

NOTICE OF FILING

Details of Filing

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File Number:	VID829/2023
File Title:	JAN MAREK KANT v THE AUSTRALIAN INFORMATION COMMISSIONER
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "Sia Lagos".

Registrar

Important Information

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

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No. VID829/2023

Federal Court of Australia
District Registry: Victoria
Division: General

JAN MAREK KANT

Applicant

THE AUSTRALIAN INFORMATION COMMISSIONER

Respondent

Date: 20 October 2024

Applicant's Submissions in Reply

(in the 18 Jul 2024 amended interlocutory application)

Errors

1. The Respondent's 18 Oct 2024 submissions are his **complete** submissions in the 18 Jul 2024 (amended) interlocutory application¹, not an "outline" of his submissions.
2. The 27 Dec 2023 *Application to Review a Registrar's Decision* was the Applicant's third interlocutory application **[1]**² in this proceeding.
3. The Court has already ordered the 18 Jul 2024 (amended) interlocutory application be determined³. **[2, 18]**
4. The background set out in submissions filed 12 Apr 2024 has material omissions and errors⁴.
5. The writ of mandamus is only part **[5]** of the final relief sought by the Applicant in this proceeding⁵.
6. Any kind of investigation by the Respondent **[6]** is presently of no value to the Applicant.

Investigation

7. It is to be expected the OAIC will **not** be substantially less ineffectual before the Court reaches a final determination on the issuance of a writ of mandamus; **[6]** proposed order 3 is therefore necessary.

¹ See: item 2 of the 20 Sep 2024 Order

² Digits enclosed in brackets point to same-numbered items in the Respondent's 18 Oct 2024 submissions

³ See: item 4 of the 20 Sep 2024 Order

⁴ See also: paragraphs 1 through 4 of the Applicant's 23 Apr 2024 submissions

⁵ See also: items 4 and 5 of the 24 Jan 2024 amended originating application

8. Proposed orders 2 and 3 are not separable. [7] Together, these orders would require the Respondent action the Applicant's original request with necessary modification. (17)⁶
9. Proposed order 2 would require the Respondent find and hold onto relevant information; applications for discovery [7] would come later. Making the information "discoverable" necessarily requires its discovery won't be impermissible.
10. Information found pursuant to proposed order 2 is not intended for use in this proceeding only⁷. [8] Discovery will assist in resolving claims to damages⁸ after recommencement of the proceeding pursuant to the proposed order 4(b).

Proposed order 4(a)

11. 21(1) *Federal Court of Australia Act 1976* allows the Court to make the proposed order 4(a) absent any application for joinder by any party.

Conspiracy

12. The deponent was at all times compellable to give further evidence about facts disclosed in his affidavits⁹.
13. By necessary implication of 41(3) *Evidence Act 1995*, the truthfulness of a deponent or accuracy of any information given by him in a proceeding can be challenged. The Respondent has not sought to cross-examine the deponent¹⁰; there can be no doubt (in this proceeding, at least) about the truth of his evidence.
14. The Respondent gave no evidence inconsistent with evidence given by the Applicant, nor has the Respondent challenged any of the evidence given by the Applicant. No balancing of probabilities is required in this matter; the Court must find the case of the Applicant proved¹¹. [11]

Legal Services Directions

15. The Respondent is a *non-corporate Commonwealth entity* in meaning of *Public Governance, Performance and Accountability Act 2013* and *Legal Services Directions 2017*.
16. 4.2 *Legal Services Directions 2017* is conditioned on 4.1 *Legal Services Directions 2017* with reference to "the entity".
17. 4.2 *Legal Services Directions 2017* requires the Respondent to conduct litigation in accordance with Appendix B of *Legal Services Directions 2017*.
18. The Respondent conducting litigation inconsistently with Appendix B of *Legal Services Directions 2017* is unlawful (whether or not obligations therein are enforceable on application by the Respondent's boss or otherwise); and,

⁶ Digits enclosed in ellipses point to same-numbered items in the Applicant's 24 Sep 2024 submissions

⁷ Note *Rule 7.22*, for example

⁸ See: item 4 of the 24 Jan 2024 amended originating application

⁹ See: s.12 *Evidence Act 1995*

¹⁰ See: *Rule 29.09 & 47(4) Federal Court of Australia Act 1976*

¹¹ See: 140(1) *Evidence Act 1995*

19. 37N(1) *Federal Court of Australia Act 1976* requires parties to a civil proceeding before the Court conduct the proceeding in a way that facilitates the just resolution of disputes according to the law; therefore,
20. The Respondent conducting litigation inconsistently with Appendix B of *Legal Services Directions 2017* is failure to comply with a duty imposed by 37N(1) *Federal Court of Australia Act 1976* and the Court must take account of it in exercising the discretion to award costs¹²; and,
21. 55ZG(2) *Judiciary Act 1903* must be read to exclude **[19]** enforcement by the award of costs in civil proceedings.
22. Item 2 of Appendix B of *Legal Services Directions 2017* requires the Commonwealth pay costs **[19]** of a test case in the public interest¹³. The “Commonwealth” that is required to pay costs in this matter is either the Respondent or the Federal Court.

Prepared by: Jan Marek Kant, Applicant

¹² See: 37N(4) *Federal Court of Australia Act 1976*

¹³ See especially: Note 4 in Item 2 of *Appendix B of Legal Services Directions 2017*