

## NOTICE OF FILING

### Details of Filing

Document Lodged:	Notice to Admit - Form 41 - Rule 22.01
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
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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.

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



## Notice to admit

No. VID829/2023

Federal Court of Australia

District Registry: Victoria

Division: General Division

### JAN MAREK KANT

Applicant

### THE AUSTRALIAN INFORMATION COMMISSIONER

Respondent

To the Respondent

The Applicant requires you to admit, for the purpose of the proceeding only, the truth of the following facts:

1. Matters arising under the *Privacy Act 1988* by extension of paragraph 12B(2)(a) of that Act do not arise directly under treaty.
2. "Common law" is the common law in Australia as modified by the Constitution and statute law in force in the State of Victoria.
3. Insofar as these are not inconsistent with the law creating the tort, the *general principles of criminal responsibility* of Chapter 2 of the *Criminal Code* apply with necessary modification in torts of intentional and reckless *mens rea*.
4. The meaning of "act or practice" in the *Privacy Act 1988* is the same as that of "conduct" in Chapter 2 of the *Criminal Code*.
5. The meaning of "obligation of confidence" in Part VIII of the *Privacy Act 1988* is not limited by anything given in the *Public Service Regulations 2023* or *Archives Act 1983*.
6. There is a common law tort of "disprivacy", committed when:
  - a. A person has duty to refrain from particular procurement or use or disclosure of personal information; and,

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- b. The person engages in conduct that constitutes such a procurement or use or disclosure of personal information, or that may result in such procurement or use or disclosure; and,
- c. The person intends to engage in the conduct; and,
- d. The person is reckless as to whether the conduct may result in procurement or use or disclosure of personal information; and,
- e. The person is reckless as to whether the intended procurement or use or disclosure of personal information is one from which the person has duty to refrain.

7. A person may claim in *disprivacy*:

- a. compensatory and aggravated damages for any harm suffered by result of the conduct, including injury to the person's feelings or humiliation; and,
- b. exemplary damages, whether or not claiming to have suffered harm.

8. Insofar as rights to proceed may be otherwise lacking, paragraph 12B(2)(a) of the *Privacy Act 1988* confers, by extension of *Article 3* and *Article 17* of the *International Covenant on Civil and Political Rights*, a right to proceed against the Commonwealth in *disprivacy*.

If you dispute the truth of any fact or the authenticity of any document specified in this notice, you may, within 14 days after service of this notice on you, serve on the Applicant a notice of dispute (Form 42).

**If you do not serve a notice of dispute on the Applicant within 14 days, you will be taken to have admitted the truth of each fact or the authenticity of each document specified.**

Date: 28 January 2024

  
Signed by Jan Marek Kant  
Applicant