a request to correct information.

111 I am not satisfied that it did. The 3 March Demand Email did not request the correction of anything. It was little (if anything) more than a demand that records be "destroyed", couched in objectionable language that appears to have been calculated only to bully or belittle Mr Heldon. The 3 March Demand Email does not employ the term "correction", nor any analogue of it (the subject header of the email does but only because it was carried over from the 2 March APP 13 Request, which of course *was* a request for correction of information under APP 13).

112 I am not satisfied that the Department's failure to respond to the 3 March Demand Email amounts in any way to a contravention of APP 13 (nor to an interference by the Department in Mr Knowles's privacy).

113 That being the case, the relief that Mr Knowles seeks should (and will) be declined for want of a legal basis for granting it.

3.3.3. Discretionary considerations

114 Even were I to have formed a different view about the nature of the 3 March Demand Email, I would decline to grant the relief that Mr Knowles seeks on discretionary bases.

115 Insofar as he seeks declaratory relief related to that demand, I would decline to grant it for reasons equivalent to those explained in sections 3.1.2 and 3.2.2. The relief that is sought would achieve nothing more than to vindicate Mr Knowles's opinion that the Department ought to have responded to or acted upon (or was required under APP 13 to respond to or act upon) his 3 March Demand Email, and/or to serve as advice to the Department that that view is correct. For reasons already outlined, that view is not correct; but even if it were, declaratory relief is not a remedy that is appropriately deployed in the service of those ends. Although it would undoubtedly validate Mr Knowles's criticisms of the Department's failure to respond to his 3 March Demand Email, declaratory relief in the form sought would be legally pointless (in the sense that it would not serve to vindicate any presently-existing legal rights, nor otherwise resolve any presently-existing justiciable controversy). In light of that want of utility, I am not satisfied that the present circumstances warrant an exercise of the court's discretion to grant declaratory relief in connection with the 3 March Demand Email.

116 Insofar as Mr Knowles seeks other relief related to that demand, I would decline to grant it for reasons equivalent to those explained in section 3.2.3 above. The Privacy Act—particularly Part V, which provides for the initiation, investigation and determination of complaints concerning alleged interferences with people's privacy, and s 96(1), which provides for the review of such determinations by the Administrative Appeals Tribunal—affords Mr Knowles adequate and convenient rights of review in respect of Departmental conduct that he considers was engaged in in contravention of APP 13. The existence of those processes warrants the court's refusing, as a matter of discretion, to grant relief under the ADJR Act in relation to the 3 March Demand Email: ADJR Act, s 10(2)(b). It also warrants the court's refusing, in its discretion, to grant relief in relation to that email under the alternative sources of power that Mr Knowles seeks to invoke, specifically s 39B(1) of the Judiciary Act and s 121(2) of the RP Act (see above, [88]).

3.3.4. Conclusion in respect of the 3 March Demand Email

117 Insofar as it pertains to his 3 March Demand Email, Mr Knowles's further amended originating application of 30 September 2019 should (and will) be dismissed. The respondent

(or the Department) did not contravene APP 13—nor otherwise err—by failing to respond to (or otherwise act upon) that communication. Even if he (or it) did, I would, in the exercise of the court's discretion:

(1) decline to grant the declaratory relief that Mr Knowles seeks because there is no (or insufficient) utility in granting it; and

(2) decline to grant the other relief that Mr Knowles seeks because the Privacy Act adequately provides for an alternative, convenient means of review of the Department's conduct.

4. CONCLUSIONS

118 Mr Knowles's further amended originating application of 30 September 2019 should (and will) be dismissed. The respondent seeks an order that Mr Knowles pay his costs. That is appropriate and an order to that effect will also be made.

I certify that the preceding one hundred and eighteen (118) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Snaden.

Associate:

Dated: 17 September 2020