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Important Information

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NO. VID 829/2023

JAN MAREK KANT
Applicant

AUSTRALIAN INFORMATION COMMISSIONER
Respondent

Applicant's submissions

INTRODUCTION

1. The **Respondent**[1] has a duty to investigate matters like those made known to him by the Applicant. This duty is imposed on him by *Privacy Act 1988* and other laws in accordance with 27(1)(a) *Privacy Act 1988*. The duty is *enforceable by proceedings in a court*[2] including u*nder Part 7 of the Regulatory Powers Act*[3]. The evidence indicates there may be such a matter and the fact of its existence is not in dispute in this proceeding. The Respondent refused or otherwise failed to properly discharge a duty imposed on him by law and must now be compelled to do so by order of the Court.

2. A recent development of public law requires the Applicant now demonstrate not only the decision made by the Respondent was wrong, but also the decision that was in fact made could have, realistically, been different had there been no error[4][**7**][5]. With these submissions, the Applicant shows the decision made by the Respondent is wrong and his new argument is without substance, and, as a necessary step in showing the decision(s) could have been different had there been no error, demonstrates each of the following:
    a. The Respondent has all necessary power to investigate *acts or practices* that may be inconsistent with or contrary any right or freedom recognised in the International Covenant on Civil and Political Rights (**ICCPR**);
    b. The Respondent can deal with *acts or practices*[6] that may be inconsistent with or contrary to any ***human right*** (in meaning of *Australian Human Rights Commission Act 1986*) as an *interference with the privacy of an individual* under 13(1) or 13(4) *Privacy Act 1988*

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[1] For relevant purposes, the "Respondent" is the "*Commissioner*" in 27(2) *Privacy Act 1988* and the *Office of the Australian Information Commissioner* in 5(1) *Australian Information Commissioner Act 2010* (***OAIC***) collectively
[2] in words borrowed from 10A(2) *Australian Human Rights Commission Act 1986*
[3] See: 80W(1) *Privacy Act 1988*; the Applicant should have leave to further amend his *Form 69* application if required for compliance with *Rule* 8.03
[4] See: *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12 [14]
[5] bold-text numbers enclosed in brackets are in this document references to same-numbered paragraphs in the 17 Oct 2025 *Submissions* filed by the Respondent
[6] the meaning of "act or practice" in *Privacy Act 1988* is the same as the meaning of "conduct" in *Criminal Code* Chapter 2. Refer to: Item 4 in the 28 Jan 2024 *Notice to admit* & *DISPUTED FACTS* in the 12 Feb 2024 *Notice of Dispute* & Items 14 – 19 in the 12 Mar 2024 *Applicant's Submissions*

c. The Respondent has all necessary power to inquire into *acts or practices* that may be inconsistent with or contrary to any of the rights or freedoms in Part 2 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (***The Charter***);
d. With respect to each of the "intelligence agencies"[7] referred to in *Inspector-General of Intelligence and Security Act 1986* as ***ASIO***, ***ASIS***, AGO, ASD, DIO or ONI, the Respondent has all necessary power to inquire into any matter relating to the lawfulness and propriety of particular activities of the organisation.
e. The Respondent has all necessary power to inquire into *acts or practices* of a ***State or Territory authority*** in s.6C *Privacy Act 1988* that may be inconsistent with or contrary to any *human right*;
f. The Respondent has all necessary power to inquire into acts or practices of the *Central Intelligence Agency* of the United States (***CIA***) that may be inconsistent with or contrary to any *human right*.

RESPONDENT'S CONDUCT OF THE PROCEEDING

Fairness

3. *The requirement of fairness is not only independent, it is intrinsic and inherent. According to our legal theory and subject to statutory provisions or other considerations bearing on the powers of an inferior court or a court of limited jurisdiction, the power to prevent injustice in legal proceedings is necessary and, for that reason, there inheres in the courts such powers as are necessary to ensure that justice is done in every case – Dietrich v The Queen* [1992] HCA 57 at [134], per Gaudron J (citations omitted)

4. *In English law, the right of access to the courts has long been recognised. The central idea is expressed in chapter 40 of the Magna Carta of 1215 ("Nulli vendemus, nulli negabimus aut differemus rectum aut justiciam"), which remains on the statute book in the closing words of chapter 29 of the version issued by Edward I in 1297:*

> *"We will sell to no man, we will not deny or defer to any man either Justice or Right."*

Those words are not a prohibition on the charging of court fees, but they are a guarantee of access to courts which administer justice promptly and fairly – R (UNISON) v Lord Chancellor [2017] UKSC 51 at [74], per Lord Reed (with whom the other six Lords/ Lady agreed)

Further submissions

5. The Justice Snaden invited the Respondent to make further submissions on the question of "*whether (or how) it was reasonably open for the delegate to characterise the 22 August complaint as being <u>exclusively</u> about interferences with the applicant's privacy by ASIO,* (or) *why that is (or might be) a matter of limited or no significance*".

[7] "intelligence agency" has different meaning in *Privacy Act 1988*

6. The Respondent filed such further submissions in the matter on 17 October 2025. Him doing so was procedurally unfair notwithstanding the said invitation. The Court must now take such extraordinary measures as are necessary to avoiding causing a substantial injustice.

7. The Respondent having unfairly made further submissions requires the Court now order all remedy as stated in the 24 Jan 2024 amended *Originating Application for Relief Under Section 39B Judiciary Act 1903*, whether or not the Applicant would otherwise be entitled to any such remedy claimed by him. Whereas making such orders may otherwise cause an injustice, it is sufficient to find the Respondent knew (or ought to have known) better than to make further submissions in the matter; any problem caused the Respondent by such grant of said remedy is ultimately a problem he caused himself.

8. The Court is not required to avoid doing injustice the Respondent if such an injustice is necessary to prevent a substantial injustice done the Applicant. Allowing procedural unfairness to result in substantial injustice done a *subject* is not "*possible*" in meaning of s.64 *Judiciary Act 1903*.

APPREHENDED BIAS

9. *In some cases, where an error is established, the error will be jurisdictional irrespective of any effect that the error might or might not have had on the decision that was made in fact. In other cases, the potential for an effect on the decision will be inherent in the nature of the error. An example of the former is apprehended or actual bias. An example of the latter is unreasonableness in the final result. In such cases, the error necessarily satisfies the requirement of materiality – LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12 (the ***material errors case***) at [6], per Gageler CJ and Gordon, Edelman, Steward, Gleeson, Jagot JJ (citations removed)

10. *Evidence which tells against the probability that a right motive was the sole or predominant cause of the conduct goes to provide a foundation on which the jury may reason, through the presumption that there must be some explanation of what the defendant did, to the conclusion that he must have been actuated by an inadmissible motive of some kind or other – Trobridge v Hardy* [1955] HCA 68; 94 CLR 147 at p.163, per Kitto J

11. *Section 12B is titled 'Severability – additional effect of this Act'. A severability clause generally establishes "a presumption in favour of the independence, one from another, of the various provisions of an enactment, to which effect should be given unless some positive indication of interdependence appears from the text, context, content or subject matter of the provisions". This is consistent with the explanation of s 12B in the explanatory memorandum to the Privacy Amendment (Enhancing Privacy Protection) Bill 2012, which indicates that s 12B is intended to ensure that the Privacy Act is given the widest possible operation consistent with Commonwealth constitutional legislative power* – 'Respondent's Outline of Submissions' (12 April 2024), *Australian Information Commissioner* at [19] (citations omitted)

12. *By only applying to the means of collection, this requirement, that personal information may only be collected by fair and lawful means, may not prevent other* ***inappropriate***[8] *practices. While a collection may not reach an unfair "means" threshold such as collection through deception, there are collection practices which are nonetheless are unfair in that they adversely affect rights and interests. Examples may include the targeted collection of personal information from children or vulnerable people. In addition,* ***determining whether conduct is unlawful may be a complex task for the OAIC without the assistance of a decision of a court*** *or finding of a relevant decision-making body* – Falk, A (2020) *'*Privacy Act Review – Issues Paper'*, Office of the Australian Information Commissioner*[9] at [6.6] (emphasis added)

13. Item 6.6 of the Respondent's *Issues Paper* can be treated as an admission in 81(1),82(b) *Evidence Act 1995*[10].

14. The nature of materials produced to the Applicant by the Respondent cannot be accounted for without imputing to him an improper (perhaps *inappropriate*) motive such as stated in the Applicant's 22 Nov 2023 *Notice of intention to adduce coincidence evidence*.

15. It is to be inferred the Respondent, seeking to:
    a. obtain the assistance of the Court in redrawing limits of his power; and,
    b. obtain orders to which he can point if the *ASIO* Director-General protests him investigating *ASIO*'s conduct in relation to the Applicant; and,
    c. create new case law to which he can point if the *ASIO* Director-General protests any future investigation by him of *ASIO*;

    produced to the Applicant in 12 Sep 2023 his decision, and again on 21 Sep 2023 with emphasis on relevant words (**"JMK-10"** pp.40–42), intending the Applicant "appeal" the decision by way of an application for review of it by the Federal Court or Federal Circuit Court and the relevant court inevitably find in favour of the Applicant. In producing his decision and throughout the proceeding the Respondent sought to prove the Applicant's case as necessary to that end. This is evident in:
    d. the Respondent filing a *Tender Bundle* containing the 21 Aug 2023 letter from *IGIS* and emails he received from the Applicant; and,
    e. the Respondent in his submissions making the Applicant's case for him so far as it concerns the Respondent investigating *ASIO*; and,
    f. the Respondent making submissions that advance the Applicant's case, when considered by the Court, despite on their face appearing to argue that relief as sought by him should not be granted.

[8] "propriety", not necessarily unlawfulness (by reason of "unfairness" or otherwise), of particular activities is a matter of interest to the Respondent in his official capacity. There must be a reason the Respondent interests himself in matters of propriety generally; the reason is seen to relate to a statutory duty of the Respondent to, when necessary, inquire into matters of propriety of particular activities of the organisations referred to as ASIO, ASIS, AGO, ASD, DIO and ONI in *Inspector-General of Intelligence and Security Act 1986*.
[9] available at: oaic.gov.au/__data/assets/pdf_file/0018/1773/privacy-act-review-issues-paper-submission.pdf;
[10] the Applicant will seek leave to exhibit the document if the Respondent objects to him relying on it

16. The conspicuous omission, from correspondence disclosing administrative decisions made by the Respondent, of information concerning "*appeal*" of his decisions to the *Administrative Appeals Tribunal* is not made less significant by inclusion of information about *Making a complaint to the Commonwealth Ombudsman*. The evidence is the Respondent had good reason to expect the Applicant would not seek redress with the Ombudsman. The same conspicuous omission is apparent in the Respondent's 12 Sep 2023 and 21 Sep 2023 letters and his 28 Aug 2023 email concerning his refusal to investigate a complaint about the *Inspector-General of Intelligence and Security* (***IGIS***).

17. The Respondent's decision not to investigate the complaint about *IGIS* was likewise designed to fail against judicial review (**"JMK-12"** pp.50–51), including on grounds as stated by the Applicant in the relevant form when making the complaint (**"JMK-12"** p.9)[11], and, much like the 12 Sep 2023 decision, was attempt by the Respondent to have redrawn the limits of his power. The 12 Sep 2023 refusal was not the first attempt by the Respondent to use the Applicant and the courts for such a purpose, it was merely the first instance in which the Applicant "took the bait".

18. Whether so extensive a redrawing of the limits of power of the Respondent as must, because of the *material errors case*, now result of the proceeding was intended or expected by him is not to the Applicant apparent in the evidence.

19. The Respondent's decision not to inquire into matters as disclosed to him by the Applicant on 22 Aug 2023 was made with intention the Applicant "*appeal*" it; it was necessarily made in error of jurisdiction.

RESPONDENT'S SUBMISSIONS

Enquiry Form

20. Was the 22 Aug 2023 notification in the "*Enquiry Form"* bearing *Reference Code: XQL636PW* a "complaint" of a kind discussed in Respondent's submissions with reference to *Rana v Australian Information Commissioner* (2023) [**7**], or did it include one or more such complaints? Not necessarily.

21. The *OAIC* has (or had at relevant times) standard contact forms including the "*Information Commissioner Review Application form*", "*Privacy complaint form*" and "*Enquiry Form*" as appear in the evidence. The *OAIC* has (or had at relevant times) also a "*Freedom of Information Regulatory Branch*", an "*Early Resolution Team*" which deals with privacy complaints, and an "*Enquiries Team*". The Applicant's 22 Aug 2023 contact (the ***enquiry***) was made in an "*Enquiry Form*" and was on 22 Aug 2023 received by the Respondent's "*Enquiries Team*"[12].

[11] note: denying all access to current intelligence agency records would be unlawful, as stated by the Applicant in the complaint form, because Chapter III of the Constitution requires that such records are at very-least discoverable in proceedings against the Crown or against individuals employed by the intelligence agencies

[12] note the reference codes *EN23/09186*, *XQL636PW* and timestamps in documents reproduced in "**JMK-10"**

22. The *enquiry* was not made in the "*Privacy complaint form*" and, to avoid confusing matters, should not now be referred to as a "complaint".

23. It is to be noted the Applicant's letter in the *enquiry* purports to concern a "*Request to investigate under 12B(2) of the Privacy Act 1988*". While it doesn't necessarily prevent the *enquiry* being also a complaint like in 36(1) *Privacy Act 1988*, the request, purporting to be made of the *Commissioner* under 12B(2), can't be just a 36(1) complaint about *ASIO*. 27(4) *Privacy Act 1988* confirms the *Commissioner* has investigative functions in s.12B of the *Act*. The functions include the *Commissioner* also investigating acts and practices that may be violation of rights or freedoms recognised in ICCPR.

24. The Applicant's conduct subsequent to making the *enquiry* does not, as the Respondent submits, support a conclusion that the *enquiry* was confined to any one entity or the Applicant acquiesced in it being treated that way [**4**][13]. The Applicant understood the part of the *enquiry* concerning interference by *ASIO* with his privacy as being delt with by the Respondent as a complaint (numbered *CP23/02755*) [**6**]. Observations stated by the Applicant in his 12 Sep 2023 email are (perhaps otherwise than in his use of the word "void" where he meant "inoperative") good in the law [**6,7**].

25. The administrative decision that is subject of the present judicial review proceeding is the Respondent's decision not to deal with the matters of the *enquiry* [**8**].

Not a complaint to the CIA

26. The "*Contact CIA*" webform submission recorded in the document in p.8 of the Respondent's *Tender Bundle* is not a complaint [**3.2**]. The Applicant has records of his 24 Apr 2024 request of the *CIA* for access to information about him, and of his 17 May 2024 notification to the "*Privacy and Civil Liberties Officer*" of that organisation concerning an "*unsatisfactory*" outcome of the earlier request. The 24 Apr 2024 and 17 May 2024 contacts are not in the evidence but the Applicant can produce records of these should it please the Court.

27. *ASIO* is known to undertake *joint operations* with partner *foreign services* (not being the *ASIS foreign service*), including such operations which target Australian persons of "security interest" (**"JMK-35"** p.35). The "*Contact CIA*" webform submission is of interest in relation to the *enquiry* so far as it concerns the "*One or more intelligence agencies*", the "*Inspector-General of Intelligence and Security*" and the "*Office of Inspector General, United States*" mentioned in the letter.

No complaint specific to mishandling of personal information by ASIO

28. Neither the *enquiry* nor documents which accompanied the *enquiry* include a claim, made by the Applicant, of "mishandling" of his personal information by *ASIO* [**5**]. The 18 May 2023 letter to *ASIO* is a request for access to records about the Applicant. Any such claim implied in the 21 Aug 2023 letter from *IGIS* is made by the *IGIS*.

[13] the opposite is true

29. The "*2 July 2023 letter*" to *IGIS* is a "*complaint*" in each of paragraphs 8(1)(a), 8(2)(a), 8(3)(a), 8(3)(b) and 8(3A)(c) of *Inspector-General of Intelligence and Security Act 1986* (**IGIS Act**). It must be expected that a person who complains about action taken by relevant agencies might be unable to identify the particular organisation [**3.1,3.2**]. It is something of a defining characteristic of "intelligence agencies" (and similar organisations) that people working for such an organisation typically[14] don't make the fact of their working for it known[15].

30. The Applicant complained to *IGIS* about "*Multiple and repeated interferences with my privacy by one or more intelligence agencies*" (the ***interferences-generally***). Pursuant to 11(1) IGIS Act, the *IGIS* then proceeded to inquire into such action taken by the agencies. In the course of said inquiries the *IGIS* found *ASIO* had engaged in conduct amounting to one or more interferences with the privacy of the Applicant (***ASIO interferences***). The *ASIO interferences* included:
    a. surveillance of the Applicant; and,
    b. security investigation/assessment of the Applicant after his separation from the *Defence Science and Technology Group*; and,
    c. security investigation/assessment of the Applicant throughout.

31. Having examined all the material available in relation to the Applicant's complaint about "*Multiple and repeated interferences with my privacy by one or more intelligence agencies*", the *IGIS* decided pursuant to 11(2)(c), 11(4A) IGIS Act to discontinue further inquiry into the *ASIO interferences* because, having had regard to all the circumstances of the *interferences-generally*, he was satisfied that further inquiry **by him** into the *ASIO interferences* was not warranted as that part of the Applicant's complaint could be more effectively or conveniently dealt with by the *Information Commissioner*.

32. The 21 Aug 2023 letter shows the *IGIS* exercised the discretion conferred on him by 32AG IGIS Act to not transfer to an integrity body a part of a complaint despite being satisfied the complaint-part could be more effectively or conveniently dealt with by the relevant integrity body. The *IGIS* left it to the Applicant to disclose the matter of *ASIO interferences*, at his own convenience, to the *Information Commissioner*. It was convenient for the Applicant to disclose the matter to the Respondent in and alongside his *enquiry* made the following day.

33. Documents produced to the Respondent with the *enquiry* included documents which indicate the "*relevant conduct"* [**2**] may include the *ASIO interferences* and perhaps other conduct of *ASIO*.

34. The *IGIS* did not "*close the matter*" [**2.2**] of the *interferences-generally* nor of the *ASIO interferences*. The term "*close*" appears neither in the 21 Aug 2023 letter nor in IGIS Act, nor do the words "*close*" or "*closed*" appear anywhere in the text of *Privacy Act 1988*; whatever the Respondent intends it to mean in his submissions is to be understood from a reading of documents in his *Tender Bundle*, in which he discloses having "*decided to close* (a) *complaint under s 36(1) of the Privacy Act 1988*

[14] despite exceptions in evidence
[15] this fact is common knowledge and the Court can take judicial notice of it

(Cth)" and insists that a "*complaint remains closed under s 36(1) of the Privacy Act*". 36(1) *Privacy Act 1988* reads:

> *An individual may complain to the Commissioner about an act or practice that may be an interference with the privacy of the individual.*

The Respondent's submissions in [**2.2**] should be understood as attempt by him to confuse the Applicant and/or the Court.

No reason to refuse to investigate the matter otherwise than as concerns ASIO

35. The evidence is the Respondent with his 12 Sep 2023 letter disclosed his decision to refuse to investigate all of the matter(s) of the *enquiry*[16] [**8**]. If, as the Respondent has submitted, the *enquiry* gave rise to a separate complaint for every "respondent" specified therein [**7**], the Respondent has refused to deal with each of those several complaints because of his having concluded that any *act or practice* done by *ASIO* is excluded from operation of *Privacy Act 1988*[17]. Even if *ASIO* were excluded from operation of *Privacy Act 1988*, the fact would not be proper ground to refuse to investigate the *acts or practices* of persons other than *ASIO*.

36. The Respondent erred in finding *"that* (a particular) *complaint* (perhaps implied in the *enquiry*) *did not meet the requirements of s 36(1) of the Act*" because "*s 7(1A)(a) of the Privacy Act states that any act or practice done by ASIO is excluded from coverage of the Privacy Act*" and so refusing to further deal with the *enquiry* [**5**].

INTERPRETATION

Purpose or object of *Privacy Act 1988*

37. The provisions of *Privacy Act 1988* be must be interpreted subject to 15AA *Acts Interpretation Act 1901*. That section reads:

> *In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation.*

38. Some objects of *Privacy Act 1988* are expressly stated in s.3 *Privacy Act 1988*. s.3 of the Act as at 22 Aug 2023 reads (emphasis added):

> *The objects of this Act are:*
>
> *(a) to promote the protection of the privacy of individuals; and*
> *(b) to recognise that the protection of the privacy of individuals is balanced with the interests of entities in carrying out their functions or activities; and*

[16] note *EN23/09186* appearing on documents in pp.13,14,16 of the *Tender Bundle* & **"JMK-10"** p.18, absent evidence of the Respondent otherwise dealing with matters of the *enquiry*.
[17] e.g. a complaint made about an act or practice of the *Department of Defence* does not meet requirements of 36(1) *Privacy Act 1988* because 7(1A)(a) *Privacy Act 1988* states that any act or practice done by ASIO is excluded from coverage of the Privacy Act

*(c) to provide the basis for **nationally consistent regulation** of privacy and the handling of personal information; and*

*(d) to promote **responsible and transparent** handling of personal information by entities; and*

(e) to facilitate an efficient credit reporting system while ensuring that the privacy of individuals is respected; and

*(f) to facilitate the **free flow of information across national borders** while ensuring that the privacy of individuals is respected; and*

(g) to provide a means for individuals to complain about an alleged interference with their privacy; and

*(h) to **implement Australia's international obligation** in relation to privacy.*

39. Purposes of *Privacy Act 1988* can be further inferred from words of the preamble to the Act. The preamble reads (emphasis added):

> *WHEREAS Australia is a party to the International Covenant on Civil and Political Rights, the English text of which is set out in Schedule 2 to the Australian Human Rights Commission Act 1986:*
>
> *AND **WHEREAS, by that Covenant, Australia has undertaken to adopt such legislative measures as may be necessary** to give effect to the right of persons not to be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence:*
>
> *AND WHEREAS Australia is a member of the Organisation for Economic Co-operation and Development:*
>
> *AND WHEREAS the Council of that Organisation has recommended that member countries **take into account in their domestic legislation** the principles concerning the protection of privacy and individual liberties set forth in Guidelines annexed to the recommendation:*
>
> *AND **WHEREAS** Australia has informed that Organisation that it **will participate in the recommendation** concerning those Guidelines:*
>
> *BE IT **THEREFORE** ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:*

40. In interpreting a provision of *Privacy Act 1988*, an interpretation that would best result in there having been adopted "*such legislative measures as may be necessary to give effect to the right of persons not to be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence"* is preferrable to other interpretations.

41. In interpreting a provision of *Privacy Act 1988*, an interpretation that would best result in "*the principles concerning the protection of privacy and individual liberties set forth in* (the) ***Guidelines***" having been taken into account in Australian legislation is preferrable to other interpretations.

42. In interpreting a provision of *Privacy Act 1988*, an interpretation that would best result in Australia's international obligation in relation to privacy having been implemented is preferrable to other interpretations.

43. In interpreting a provision of *Privacy Act 1988*, an interpretation that would best result in there having been implemented nationally consistent regulation of privacy is preferrable to other interpretations.

OECD Guidelines

44. The original *Guidelines* were annexed to the *Recommendation of the* (OECD) *Council Governing the Protection of Privacy and Transborder Flows of Personal Data* made 23rd September 1980[18]. The OECD council recommended (without front matter):

    (1) That Member countries take into account in their domestic legislation the principles concerning the protection of privacy and individual liberties set forth in the Guidelines contained in the Annex to this Recommendation which is an integral part thereof;

    (2) That Member countries endeavour to remove or avoid creating, in the name of privacy protection, unjustified obstacles to transborder flows of personal data;

    (3) That Member countries co-operate in the implementation of the Guidelines set forth in the Annex;

    (4) That Member countries agree as soon as possible on specific procedures of consultation and co-operation for the application of these Guidelines.

45. The OECD's *Guidelines* were revised with the *Recommendation of the Council concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data*[19] on 11 July 2013. The OECD council recommended (without front matter):

    that Member countries:

    - *Demonstrate leadership and commitment to the protection of privacy and free flow of information at the highest levels of government;*
    - *Implement the Guidelines contained in the Annex to this Recommendation, and of which they form an integral part, through processes that include all relevant stakeholders;*
    - *Disseminate this Recommendation throughout the public and private sectors;*

46. The preamble to *Privacy Act 1988* must now refer to *Guidelines* as revised.

47. Item 6 of *Guidelines* reads:

[18] The 23 Sep 1980 *Recommendation* is available at oecd.org/content/dam/oecd/en/publications/reports/2002/02/oecd-guidelines-on-the-protection-of-privacy-and-transborder-flows-of-personal-data_g1gh255f/9789264196391-en.pdf. The Applicant will seek leave to exhibit the document if the Respondent objects to him relying on it.

[19] The 23 Sep 1980 *Recommendation* is available at legalinstruments.oecd.org/public/doc/114/114.en.pdf. The Applicant will seek leave to exhibit the document if the Respondent objects to him relying on it.

These Guidelines should be regarded as minimum standards which can be supplemented by additional measures for the protection of privacy and individual liberties, which may impact transborder flows of personal data.

A similar clause appears in *Guidelines* as annexed to the 23 Sep 1980 *Recommendation*.

48. The OECD's *Guidelines* include those concerning a "*privacy enforcement authority*". Item 1.d of *Guidelines* reads:

    For the purposes of these Guidelines:

    d) "privacy enforcement authority" means any public body, as determined by each Member country, that is responsible for enforcing laws protecting privacy, and that has powers to conduct investigations or pursue enforcement proceedings;

49. Item 1.d of the *Guidelines* merely defines "*privacy enforcement authority*" for purposes of *Guidelines* but a requirement that such a public body exist, and a further requirement that it be "*competent*", is necessarily implied in Item 15.b of the *Guidelines*. Item 15.b of the *Guidelines* reads (emphasis added):

    A data controller should:

    b) Be prepared to demonstrate its privacy management programme as appropriate, ***in particular at the request of a competent privacy enforcement authority*** *or another entity responsible for promoting adherence to a code of conduct or similar arrangement giving binding effect to these Guidelines;*

50. The *Information Commissioner* is the "*privacy enforcement authority"* the Parliament has provided for the purposes of *Privacy Act* 1988 and *Guidelines*. In interpreting provisions of *Privacy Act 1988*, the purpose and content of the *Guidelines* should be kept in mind; especially so in interpreting provisions relating to functions of the *Information Commissioner*.

Inspector-General of Intelligence and Security Act 1986

51. Provisions of IGIS Act must likewise be interpreted subject to 15AA *Acts Interpretation Act 1901*.

52. A relevant object of IGIS Act appears in 4(d) IGIS Act. 4(d) IGIS Act reads:

    The objects of this Act are:

    (d) to assist the Government in assuring the Parliament and the public that intelligence and security matters relating to Commonwealth agencies are open to scrutiny, in particular the activities and procedures of intelligence agencies.

53. An important object of IGIS Act appears also on "reading between the lines" of a speech made in Parliament on the subject of *Inspector-General of Intelligence and Security Bill 1986* and related Bills. Relevant text of *Hansard* (*Commonwealth*) p.4383 reads:

(T)*hese Bills will not finish off ASIO, but they will finish off ASIO being used by successive reactionary governments to stifle political debate in this country. That is what those governments in the past used ASIO for. That is what the honourable member for Gippsland is insinuating the Opposition is going to use ASIO for if it ever becomes the Government.*

It is a characteristic of a bureaucracy that, once it is established, it takes off and assumes a life of its own. It is extremely virile, and it is quick to start its filing systems and dossiers. Once established, a bureaucracy tends to be indispensible and independent to the point of rejecting outside control. It develops internally into a formal, social organisation whose personnel defend its entrenched interests and view its existence per se-which, for it, is more important than providing assistance to its clientele or its higher elected officials, including the relevant Minister. Bureaucracy was aptly described by American sociologist Robert King Merton, who said:

> *Bureaucracy is administration which almost completely avoids public discussion of its techniques, although there may occur public discussion of its policies. This secret is confined neither to public nor private bureaucracies. It is held to be necessary to keep valuable information from private economic competitors or from foreign and potentially hostile groups.*

If this description of bureaucracy applies to private and public administration, it applies even more to the bureaucracy of spooks. ASIO was set up in 1949 and it did not take it long to assume all the characteristics of a bureaucracy. Being a secret intelligence organisation, it became more of a force than bureaucracies usually tend to become. Soon after its establishment, ASIO started busily to accumulate dossiers, and in the context of the Cold War it found a favourable climate of distrust, sown in the Australian community by the conservative forces, for its secret operations of spying on Australians who did not conform to the reactionary ideals of successive conservative governments.

…

One would only have to think of the bomb that went off on 13 February 1978 in front of the Hilton Hotel in Sydney. Only people who were trained in incapacity and ineptness, like ASIO spooks, could do such an inept bungling job, and then blame in a frame-up three Ananda Marga unfortunates for it. As I said before, ASIO never produced a spy, except for a drunken Russian diplomat, who liked the good old Scotch whisky more than his native vodka and decided to defect. ASIO's more recent scoop was the former Federal Secretary of the Australian Labor Party who, during a friendly chat to a Russian diplomat, described the political situation in Australia-a description which Mr Ivanov could have read in any Australian newspaper. If, in 37 years of its existence, this is all that ASIO produced at a cost of $35m a year, I would gladly vote for its abolition whenever Cabinet decides to propose it.

– Mr Kent, 2 June 1986

54. The purpose of IGIS Act includes ensuring *ASIO* and other agencies are "kept in line". So far it involves inquiring into *acts or practices* that are or may be inconsistent with or contrary to any human right, responsibility for keeping *ASIO* and the other agencies in line is shared between *IGIS* and the *Information Commissioner*[20].

55. Some provisions of IGIS Act, including provisions relating to inquiry/investigation, are *lex specialis* in *Privacy Act 1988*[21]. The relevant provisions of *Privacy Act 1988* must therefore be interpreted with purposes of IGIS Act in mind. Consistently with 15AA *Acts Interpretation Act 1901*, an interpretation, of a provision of *Privacy Act 1988* in which a provision of IGIS Act is *lex specialis*, best achieving also the purpose or object of IGIS Act is preferable to other interpretations.

LEGISLATIVE POWERS OF THE PARLIAMENT

Legislative power generally

56. 51(xxxix) of the Constitution empowers the Parliament to make laws giving effect to ICCPR so far as these concern the *Commonwealth* executive.

57. Chapter II, 51(xxxix), s.112, of the Constitution empower the Parliament to make laws giving effect to ICCPR so far as these concern executive government of a Territory.

58. Chapter II, 51(vi), 51(xxix), 51(xxx), 51(xxxi), 51(xxxix), s.119 of the Constitution, and 2(2) *Australia Act 1986* by implication, empower the Parliament to make laws giving effect to the ICCPR so far as these concern executive government of a State.

59. 51(vi) of the Constitution empower the Parliament to make laws with respect to intelligence agencies.

60. 51(vi), 51(xviii), 51(xix), 51(xxvi), 51(xxvii), 51(xxviii)[22], 51(xxix) of the Constitution empower the Parliament to make laws with respect to the espionage activities of bodies politic other than the *Commonwealth* taking place within Australia. s.3 *Statute of Westminster 1931* further empowers the Parliament to make laws with respect to the espionage activities of bodies politic other than the *Commonwealth* taking place not within Australia.

Invocation of legislative power in s.12B Privacy Act 1988

61. *There are different ways of undertaking the interpretive task and, in a particular case, they may yield different answers to the same questions. But if the words of a statute are clear, so too is the task of the Court in interpreting the statute with fidelity to the Court's constitutional function. The meaning given to the words must be a meaning which they can bear. As Lord Reid said in Jones v Director of Public Prosecutions:*

> *"It is a cardinal principle applicable to all kinds of statutes that you may not for any reason attach to a statutory provision a meaning which the words of that provision cannot*

[20] and the not-presently-relevant *Australian Human Rights Commission*
[21] eg. s.8 IGIS Act is *lex specialis* in 12B(2)(a) Privacy Act & Art.3 ICCPR
[22] note *Criminal Code* Part 5.2, for instance

reasonably bear. If they are capable of more than one meaning, then you can choose between those meanings, but beyond that you must not go."

– *Momcilovic v The Queen [2011] HCA 34* at [39] (citations omitted), per French CJ

62. *In reliance on s 12B(2) of the Privacy Act, which refers to the ICCPR, the applicant's argument read various Privacy Act provisions as if the text included various "rights" set out in the ICCPR. For example, he submitted that s 66(1) of the Privacy Act has effect as if it reads that:*

> *A federal court contravenes that subsection if:*
> *(a) the federal court is requested by an individual to do something required for giving effect to a right or freedom recognised in the ICCPR; and,*
> *(b) the federal court refuses or fails to do so.*

The applicant then argued that by refusing to accept his documents for filing, the Registrar breached that provision, as well as breaching s 66(1AA) which deals with systemic breaches of s 66(1) – Kant v Principal Registrar of the Federal Court of Australia [2025] FCA 274 at [50], per Murphy J

63. *The applicant's argument reflects a fundamental misunderstanding of the effect of s 12B of the Privacy Act, which is concerned with ensuring that there is a Constitutional basis for the operation of the Act. It does not operate to alter the meaning of the text of the Act as the applicant proposed. The Explanatory Memorandum to the Privacy Amendment (Private Sector) Bill 2000 provides that "Clause 12B is intended to ensure that the Act is given the widest possible operation consistent with Commonwealth constitutional legislative power." – Kant v Principal Registrar of the Federal Court of Australia* [2025] FCA 274 at [52], per Murphy J

64. s.12B *Privacy Act 1988* does not cause 66(1) *Privacy Act 1988* have the effect it would have if 66(1) consisted of a particular combination of words not being text of 66(1). However, *Privacy Act 1988* might also have the effect it would have if 66(1) were also expressed in different words. Similarly, *Privacy Act 1988* might also have the effect it would have if other provisions of the Act (to which s.12B applies) were also expressed in different words which conform with the provisions of s.12B. Such findings would not be inconsistent with the findings of the Justice Murphy in *Kant v Principal Registrar of the Federal Court of Australia* (2025).

65. Every subsection of s.12B *Privacy Act 1988* except 12B(1), which defines the term *regulated entities,* begins with the words "*This Act also has the effect it would have if its operation in relation to regulated entities were expressly confined to*". s.12B in its entirety is[23]:
    a. a single provision causing some entities to be *regulated entities* and the effect of *Privacy Act 1988* (apart from s.12) not be limited by s.12B; and,
    b. several provisions each causing the Act have additional effect in relation to the *regulated entities*.

[23] See also: Item 48 *Explanatory Memorandum*, *Privacy Amendment (Private Sector) Bill 2000*

The words of the statute are clear and "*so too is the task of the Court in interpreting the statute with fidelity to the Court's constitutional function*".

66. *Privacy Act 1988* (including s.12B) must be read as having also the effect it would have if its operation in relation to *regulated entities* were expressly confined to an operation giving the Act "*the widest possible operation consistent with Commonwealth constitutional legislative power*".

67. It is common ground s.12B *Privacy Act 1988* ensures the Act has widest possible operation consistent with *Commonwealth* constitutional legislative power.

Effect of s.12B Privacy Act 1988

Semantics

68. an ***excluded entity*** is a small business operator, a registered political party, an agency, a State or Territory authority or a prescribed instrumentality of a State or Territory.

69. ***terms of exclusion*** are the words "*that is not a small business operator, a registered political party, an agency, a State or Territory authority or a prescribed instrumentality of a State or Territory*" appearing in 6C(1) *Privacy Act 1988*.

Incorporation of ICCPR into Australian law

70. *Ratification of the ICCPR as an executive act has no direct legal effect upon domestic law; the rights and obligations contained in the ICCPR are not incorporated into Australian law unless and until specific legislation is passed implementing the provisions. No such legislation has been passed – Dietrich v The Queen* [1992] HCA 57 at [17], per Mason CJ and McHugh J

71. Some eight years after the verdict in *Dietrich v The Queen* the Parliament incorporated ICCPR into Australian law *with Privacy Amendment (Private Sector) Act 2000*. More recent cases quoting par.17 of *Dietrich v The Queen* suggest incorporation of ICCPR into Australian law has largely gone unnoticed. Perhaps par.117 in the Explanatory Memorandum to *Privacy Amendment (Private Sector) Bill 2000* and Item 35 in the Explanatory Memorandum to *Privacy Amendment (Enhancing Privacy Protection) Bill 2012* less-than-fully explained it, and perhaps text of s.12B *Privacy Act 1988* having such unusual operation so confused lawyers that, despite even the Privacy Act 1988 compilation now returning on search of *legislation.gov.au* for the phrase "*International Covenant on Civil and Political Rights*"[24], they have not made sense of it in the 25 years since its enactment.

72. Item 48 in Schedule 1 of *Privacy Amendment (Private Sector) Act 2000* incorporates ICCPR into Australian law and makes ICCPR provisions so incorporated binding on the courts, judges, and people of every State and of every part of the Commonwealth[25]. Item 3 of the same Schedule makes the ICCPR provisions so incorporated binding on persons "*whose continued presence in Australia is not subject to a limitation as to time imposed by law*" who do *acts or practices* outside Australia and the external Territories. Finding ICCPR is now incorporated into Australian law would not conflict with contrary findings, made since *Privacy Amendment (Private Sector) Act 2000* came

[24] functionality of the website at *legislation.gov.au* need not be proved in this proceeding
[25] also "*in force*" on boats which are not presently relevant. See: s.5 *Commonwealth of Australia Constitution Act*

into operation, in cases where s.12B *Privacy Act 1988* was not considered. The operation of an Act is not changed by effect of parties to a proceeding having omitted to bring it to the notice a court.

Intelligence agencies

73. *Privacy Act 1988* must also have the operation it would have in relation to the *Commonwealth* if operation of the Act were expressly confined to *regulated entities* that are corporations. The *Commonwealth*, a body politic, is always a *regulated entity* and 12B(4) therefore requires it also be a "*corporation*" (i.e. "*a body corporate*") for the purposes of the Act, and therefore also an organisation in 6C(1) and so also in 12B(1). The *terms of exclusion* must be severed. To give a different meaning to words in 12B(4) would be to limit generally the effect of *Privacy Act 1988* contrary to 12B(1).

74. The *Commonwealth* is "*A legal person*" in 6C(2) *Privacy Act 1988* who can have a number of different capacities in which he/it does things. In each of those capacities, the *Commonwealth* is taken to be a different *organisation*. In several such capacities, the *Commonwealth* is an unincorporated association constituting an intelligence agency.

75. Without limiting its effect apart from s.12B, *Privacy Act 1988* has in relation to:
    a. the *Commonwealth*; and,
    b. an intelligence agency;

    also the effect it would have if each intelligence agency were an *organisation* in relation to which:
    c. the *Australian Privacy Principles* applied; and,
    d. *Privacy Act 1988* also had the effect it would have if its operation in relation to those *regulated entities* were expressly confined to an operation to give effect to ICCPR.
    e. *Privacy Act 1988* also had the effect it would have if its operation in relation to those *regulated entities* were expressly confined to *acts or practices* covered by section 5B (which deals with acts and practices outside Australia and the external Territories); and,
    f. *Privacy Act 1988* also had the effect it would have if its operation in relation to those *regulated entities* were expressly confined to *acts or practices* of *regulated entities* taking place in the course of, or in relation to, trade or commerce between Australia and places outside Australia.

State or Territory authorities

76. Privacy Act 1988 must also have the operation it would have in relation to a State or Territory if operation of the Act were expressly confined to *regulated entities* that are corporations. A State or Territory, in every instance a body politic, is always a *regulated entity* and 12B(4) therefore requires it also be a "*corporation*" (i.e. "*a body corporate*") for the purposes of the Act, and therefore also an organisation in 6C(1) and so also in 12B(1). The *terms of exclusion* must be severed. To give a different meaning to words in 12B(4) would be to limit generally the effect of *Privacy Act 1988* contrary to 12B(1).

77. A State or Territory is "*A legal person*" in 6C(2) *Privacy Act 1988* who can have a number of different capacities in which he/it does things. In each of those capacities, the State or Territory is taken to be

a different *organisation*. In several such capacities, a State or Territory is an unincorporated association ordinarily constituting a *State or Territory authority*.

78. *Privacy Act 1988* also has the effect it would have if its operation in relation to a State or Territory were expressly confined to an operation to give effect to ICCPR. Art.50 ICCPR reads:

> *The provisions of the present Covenant shall extend to all parts of federated States without any limitations or exceptions.*

Australia is a federated "State" and the provisions of ICCPR must extend to all parts of the federation without any limitations or exceptions. The *terms of exclusion* must be severed by effect of 12B(2)(a) and the s.4 *Privacy Act 1988* requirement the Crown in right of each of the States and Territories be, for purposes of the Act, bound except to the effect of making it an *agency* or liable to be prosecuted.

79. Without limiting its effect apart from s.12B, *Privacy Act 1988* has in relation to:
    a. a State or Territory; and,
    b. a *State or Territory authority*;

    also the effect it would have if each *State or Territory authority* were an *organisation* in relation to which:
    c. the *Australian Privacy Principles* applied; and,
    d. *Privacy Act 1988* also had the effect it would have if its operation in relation to those *regulated entities* were expressly confined to an operation to give effect to ICCPR.
    e. *Privacy Act 1988* also had the effect it would have if its operation in relation to those *regulated entities* were expressly confined to *acts or practices* of *regulated entities* taking place in the course of, or in relation to, trade or commerce among the States and Territories.

<u>*Central Intelligence Agency*</u>

80. *Privacy Act 1988* must also have the operation it would have in relation to *The United States* if operation of the Act were expressly confined to *regulated entities* that are corporations. *The United States*, a body politic, is always a *regulated entity* and 12B(4) therefore requires it also be a "*corporation*" (i.e. "*a body corporate*") for the purposes of the Act, and therefore also an organisation in 6C(1) and so also in 12B(1). To give a different meaning to words in 12B(4) would be to limit generally the effect of *Privacy Act 1988* contrary to 12B(1).

81. *The United States* is "*A legal person*" in 6C(2) *Privacy Act 1988* who can have a number of different capacities in which he/it does things. In each of those capacities, *The United States* is taken to be a different *organisation*. In one such capacity, *The United States* is an unincorporated association constituting *CIA*.

82. A *foreign service* not being the *ASIS foreign service* gets no special treatment in *Privacy Act 1988*. *CIA* is, independently of s.12B *Privacy Act 1988*, also an *unincorporated association* in 6C(1)(d). Not being an *excluded entity*, *CIA* is therefore an *organisation* in 6C(1) *Privacy Act 1988* and so also in 12B(1).

83. Without limiting its effect apart from s.12B, *Privacy Act 1988* has in relation to:
    a. *The United States*;
    b. the *Central Intelligence Agency*;

    also the effect it would have if *CIA* were an *organisation* in relation to which:
    c. the *Australian Privacy Principles* applied; and,
    d. *Privacy Act 1988* also had the effect it would have if its operation in relation to those *regulated entities* were expressly confined to an operation to give effect to ICCPR; and,
    e. *Privacy Act 1988* also had the effect it would have if its operation in relation to those *regulated entities* were expressly confined to *acts or practices* covered by section 5B (which deals with acts and practices outside Australia and the external Territories); and,
    f. *Privacy Act 1988* also had the effect it would have if its operation in relation to those *regulated entities* were expressly confined to *acts or practices* of *regulated entities* taking place in the course of, or in relation to, trade or commerce between Australia and the United States; and,
    g. there existed for purposes of *Privacy Act 1988* an "*Australian link*" because the *organisation* is not subject to a 5B(2)(b) limitation **as to time** imposed by law.

84. In enacting 12B(2) *Privacy Act 1988*, the Parliament of the Commonwealth required *The United States* adhere to the provisions of ICCPR. So far as it concerns the law, the Parliament of the Commonwealth has all of the necessary power. Anything done by *The United States* contrary to ICCPR is done contrary to the law.

85. So far as it concerns the law, the *Information Commissioner* has all power he needs in order to procure records of *CIA*[26] in/for doing a thing necessary or convenient to be done for, or in connection with, the performance of his functions[27]. With regard to the *Information Commissioner* obtaining records as said, it is sufficient to note the OECD Council recommended on 23 Sep 1980 that *Member countries* co-operate on enabling *transborder flows of personal data* and the "how?" of it is for executive government, not the courts, to contemplate – the Court must not imagine what the executive may think or do. In the *material errors case*, a full bench of the High Court relevantly observed/decided (emphasis added):

> *Having found the Tribunal so erred, the Full Court then identified other aspects of the Tribunal's reasons as bases for assuming that the Tribunal would have adopted a different process of reasoning to the same end and, on that basis, concluded that the error was not material. By way of example, the Full Court reasoned that, "even if the Tribunal had concluded that subparagraph (a) was entirely irrelevant and moved on", the Full Court did not consider that there was "a realistic possibility" that the Tribunal could have found the appellant's conduct to be merely "serious" in considering the nature and seriousness of his conduct under paras 8.1(2)(a) and 8.1.1(1), or that the weighing exercise under para 8.1.1(1) could have had a "favourable outcome" for the appellant even if the Tribunal did assess his*

[26] and information not recorded in a material form
[27] See: 27(2) *Privacy Act 1988*

conduct to be "serious". Both of these findings involved the Full Court making assumptions about how the Tribunal would have undertaken the weighing exercise of the matters in para 8.1.1(1). ***Such approaches should not be adopted*** *- LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12 at [29], per Gageler CJ and Gordon, Edelman, Steward, Gleeson, Jagot JJ (citations removed)

Information Commissioner

86. The *OAIC* is an *agency* in 6(1) *Privacy Act 1988* and must therefore also be a *regulated entity* in 12B(1) – s.12B giving *Privacy Act 1988* "*the widest possible operation consistent with Commonwealth constitutional legislative power*" necessarily requires it.

87. The *OAIC* is a *regulated entity* and 12B(4) therefore requires it also be a "*corporation*" (i.e. "*a body corporate*") for purposes of the Act, and therefore also an *organisation* in 6C(1) and so also in 12B(1). The *terms of exclusion* must be severed. To give a different meaning to words in 12B(4) would be to limit generally the effect of *Privacy Act 1988* contrary to 12B(1).

88. The *Commonwealth* is "*A legal person*" in 6C(2) *Privacy Act 1988* who can have a number of different capacities in which he/it does things. In each of those capacities, the *Commonwealth* is taken to be a different *organisation*. In one such capacity, the *Commonwealth* is the *OAIC*; in the very same such capacity, the *Commonwealth* is the *Information Commissioner*.

89. Without limiting its effect apart from s.12B, *Privacy Act 1988* has in relation to:
    a. the *Commonwealth*; and,
    b. the *OAIC*; and,
    c. the *Information Commissioner*;

    also the effect it would have if the Respondent were an *organisation* in relation to which:
    d. *Privacy Act 1988* also had the effect it would have if its operation in relation to the *Commonwealth* were expressly confined to an operation to give effect to ICCPR; and,
    e. *Privacy Act 1988* also had the effect it would have if its operation in relation to the *OAIC* were expressly confined to an operation to give effect to ICCPR; and,
    f. *Privacy Act 1988* also had the effect it would have if its operation in relation to the *Information Commissioner* were expressly confined to an operation to give effect to ICCPR.

POWERS OF THE COMMISSIONER

90. The Respondent has power to "*do all things*" necessary or convenient to be done for, or in connection with, the performance of the *Commissioner's functions*.

91. Intention of Parliament with respect to 27(2) *Privacy Act 1988* can be inferred from the text of legislation conferring powers on the *Australian Federal Police*. 8(1)(be) *Australian Federal Police Act 1979* reads (emphasis added):

> *The functions of the Australian Federal Police are:* ***(be)*** *to perform such protective and custodial functions as the Minister directs by notice in writing in the Gazette, being functions*

that ***relate to a person, matter or thing with respect to which the Parliament has legislative power***;

92. The Parliament must have intended to with s.27 *Privacy Act 1988* confer on the *Information Commissioner* power to do all things necessary or convenient to be done for, or in connection with, the performance of the *Commissioner's functions* as relate to any person, matter of thing with respect to which the Parliament has legislative power[28].

"HUMAN RIGHTS"

ICCPR

93. A right of effective remedy to violation of rights and freedoms recognised in ICCPR is impliedly recognised in 3(a) ICCPR.

94. A right of having claims to remedy, of rights and freedoms recognised in ICCPR, determined by competent authorities provided for by the legal system of the "*State*" is impliedly recognised in 3(b) ICCPR.

95. A right of having remedy, to violation of rights and freedoms recognised in ICCPR, enforced by competent authorities (notwithstanding the violation was committed by persons acting in an official capacity) is impliedly recognised in 3(c) ICCPR.

96. Art.5.2 ICCPR ensures that all rights and freedoms set forth in the *Universal* ***Declaration*** *of Human Rights* (referred to in the preamble to ICCPR) are incorporated and likewise recognised in ICCPR despite any differences in their descriptions. The *Declaration* is *lex specialis* in ICCPR or vice versa.

97. The rights and freedoms recognised in ICCPR include all of:
    a. individual rights and freedoms expressly set forth or implied in *Part III* of ICCPR; and,
    b. individual rights and freedoms implicit to the rights of "peoples" expressly set forth or implied in ICCPR; and,
    c. individual rights and freedoms implicit to the obligations of "*The States Parties*" expressly set forth or implied throughout ICCPR; and,
    d. individual rights and freedoms expressly set forth or implied in the *Declaration*.

Australian Human Rights Commission Act 1986

98. Unless the contrary intention appears, in *Australian Human Rights Commission Act 1986* (**AHRC Act**) Australia includes the external Territories[29].

99. *human rights* in AHRC Act include all of the rights and freedoms recognised in ICCPR, and those recognised or declared by any relevant international instrument, as the instruments apply to Australia or were adopted by Australia[30].

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[28] this notably includes power to acquire property of the *Commonwealth* for his own use; "I don't have the necessary resources" does not excuse the *Information Commissioner* not doing his job.
[29] See: 3(1) *Australian Human Rights Commission Act 1986*
[30] See: 3(4) *Australian Human Rights Commission Act 1986*

100. A reference in AHRC Act to adoption by Australia of an international instrument being a declaration made by an international organisation is a reference to the giving of some form of public notification by Australia expressing its support for the declaration.

101. Despite Australia in AHRC Act by definition including the external Territories, the collective land and sea and other space existing within the territorial boundaries of the Commonwealth and States and Territories (including the external Territories) is incapable of giving a public notification or otherwise expressing its support for a declaration made by an international organisation. A reference to Australia in 4(6) AHRC Act must be a reference to the several or collective bodies politic of the Commonwealth and States and Territories (including the external Territories).

102. The rights and freedoms recognised in ICCPR, as it applies to Australia, include the rights and freedoms in the *Declaration* and those modified by the relevant international instruments and declarations made by international organisations. Examples of relevant instruments/declarations include:

a. the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ratified by Australia on 7 September 1989 (**CAT**) – *lex specialis* in Art. 7 ICCPR; and,
b. the *International Convention for the Protection of All Persons from Enforced Disappearance* (**CPED**), adopted by the General Assembly of the United Nations with its *resolution 61/177* on 20 December 2006, adopted by Australia (despite it not being among "*The States Parties to* (that) *Convention*") with the *Commonwealth* publicly expressing its support for the declaration therein by enacting *Criminal Code* section "*268.21 Crime against humanity—enforced disappearance of persons*" – *lex specialis* in Arts. 9.1, 9.4, 9.5, 10.1, 12.1, 12.2, 14.1, 17.2, 18.1, 19.2, 21, 22.1 ICCPR

These are the ICCPR rights and freedoms mentioned in the *enquiry* letter.

103. Enactment of *The Charter* by the Parliament of *Victoria* was a public notification by Australia expressing its support of the *Declaration* and ICCPR. *human rights* in AHRC Act thus include all rights and freedoms in the *Declaration*, ICCPR and Part 2 of *The Charter of Human Rights and Responsibilities Act 2006*.

Functions of the Australian Human Rights Commission

104. Functions of the *Australian Human Rights Commission* include inquiring into any act or practice that may be inconsistent with or contrary to any *human right*. A complaint made to the *Australian Human Rights Commission* can be transferred to the *Information Commissioner*.

105. 11(1)(f) *Australian Human Rights Commission Act 1986* reads:

> *The functions of the Commission are:*
>
> *(a) to:*
>
> *i. inquire into any act or practice that may be inconsistent with or contrary to any human right; and*

ii. *if the Commission considers it appropriate to do so— endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry*

106. 20(1)(b) *Australian Human Rights Commission Act 1986* reads (emphasis added):

Subject to subsection (2), the Commission shall perform the functions referred to in paragraph 11(1)(f) when:

(b) a complaint is made in writing to the Commission, by or on behalf of one or more persons aggrieved by an act or practice, alleging that the act or practice is inconsistent with or contrary to ***any human right***

107. 20(2) AHRC Act is not presently relevant.

108. 20(4A) *Australian Human Rights Commission Act 1986* reads (emphasis added):

Where:

(a) a complaint has been made to the Commission in relation to an act or practice; and

(b) because the Commission is of the opinion that ***the subject-matter of the complaint*** *could be more effectively or conveniently dealt with by the Information Commissioner under the Privacy Act 1988* ***as an*** *interference with the privacy of an individual under subsection 13(1) or (4) of that Act, the Commission decides not to inquire, or not to continue to inquire, into that act or practice;*

the Commission shall:

(c) transfer the complaint to the Information Commissioner;

(d) forthwith give notice in writing to the complainant stating that the complaint has been so transferred; and

(e) give to the Information Commissioner any information or documents that relate to the complaint and are in the possession, or under the control, of the Commission.

109. 20(4B) *Australian Human Rights Commission Act 1986* reads:

A complaint transferred under subsection (4A) shall be taken to be a complaint made to the Information Commissioner under Part V of the Privacy Act 1988.

110. By necessary implication of 20(4A) AHRC Act, the *Information Commissioner* can deal with an *act or practice* inconsistent with or contrary to any *human right* as an *interference with the privacy of an individual* in *Privacy Act 1988*.

111. By necessary implication of 20(4A), 20(4B) AHRC Act, the *Information Commissioner* can, in the same way he investigates an *act or practice* that may be an *interference with the privacy of the individual*, investigate any *act or practice* that may be inconsistent with or contrary to any *human right*.

112. AHRC Act and *Privacy Act 1988* together empower the Respondent to investigate any *act or practice* that may be inconsistent with or contrary to any right or freedom in the ICCPR, *Declaration*, CAT, CPED or Part II of *The Charter*.

113. *Privacy Act 1988* also has the effect it would have if its operation in relation to *regulated entities* were expressly confined to an operation:

a. giving effect to the Art.2 ICCPR obligation on Australia to "*adopt such laws or other measures as may be necessary to give effect to the rights recognized in the* (ICCPR)"; and,
b. giving effect to the 3(a) ICCPR obligation on Australia to "*ensure that any person whose rights or freedoms as* (in ICCPR*) recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity*"; and,
c. giving effect to the 3(b) ICCPR obligation on Australia to "*ensure that any person claiming such a remedy shall have his right thereto determined by competent authorities*"; and,
d. giving effect to the 3(c) ICCPR obligation on Australia to "*ensure that the competent authorities shall enforce such remedies when granted*"; and,
e. giving effect to the implied ICCPR obligation on Australia to "*adopt such laws or other measures as may be necessary to give effect to"* rights implicit to Art.3 ICCPR

114. The *Information Commissioner* is the officer of executive government tasked by the Parliament with ensuring that a person whose rights or freedoms as in *Privacy Act 1988* recognised are violated can obtain remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

115. The *Information Commissioner* is the 3(b), ICCPR "*competent authorit*(y)" tasked by the Parliament with determining claims to remedy in respect of interferences with rights or freedoms in *Privacy Act 1988*, and also the 3(c) "*competent authorit*(y)" tasked with enforcement[31] of rights and freedoms in the *Act*.

116. 12B(2) *Privacy Act 1988* must be construed as conferring on the *Information Commissioner* the function of *human rights* enforcement (including investigation) generally.

117. By extension of Art.50 ICCPR, 12B(2) *Privacy Act 1988* requires enforcement powers of the *Information Commissioner* extend to the *acts or practices* of *State or Territory authorities*.

INSPECTION-GENERALLY OF INTELLIGENCE AND SECURITY MATTERS

Inspection-Generally by IGIS

118. *IGIS* ordinarily handles complaints about the *acts or practices* of his "intelligence agencies" that may be inconsistent with or contrary to *human rights*.

119. 8(1) *Inspector-General of Intelligence and Security Act 1986* relevantly provides:

[31] See: Part V, Part VIB *Privacy Act 1988*

Subject to this section, the functions of the Inspector-General in relation to ASIO are:

(a) at the request of the Attorney-General or the responsible Minister, of the Inspector-General's own motion or in response to a complaint made to the Inspector-General, to inquire into any matter that relates to:

i. the compliance by ASIO with the laws of the Commonwealth and of the States and Territories;

…

iii. the propriety of particular activities of ASIO;

…

v. an act or practice of ASIO that is or may be inconsistent with or contrary to any human right, (etc.)

120. 8(2) *Inspector-General of Intelligence and Security Act 1986* relevantly provides:

Subject to this section, the functions of the Inspector-General in relation to ASIS, AGO or ASD are:

(a) at the request of the Attorney-General or the responsible Minister, of the Inspector-General's own motion or in response to a complaint made to the Inspector-General by a person who is an Australian citizen or a permanent resident (within the meaning of the Intelligence Services Act 2001), to inquire into any matter that relates to:

i. the compliance by that agency with the laws of the Commonwealth and of the States and Territories;

…

iii. the propriety of particular activities of that agency;

iv. an act or practice of that agency that is or may be inconsistent with or contrary to any human right, (etc.)

121. 8(3) *Inspector-General of Intelligence and Security Act 1986* relevantly provides:

Subject to this section, the functions of the Inspector-General in relation to DIO or ONI are:

(a) at the request of the Attorney-General or the responsible Minister, of the Inspector-General's own motion, or in response to a complaint made to the Inspector-General by a person who is an Australian citizen or a permanent resident, to inquire into any matter that relates to:

i. the compliance by that agency with the laws of the Commonwealth and of the States and Territories;

…

iii. the propriety of particular activities of that agency;

…

(b) at the request of the Attorney-General or the responsible Minister, of the Inspector-General's own motion, or in response to a complaint made to the Inspector-General by a person who is an Australian citizen or a permanent resident, to inquire into any matter that relates to an act or practice of that agency:

i. that is or may be inconsistent with or contrary to any human right;

122. 8(3A) *Inspector-General of Intelligence and Security Act 1986* relevantly provides:

Subject to this section, the functions of the Inspector-General in relation to ACIC or the Australian Federal Police are:

…

(c) in response to a complaint made to the Inspector-General;

to inquire into any of the following matters, to the extent that the matter relates to an intelligence function of that agency:

…

(d) the compliance by that agency with the laws of the Commonwealth and of the States and Territories;

…

(f) the propriety of particular activities of that agency;

(h) any matter that relates to an act or practice of that agency:

i. that is or may be inconsistent with or contrary to any human right;

123. The rest of s.8 IGIS Act is not presently relevant.

124. *IGIS* must inquire into complained-about action taken by an agency subject to s.11 IGIS Act. 11(4A) IGIS Act allows IGIS to not inquire into complaints if a complaint in respect of the action could have been made to an *integrity body* like the Information Commissioner.

125. 11(1) *Inspector-General of Intelligence and Security Act 1986* relevantly provides:

If:

(a) a complaint is made to the Inspector-General in respect of action taken by an intelligence agency; and

(b) inquiring into the action in response to a complaint is within the functions of the Inspector-General referred to in section 8;

the Inspector-General must, subject to this section, inquire into the action.

126. 11(2) *Inspector-General of Intelligence and Security Act 1986* relevantly provides:

If a complaint is made to the Inspector-General in respect of action taken by an intelligence agency, the Inspector-General may decide not to inquire into the action or, if the Inspector-General has commenced to inquire into the action, decide not to inquire into the action further if the Inspector-General is satisfied that:

(c) having regard to all the circumstances of the case, an inquiry, or further inquiry, into the action is not warranted.

127. 11(4A) *Inspector-General of Intelligence and Security Act 1986* relevantly provides:

Without limiting paragraph (2)(c), the Inspector-General may decide not to inquire into, or not to inquire further into, a complaint or part of a complaint in relation to action taken by an intelligence agency if:

(a) a complaint in respect of the action has been, or could have been, made by the complainant to any of the following persons or bodies (the integrity body for the complaint):

iii. the Information Commissioner under Part V of the Privacy Act 1988; and,

(b) the Inspector-General is satisfied that the subject matter of the complaint or the part of the complaint could be more effectively or conveniently dealt with by the integrity body for the complaint.

128. The rest of s.11 IGIS Act is not presently relevant.

Inspection-Generally by the Information Commissioner

129. By necessary implication of ss.8,11 IGIS Act, the *Information Commissioner* has power to inquire into any matter, in relation to *ASIO*, *ASIS*, *AGO*, *ASD*, *DIO*, or *ONI*, that relates to:

a. compliance by that agency with the laws of the Commonwealth and of the States and Territories; or,
b. the propriety of particular activities of that agency; or
c. an *act or practice* of that agency that is or may be inconsistent with or contrary to any *human right*.

130. 3(1) *Inspector-General of Intelligence and Security Act 1986* relevantly provides:

In this Act, unless the contrary intention appears:

…

human rights has the same meaning as in the Australian Human Rights Commission Act 1986.

therefore:

131. IGIS Act and *Privacy Act 1988* together empower, and impose a corresponding duty upon, the Respondent to investigate as necessary any *act or practice* of *ASIO*, *ASIS*, *AGO*, *ASD*, *DIO*, or *ONI* that may be inconsistent with or contrary to any right or freedom in the ICCPR, *Declaration*, CAT, CPED or Part II of *The Charter*.

132. s.5 IGIS Act clarifies investigative/enforcement functions of the *Information Commissioner* as conferred on him by extension of IGIS Act include investigation beyond territorial boundaries of Australia and of things done beyond territorial boundaries of Australia. s.5 IGIS Act reads:

This Act applies both within and outside Australia and extends to every external Territory.

Limited exception w.r.t. police intelligence

133. In relation to *ACIC* or the *Australian Federal Police* (and **only** those *agencies*) powers conferred on the *Information Commissioner* by IGIS Act may be limited by s.49B *Privacy Act 1988*. A *complaint* in s.49B can only be a complaint about action taken by *ACC* or the *Australian Federal Police* that was made to *IGIS* and then transferred to the *Information Commissioner* in accordance with 11(4A) IGIS Act.

134. s.49B *Privacy Act 1988* reads (emphasis added):

> *An individual is taken to have complained to the Information Commissioner under subsection 36(1) in respect of action taken by ACC or the Australian Federal Police if the Inspector-General of Intelligence and Security transfers all or part of **the** complaint to the Information Commissioner under section 32AD of the Inspector-General of Intelligence and Security Act 1986.*

THE REQUIREMENTS OF S 36(1)

Text of 36(1)

135. 36(1) *Privacy Act 1988* allows an individual complain about any *act or practice* that *may* be an interference with his privacy. The *act or practice* must not be one which cannot possibly be an *interference with the privacy of the individual*; 36(1) provides for no further limitations or restrictions on this thing it allows an individual to do.

136. If a thing complained about can be an *act or practice* which can be an *interference with the privacy of an individual*, the complaint made about it must not for any reason fail to "*meet the requirements of"* 36(1) *Privacy Act 1988*. Reading ss.7,8 *Privacy Act 1988* shows a thing done by *ASIO* can, if done by a person working for ASIO, be an *interference with the privacy of an individual* in s.13,36(1) *Privacy Act 1988*.

Text of the Act

137. 7(1A)(a) *Privacy Act 1988* reads:

> *Despite subsections (1) and (2), a reference in this Act (other than section 8) to an act or to a practice does not include a reference to the act or practice so far as it involves the disclosure of personal information to:*
>
> *(a) the Australian Security Intelligence Organisation;*

138. 7(1)(a)(i)(A) *Privacy Act 1988* relevantly provides (emphasis added):

> ***Except so far as the contrary intention appears**, a reference in this Act (other than section 8) to an act or to a practice is a reference to: **(a)** an act done, or a practice engaged in, as the case may be, by an agency (other than an eligible hearing service provider), a file number recipient, a credit reporting body or a credit provider other than: **(i)** an agency specified in any of the following provisions of the Freedom of Information Act 1982: **(A)** Division 1 of Part I of Schedule 2;*

139. *Australian Security Intelligence Organisation* is specified in Division 1 of Part I of Schedule 2 of *Freedom of Information Act 1982*.

140. 7(1)(f) *Privacy Act 1988* relevantly provides (emphasis added):

> ***Except so far as the contrary intention appears**, a reference in this Act (other than section 8) to an act or to a practice is a reference to:* **(…)** *but does not include a reference to an act done, or a practice engaged in, in relation to a record that has originated with, or has been received from:* ***(f)*** *an intelligence agency;*

141. 7(2)(a) *Privacy Act 1988* relevantly provides (emphasis added):

> ***Except so far as the contrary intention appears**, a reference in this Act (other than section 8) to an act or to a practice includes, in the application of this Act otherwise than in respect of the Australian Privacy Principles, a registered APP code and the performance of the Commissioner's functions in relation to the principles and such a code, a reference to an act done, or a practice engaged in, as the case may be, by an agency specified in Part I of Schedule 2 to the Freedom of Information Act 1982 or in Division 1 of Part II of that Schedule other than:* ***(a)*** *an intelligence agency*;

142. 8(1)(a) *Privacy Act 1988* relevantly provides (emphasis added):

> *For the purposes of this Act:* ***(a)*** *an act done or practice engaged in by, or information disclosed to, a person employed by, or in the service of, an* ***agency**, organisation, file number recipient, credit reporting body or credit provider in the performance of the duties of the person's employment shall be treated as having been done or engaged in by, or disclosed to, the* ***agency**, organisation, recipient, credit reporting body or credit provider;*

143. 6(1) *Privacy Act 1988* relevantly provides:

> *In this Act, unless the contrary intention appears:*
>
> ***agency** means:* ***(c)*** *a body (whether incorporated or not), or a tribunal, established or appointed for a public purpose by or under a Commonwealth law, not being:* ***(i)*** *an incorporated company, society or association; or* ***(ii)*** *an organisation that is registered under the Fair Work (Registered Organisations) Act 2009 or a branch of such an organisation;*
>
> **…**
>
> ***intelligence agency** means:* ***(a)*** *the Australian Security Intelligence Organisation;*

Negative Implication & other such fun processes of statutory construction

144. For tractability:

a. "*an act done or practice engaged in*" is ***conduct***;
b. "*act done, or a practice engaged in*" is ***conduct***;

c. *"an act done, or a practice engaged in, as the case may be"* is ***conduct***;
d. "*application of the Act otherwise than in respect of the Australian Privacy Principles, a registered APP code and the performance of the Commissioner's functions in relation to the principles and such a code*" is ***ancillary application of the Act***;
e. "*record that has originated with, or has been received from an intelligence agency*" is ***intelligence record***

145. By effect of 7(1)(f):
a. a reference in s.8 *Privacy Act 1988* to an act or practice includes a reference to *conduct* in relation to an *intelligence record*; thus,
b. 8(1) *Privacy Act 1988* causes that:
    i. For the purposes of the *Act*, (including the purposes of s.7) *conduct* in relation to an *intelligence record*, of a person employed by (or otherwise in the service of) an agency (including an intelligence agency) in the performance of the duties of the person's employment is treated as having been engaged in by the agency; and,
    ii. For the purposes of the *Act* (including the purposes of s.7), information disclosed, in relation to an *intelligence record*, to a person employed by (or otherwise in the service of) an agency (including an intelligence agency) in the performance of the duties of the person's employment is treated as having been disclosed to the agency.

146. By effect of 7(2)(a):
a. a reference in s.8 *Privacy Act 1988* to an act or to a practice includes, in the *ancillary application of the Act*, a reference to *conduct* of any *agency* specified in Part I of Schedule 2 to the *Freedom of Information Act 1982*; thus,
b. 8(1) *Privacy Act 1988* causes that:
    i. For the purposes of the *Act* (including the purposes of s.7), in the *ancillary application of the Act*, *conduct* of a person employed by (or otherwise in the service of) an agency (including an *agency* specified in Part I of Schedule 2 to the *Freedom of Information Act 1982*) in the performance of the duties of the person's employment is treated as having been engaged in by the agency.
    ii. For the purposes of the *Act* (including the purposes of s.7), in the *ancillary application of the Act*, information disclosed to a person employed by (or otherwise in the service of) an agency (including an *agency* specified in Part I of Schedule 2 to the *Freedom of Information Act 1982*) in the performance of the duties of the person's employment is treated as having been disclosed to the agency.

147. By effect of 7(1A)(a):
a. a reference in s.8 *Privacy Act 1988* to an act or to a practice includes, despite subsections 7(1) and 7(2) of the *Act*, a reference to the *act or practice* so far as it involves the disclosure of personal information to an intelligence agency specified in Part I of Schedule 2 to the *Freedom of Information Act 1982*.

b. 8(1) *Privacy Act 1988* causes that, for the purposes of the *Act*, despite anything in 7(1),7(2) *Privacy Act 1988*, personal information disclosed to a person employed by (or otherwise in the service of) an intelligence agency specified in Part I of Schedule 2 to the *Freedom of Information Act 1982* in the performance of the duties of the person's employment must be treated as having been disclosed to that intelligence agency.

148. A reference in *Privacy Act 1988* "*to an act or to a practice*" is also a reference to a disclosure of information to an intelligence agency specified in Part I of Schedule 2 to the *Freedom of Information Act 1982 except so far as* the information is disclosed to the intelligence agency without it being disclosed to any person employed by (or in the service of) the intelligence agency in the performance of the duties of the person's employment. What a disclosure of information to an intelligence agency may resemble, if not a disclosure to a person working for the intelligence agency, is difficult to image.

ASIO IS NOT EXEMPT FROM THE REQUIREMENTS OF PRIVACY ACT 1988

149. The Respondent wrongly "*found that the complaint did not meet the requirements of s 36(1) of the Act*" because "*s 7(1A)(a) of the Privacy Act states that any act or practice done by ASIO is excluded from coverage of the Privacy Act*". 7(1A)(a) does not state *ASIO* is excluded from coverage of *Privacy Act 1988* and there are no requirements of 36(1) except it be possible for the thing complained about to be a relevant interference.

150. *Conduct* in relation to an *intelligence record*, engaged in by a person working for *ASIO*, is for the purposes of *Privacy Act 1988* treated as having been engaged in by *ASIO*; and,

151. Any *conduct* engaged in by a person working for *ASIO* is, for the purposes of *Privacy Act 1988* in the *ancillary application of the Act,* treated as having been engaged in by *ASIO*; therefore,

152. An *act or practice* of a person working for *ASIO* is, if done in relation to an *intelligence record*, an *act or practice* of *ASIO* for all purposes of *Privacy Act 1988*, or, if not done in relation to an *intelligence record*, an *act or practice* of *ASIO* for purposes of *Privacy Act 1988* in the "*application of the Act otherwise than in respect of the Australian Privacy Principles, a registered APP code and the performance of the Commissioner's functions in relation to the principles and such a code".*

153. In performing the *Commissioner's functions* in relation to the APPs or a registered APP code, the Respondent can investigate any *act or practice* of a person working for *ASIO* that was done in relation to an *intelligence record*. In performing the *Commissioner's functions* otherwise than in relation to the APPs or a registered APP code, the Respondent can investigate any *act or practice* whatsoever of a person working for *ASIO*.

154. 7(1)(f), 8(1) *Privacy Act 1988* allow the Respondent, in performing the *Commissioner's functions* in relation to the APPs or a registered APP code, to access all records created by persons working for *ASIO*, received from an intelligence agency by persons working for *ASIO*, or originated with an intelligence agency and obtained by persons working for *ASIO* otherwise than by receiving it from an intelligence agency.

155. 7(1)(f),7(2)(a),8(1),44(1),45(1) *Privacy Act 1988* together allow the Respondent to, in performing the *Commissioner's functions* other than (or in performing the *Commissioner's functions* including functions other than) his functions in relation to the APPs or a registered APP code, access all records created, received or otherwise held by a person working for *ASIO* and all information known to such a person, whether or not the information is recorded in a material form.

156. *ASIO*, and everyone who works for *ASIO*, is a "*person*" in 44(1) *Privacy Act 1988* and the Respondent has all power necessary to compel such a person to give or produce to him information and documents the Respondent believes relevant to an investigation, including of the kind described in Division 1 of Part V of *Privacy Act 1988* and by necessary implication of s.12B not limited to only that kind of investigation.

157. 44(1) *Privacy Act 1988* concerns information or a document "*a person has*" that is "*relevant to an investigation*"; the information or document may be relevant to investigation of *an act or practice* of a third person. 44(1) *Privacy Act 1988* thus clarifies the Respondent can access any information or document of a relevant entity if he has reason to believe it has **any** relevant information or documents.

158. The not-exclusion "*from coverage of the Privacy Act*" of things done by persons working for *ASIO* likewise applies to each of the organisations referred to in *Inspector-General of Intelligence and Security Act 1986* as ASIS, AGO, ASD, DIO, ONI and ACIC. There is reason to believe at least *ASIO*, *DIO*, *ONI*, *IGIS* and *ACIC* have information and documents relevant to investigation of matters as are disclosed in the *enquiry*.

159. Despite 44(4), s.70 *Privacy Act 1988* must be inapplicable to investigations required by order of the Court (such as those that would result of the Court granting relief as claimed in this proceeding) if the Court has not examined the relevant "*certificate*" before making the order. The *Attorney-General* mentioned in s.70 *Privacy Act 1988*, the Respondent's boss[32], had all reasonable opportunity to intervene in the proceeding, and, having opted not to intervene in the proceeding, must not intervene after the fact. s.70 *Privacy Act 1988* would be unconstitutional if it allowed after-the-fact action be taken by the Commonwealth executive (otherwise than action taken as the Court may order).

APP 12.1

160. *ASIO* is an *agency* and therefore an *APP entity* in *Privacy Act 1988* unless the contrary intention appears. No relevant such intention is apparent.

161. *ASIO* is not authorised by *Freedom of Information Act 1982* to refuse to give an individual access to information because:

a. *Australian Security Intelligence Organisation* is specified in Division 1 of Part I of Schedule 2 of *Freedom of Information Act 1982*; and so,
b. *ASIO* must be excluded from all operation of *Freedom of Information Act 1982*; and so,

[32] the fact is common knowledge and the Court can take judicial notice of it

c. *ASIO* can never be in receipt of a valid request for access to records made under *Freedom of Information Act 1982*; and so,
d. *ASIO* can never refuse a request for access to records in accordance with *Freedom of Information Act 1982*.

162. ASIO is not by any known Act of the Commonwealth authorised to refuse to give an individual access to personal information and must, on request, produce records of personal information about an individual in accordance with APP 12.1. The Applicant made such a request of ASIO and the Respondent has power to do all things necessary or convenient to be done for, or in connection with, the investigation of that part of the *enquiry* [**2.1**].

HEALTHCARE IDENTIFIERS

The meaning of "*identifier*"

163. The term "*identifier*" is not separately defined in *Healthcare Identifiers Act 2010*; the meaning of *identifier* in that Act must be the ordinary meaning of the word.

164. From the Macquarie dictionary[33]:

> ***identify***
>
> 1) to recognise or establish as being a particular person or thing; attest or prove to be as purported or asserted: *to identify handwriting, identify the bearer of a cheque*
>
> …
>
> 7) to serve as a means of identification for.

165. The meaning of *identifier* corresponds to that of *identify*. An *identifier* recognises or establishes as being a particular person or thing. An *identifier* serves as a means of identification for.

The meaning of "*healthcare identifier*" generally

166. The meaning of "*healthcare identifier"* in *Healthcare Identifiers Act 2010* is that given it by s.9 of that *Act*. 9(3)(c) *Healthcare Identifiers Act 2010* makes an "*identifier that is assigned to a healthcare recipient*" a *healthcare identifier*. 9(1),9(2),9(3) *Healthcare Identifiers Act 2010*, properly construed[34], make every identifier so assigned **by anyone or anything** a *healthcare identifier*.

167. Each of the following examples is "*an identifier that is assigned to a healthcare recipient*", and so a *healthcare identifier* in *Healthcare Identifiers Act 2010*, conditioned only on the individual in question also being "*an individual who has received, receives, or **may receive**, healthcare*"[35] within the territorial limits of Australia:

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[33] Published by Macquarie Library Pty. Ltd., Mc Mahon's Point NSW. Reprinted 1982.

[34] *expressio unius est exclusio alterius*, etc.

[35] (emphasis added); with no further constraints on the meaning of the term, every individual in Australia (and the external territories, per s.4) must be, in reality, a *healthcare recipient* in *Healthcare Identifiers Act 2010*

a. The unique *CRN* number of an individual, as appears on a *Health Care Card* issued by *Services Australia*, assigned to the individual by *Services Australia*;
b. The unique *Tax File Number* of an individual as assigned to the individual by the *Australian Tax Office*;
c. A unique file number as may be assigned to an individual, for records management purposes, by another person with whom the individual interacts (e.g. in transacting business).
d. The name of an individual, as may be assigned to the individual by himself, or as may be assigned to the individual by his parents/etc., or as may be assigned to the individual by some other person.
e. *The fat dude who lives down the road*, a descriptive identifier, as may be assigned to an individual matching the description by another person who is unable to conveniently identify the individual without assigning an identifier to him.
f. *The man in that photo*, a descriptive identifier, as may be assigned to an individual whose image appears in a photograph by another person who is unable to conveniently identify the individual without assigning an identifier to him.

168. A descriptive identifier assigned to a *healthcare recipient* is a *healthcare identifier* whether or not it operates with reference to some thing (e.g. a photograph).

The fully intended meaning of "healthcare identifier"

169. The creation of a record of information about an individual necessarily assigns an *identifier* to the individual who the information is about. For instance:
a. recording opinion about an individual assigns to him the identifier of "person who opinion so recorded is about"
b. making a photo image of an individual assigns to him the identifier of "person appearing in the image so made"
c. creating a timestamped CCTV recording at/of a particular location may assign to an individual an identifier of:
iii. "person appearing in the CCTV recording"; and/or,
iv. "person who appeared at the location at the indicated time"; and/or;
v. "person who engaged in activity as seen in the CCTV recording to have been engaged in by a person at the location at the indicated time"

170. An individual need not be otherwise identified in a record of information about him for the information to constitute an *identifier*. The meaning of *identifier* in *Healthcare Identifiers Act 2010* is so generalised; therefore,

171. Every record of information, if about a *healthcare recipient*, contains a *healthcare identifier* assigned to an individual whether or not that individual is otherwise identified.

172. Having mind to *healthcare identifiers* like examples given above, the 26(1) *Healthcare Identifiers Act 2010* prohibition of use or disclosure of information may seem strange; it is, nonetheless, a true operation of that Act.

The meaning of "*healthcare identifier*" to the Respondent

173. 26(3)(e) *Healthcare Identifiers Act 2010* necessarily implies the Respondent (and also another person named in the *enquiry* letter) may, in exercising powers or performing functions **in relation to privacy**, lawfully require use or disclosure of a *healthcare identifier*. The 26(3)(e) authorisation to collect (and to use and disclose as necessary) *healthcare identifiers* is, by effect of s.28 *Healthcare Identifiers Act 2010*, also an authorisation to collect (and likewise use/disclose) *healthcare identifiers* for the purpose of the *Privacy Act 1988*.

174. The Respondent is empowered to collect and use and disclose *healthcare identifiers* as is necessary or convenient for, or in connection with, performance of his functions in *Privacy Act 1988*, not limited to the functions additionally conferred on him by extension of *Healthcare Identifiers Act 2010*.

175. 29(1) *Healthcare Identifiers Act 2010* makes an *act or practice* "*in connection with*" a *healthcare identifier* that contravenes that Act (or would but for a requirement relating to state of mind) also an *interference with the privacy of an individual* for the purposes of *Privacy Act 1988*. For purpose of investigation of such *interferences*, a *State or Territory authority* is treated as an *organisation* in *Privacy Act 1988*.

176. The Respondent is, in summation, empowered to investigate any *act or practice* in relation to any identifier assigned to an individual unless (or until such time it can be confirmed) the identifier, when assigned, was information about an individual who was at that time beyond the geographic limits of Australia and external territories. This includes power to investigate a use **for any purpose** of the information by a "body politic"[36], or by an unincorporated association or political organisation (like *Freemasons*, for example) or by a federal court or a Minister, or by an intelligence agency, or by *Victoria Police*, *South Australia Police*, the *Independent Broad-based Anti-corruption Commission* or any other *State or Territory authority*, as named in the *enquiry* or involved in matters disclosed in the *enquiry*, unless the particular purpose or particular use is excluded by express words or necessary implication of an Act of the *Commonwealth*. The corresponding duty imposed on the Respondent is not discretionary and the Applicant with the *enquiry* requested the Respondent discharge the said duty.

CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006

Interpretation and purpose of the Charter

Interpretation

177. *Section 32(1) does what Lord Hoffmann and the other Law Lords in Wilkinson said s 3 of the* (Human Rights Act 1998 (UK)) *does. It requires statutes to be construed against the background of human rights and freedoms set out in the Charter in the same way as the principle of legality requires the same statutes to be construed against the background of common law rights and freedoms. The human rights and freedoms set out in the Charter in significant measure incorporate*

[36] such as mentioned in 12B(1) *Privacy Act 1988*

or enhance rights and freedoms at common law. Section 32(1) applies to the interpretation of statutes in the same way as the principle of legality but with a wider field of application. – Momcilovic v The Queen [2011] HCA 34 at [51], per French CJ

178. ss.2,38 *Acts Interpretation Act 1901* clarify the interpretive requirement of 15AA *Acts Interpretation Act 1901* extends to every Act of *Victoria*.

179. 2(1) *Acts Interpretation Act 1901* reads:

This Act applies to all Acts (including this Act).

180. *s.38 Acts Interpretation Act 1901* reads:

(1) An Act passed by the Parliament of the Commonwealth may be referred to by the word "Act" alone.

(2) An Act passed by the Parliament of the United Kingdom may be referred to by the term "Imperial Act".

(3) An Act passed by the Parliament of a State may be referred to by the term "State Act".

(4) An Act passed by the legislature of a Territory may be referred to by the term "Territory Act".

181. A useful definition of "Act" appears in the *Federal Register of Legislation* webpage on Acts[37]. A paragraph beneath the heading "*Acts*" in that webpage reads:

> *An Act is a statute or law passed by both Houses of Parliament that has received Royal Assent. On Royal Assent, Acts are given a year and number. Once an Act is formally enacted it can generally only be amended or repealed by another Act. When an Act changes, a compilation of the Act is prepared to show the Act as amended. Acts are also known as primary legislation.*

182. "*An Act passed by the Parliament of the Commonwealth"* is in every instance a "statute passed by the Parliament of the Commonwealth" and a "law passed by the Parliament of the Commonwealth". Likewise, "*An Act passed by the Parliament of a State"* is in every instance a "statute passed by the Parliament of a State" and a "law passed by the Parliament of a State".

183. The words "*including this Act"* in 2(1) require *Acts Interpretation Act 1901* apply throughout the Act, including throughout s.38 of the Act. Each thing called an *Act* in s.38 *Acts Interpretation Act 1901* is a thing within the set of "*all Acts (including this Act)"* in 2(1) to which *Acts Interpretation Act 1901* applies. If *Acts Interpretation Act 1901* were not to apply also to "*An Act passed by the Parliament of a State*", 38(3) might instead refer to a "**statute** passed by the Parliament of a State" or a "**law** passed by the Parliament of a State".

[37] legislation.gov.au/acts

184. *Acts Interpretation Act 1901* applies to every *State Act*. Alternatively: 35(a) *Interpretation of Legislation Act 1984* (Vic) has the same effect 15AA *Acts Interpretation Act 1901* would have if it applied to interpretation of *The Charter*. 35(a) *Interpretation of Legislation Act 1984* (Vic) reads:

> *In the interpretation of a provision of an Act or subordinate instrument—*
>
> *(a) a construction that would promote the purpose or object underlying the Act or subordinate instrument (whether or not that purpose or object is expressly stated in the Act or subordinate instrument) shall be preferred to a construction that would not promote that purpose or object;*

185. An interpretive requirement as stated in 15AA *Acts Interpretation Act 1901* is for relevant purposes equivalent to a constructive requirement as stated in 35(a) *Interpretation of Legislation Act 1984* (Vic).

Purpose

186. *It is not unusual for a State statute to be expressed to bind "the Crown in right of" that State, but for the statute to be silent with respect to its application to the Commonwealth. Nor is it unusual, in that situation, for there to be special provision as to the manner in which the statute is to apply to members of the executive government or to the property of the State. In that situation, it may be taken that the Parliament recognised that it would be inappropriate for the statute to apply to government property or personnel in precisely the same way as it does to individuals – Commonwealth of Australia v State of Western Australia* [1999] HCA 5 at [39], per Gleeson CJ and Gaudron J

In the present situation, the Parliament intended a statute, which expressly binds the Crown it all its capacities, apply to all government personnel generally.

187. The Parliament of Victoria intending (some) provisions of *The Charter* apply to all of government generally is seen in 6(4) of *The Charter*. 6(4) of The *Charter reads*:

> *This Charter binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.*

The intention is unmistakable.

188. The purpose underlying *The Charter* is to impose duties on all of government so as to protect and promote human rights. The main purpose of *The Charter* is purportedly stated in 1(2) of *The Charter*. 1(2) of *The Charter* reads:

> *The main purpose of this Charter is to protect and promote human rights by—*
>
> *(a) setting out the human rights that Parliament specifically seeks to protect and promote; and*
>
> *(b) ensuring that all statutory provisions, whenever enacted, are interpreted so far as is possible in a way that is compatible with human rights; and*
>
> *(c) imposing an obligation on all public authorities to act in a way that is compatible with human rights; and*

(d) requiring statements of compatibility with human rights to be prepared in respect of all Bills introduced into Parliament and enabling the Scrutiny of Acts and Regulations Committee to report on such compatibility; and

(e) conferring jurisdiction on the Supreme Court to declare that a statutory provision cannot be interpreted consistently with a human right and requiring the relevant Minister to respond to that declaration.

189. s.1 of *The Charter* must be construed subject to s.12 *Acts Interpretation Act 1901* and the *expressio unius est exclusio alterius* principle. s.12 *Acts Interpretation Act 1901* reads:

> *Every section of an Act shall have effect as a substantive enactment without introductory words.*[38]

190. 1(2)(d) limits enablement of *reporting* on *compatibility with human rights* to a *Scrutiny of Acts and Regulations Committee*. The effect of 1(2)(d) not including the word "the" in front of "*Parliament*" is not presently relevant.

191. 1(2)(e) limits conferral of jurisdiction to *declare* things and to *require* things be done by a relevant Minister on **the** Supreme Court (of Victoria) only.

192. In contrast with 1(2)(d) and 1(2)(e), paragraphs 1(2)(b) and 1(2)(c) of *The Charter* are expressed in general terms. It is apparent the Parliament of Victoria, in enacting s.1 of *The Charter* adverted to questions of generality of the application of the Act and decided:

a. provisions of *The Charter* that concern the interpretation of legislation are to apply generally; and,
b. provisions of *The Charter* that concern the conduct of persons acting on behalf of governments are to apply generally; and, conversely,
c. provisions of *The Charter* empowering courts to *declare* things and *require* things be done by relevant Ministers are to apply specifically to the Supreme Court of Victoria; and,
d. provisions of *The Charter* that enable the relevant *reporting* are to apply specifically to the *Scrutiny of Acts and Regulations Committee*.

193. Only those provisions of *The Charter* that concern the interpretation of legislation or conduct of persons acting on behalf of governments are of interest in this proceeding. s.1,6(4) of *The Charter* require such provisions apply generally to the interpretation of legislation and subordinate instruments of *Victoria* and of the *Commonwealth*, and to the conduct of persons who act on behalf of *Victoria* (etc.) or the *Commonwealth*.

194. The interpretive requirement in *The Charter* applies, not unlike *legality*, also to interpretation of s.1 of *The Charter*. If words of s.1 admit more than one interpretation, and one or more such interpretations limit a ***Charter right***[39], an interpretation not limiting the right (if one or more do exist or can exist) must be adopted.

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[38] words of s.*7 Interpretation of Legislation Act 1984* (Vic) are identical except for "has" appearing in place of "shall have"

[39] note: the meaning of "human right" in *The Charter* is not necessarily that of *human right* in ARHC Act

195. The interpretive requirement in *The Charter* likewise applies to interpretation of *Privacy Act 1988* (and all of the other legislation referred to in these submissions). If, for example, words of s.12B and Part V *Privacy Act 1988* admit more than one interpretation, and one such interpretation limits a *Charter right* (perhaps a right of *privacy* expressed in 13(a) of *The Charter*) an interpretation not limiting the right (if one or more do exist or can exist) must be adopted.

Digression

196. *The numerous human rights specified in the ICCPR, including equality before the law and access to justice, form the basis of the human rights set out in Part 2 of the Charter of Human Rights and Responsibilities Act 2006, which may be referred to, with a direct simplicity that only serves to emphasise its historic significance, as the Charter - Tomasevic v Travaglini* [2007] VSC 337 at [69], per Bell J.

197. 32(2) of *The Charter* and the definition of "*human rights*" in 3(1), that is: "*the civil and political rights set out in Part 2*", further clarify *Charter rights* include rights and freedoms recognised in ICCPR. The 13(a) *privacy* right in *The Charter* must include the 17.2 ICCPR right of "*protection of the law*" against attacks on *privacy*.

198. 32(2) of the Charter provides:

> *International law and the judgments of domestic, foreign and international courts and tribunals relevant to a human right may be considered in interpreting a statutory provision.*

ICCPR is *international law*.

Application

199. 6(2) of *The Charter* reads:

This Charter applies to—

(a) the Parliament, to the extent that the Parliament has functions under Divisions 1 and 2 of Part 3; and

(b) courts and tribunals, to the extent that they have functions under Part 2 and Division 3 of Part 3; and

(c) public authorities, to the extent that they have functions under Division 4 of Part 3.

200. A *statutory provision* in *The Charter*, defined in 3(1), is "*an Act (including this Charter) or a subordinate instrument or a provision of an Act (including this Charter) or of a subordinate instrument*";

201. 4(1) of *The Charter* relevantly provides (emphasis original):

For the purposes of this Charter a public authority is—

*(a) a public official within the meaning of the **Public Administration Act 2004**; or*

(b) an entity established by a statutory provision that has functions of a public nature; or,

(c) an entity whose functions are or include functions of a public nature, when it is exercising those functions on behalf of the State or a public authority

…

202. The *Information Commissioner* is an entity established by a statutory provision that has functions of a public nature. The *Information Commissioner* is on plain reading of *The Charter* a *public authority* for purposes of *The Charter*.

203. 6(4) of *The Charter* requires its provisions apply *mutatis mutandis* to public officials of the *Commonwealth*. Provisions of *The Charter* must apply to:

a. an *Agency Head* or *APS employee* (collectively: ***APS person***) within the meaning of *Public Service Act 1999* as to a public official within the meaning of *Public Administration Act 2004*; and,
b. an entity established by an Act or subordinate instrument of the *Commonwealth* as to an entity established by an Act or subordinate instrument of *Victoria*; and,
c. an entity whose functions are or include functions of a public nature, when it is exercising those functions on behalf of the *Commonwealth* or a *Commonwealth* authority as to an entity exercising such functions on behalf of *Victoria* or a *Victorian* authority.

204. The *Information Commissioner* is bound by the *APS Code of Conduct*[40] in s.13 *Public Service Act 1999*. 13(4) *Public Service Act 1999* reads:

An APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws. For this purpose, Australian law means:

(a) any Act (including this Act), or any instrument made under an Act; or
(b) any law of a State or Territory, including any instrument made under such a law.

205. 13(4) *Public Service Act 1999* causes *The Charter* bind the Respondent so far as it applies to him. *The Charter* is seen applying so far as to require the Respondent not act in a way that is incompatible with a *Charter right* and, in making a decision, not fail to give proper consideration to a relevant *Charter right* unless by outcome of law he is unable to act differently or made a different decision[41].

Power to bind the Information Commissioner

206. The Parliament of the Commonwealth does not have exclusive power to make laws regulating conduct of the *Information Commissioner*[42].

207. s.51 of the Constitution relevantly provides:

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: (xxxix) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

208. s.52 of the Constitution reads (emphasis added):

[40] See: 14(1) *Public Service Act 1999*; 5(3) *Australian Information Commissioner Act 2010*
[41] See: s.38 of *The Charter*
[42] to avoid foreseeable confusion: a reference to the *Information Commissioner* is a reference to the *Australian Information Commissioner* and not a reference to any other "Information Commissioner"

*The Parliament shall, subject to this Constitution, have **exclusive power** to make laws for the peace, order, and good government of the Commonwealth with respect to—*

i. The seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes:

*ii. Matters relating to any department of the public service **the control of which is by this Constitution** transferred to the Executive Government of the Commonwealth:*

iii. Other matters declared by this Constitution to be within the exclusive power of the Parliament.

209. Legislative power conferred on the Parliament of the Commonwealth by s.51 of the Constitution is by necessary implication of s.52 not exclusive. Matters of 52(iii) are not presently relevant. 52(ii) and s.69 of the Constitution necessarily imply not all departments of Commonwealth public service are within exclusive lawmaking power of the Parliament of the Commonwealth. s.69 specifies some State public service departments and is not further relevant in this proceeding. Exclusivity of lawmaking powers in 52(i) is for relevant purposes remedied with *Commonwealth Places (Application of Laws) Act 1970*.

210. In enacting 13(4) *Public Service Act 1999*, the Parliament of the Commonwealth exercised legislative powers (including exclusive powers) to cause laws made by State Parliaments to apply to *APS employees*. 13(4) *Public Service Act 1999* operates concurrently with *Commonwealth Places (Application of Laws) Act 1970*.

211. Laws made by the Parliament of a State are good so far as the laws are not in conflict with the laws of the Commonwealth. ss.51, 106, 107 of the Constitution allow a State Parliament to also make laws with respect to things mentioned in s.51

212. s.106 of the Constitution reads:
The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

213. s.107 of the Constitution reads:
Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be.

214. *Australia Act 1986* and *Constitution Act 1975* (Vic) (the ***Constitution Act 1975***) empower the Parliament of Victoria to make laws operative beyond territorial limits of Victoria.

215. s.15 *Constitution Act 1975* reads:
The legislative power of the State of Victoria shall be vested in a Parliament, which shall consist of Her Majesty, the Council, and the Assembly, to be known as the Parliament of Victoria.

216. s.16 *Constitution Act 1975* reads:
The Parliament shall have power to make laws in and for Victoria in all cases whatsoever.

217. 2(1) *Australia Act 1986* reads:
It is hereby declared and enacted that the legislative powers of the Parliament of each State include full power to make laws for the peace, order and good government of that State that have extra-territorial operation.

218. The Parliament of Victoria has all power necessary to make legislation binding on an *APS person.* 13(4) *Public Service Act 1999* further ensures such law binds a relevant *APS person*, even if it would be inconsistent with another law of the *Commonwealth*, unless the *generalia specialibus non derogant* principle applies with respect to the express words or necessary implication of another Act of the Commonwealth.

So what?

219. Having failed to give proper consideration to relevant *Charter rights*, the Respondent unlawfully refused to investigate the matter of the *enquiry*.

220. The Respondent might have made a different decision had he given proper consideration to the relevant *Charter rights*.

OBJECTION

221. On grounds as follow, the Applicant objected to further submissions being made regarding the Respondent's characterisation of the *enquiry* as a complaint exclusively concerned with *ASIO*:
   a. it unfairly imposes an additional burden on him; and,
   b. it makes the proceeding procedurally unfair; and,
   c. the Court having invited further submissions is inconsistent with adversarial process; and,
   d. the Court having invited further submissions to remedy a shortcoming in the Respondent's case is inconsistent with impartial adjudication.

222. The Justice Snaden did not accept suggestions the Applicant made of procedural unfairness.

223. On more-correct revised grounds as follow, the Applicant maintains his objection to further submissions being made regarding the Respondent's characterisation of the *enquiry* as a complaint exclusively concerned with *ASIO*:
   a. it unfairly imposes an additional burden on him; and,
   b. it is procedurally unfair; and,
   c. the Court having invited further submissions is inconsistent with adversarial process; and,
   d. the Court having invited further submissions to remedy a shortcoming in the Respondent's case is inconsistent with impartial adjudication.

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26 October 2025