

From: [Annamie Hale](#)
To: [Emily Elliott](#)
Cc: [Caren Whip](#); [Emma Liddle](#)
Subject: RE: VFMA Senator Patrick - s 42 [SEC=OFFICIAL]
Date: Friday, 4 March 2022 9:09:31 AM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Tanks for the outline and all your work on this matter Emily!

I provide my in-principle approval for this estimate.

Many thanks

Annamie


Annamie Hale | Assistant Commissioner
 Corporate
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 +61 2 9284 9631 (m) s 47E(d) | annamie.hale@oaic.gov.au
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From: Emily Elliott <emily.elliott@oaic.gov.au>
Sent: Friday, 4 March 2022 9:04 AM
To: Annamie Hale <annamie.hale@oaic.gov.au>
Cc: Caren Whip <caren.whip@oaic.gov.au>; Emma Liddle <emma.liddle@oaic.gov.au>
Subject: VFMA Senator Patrick - s 42 [SEC=OFFICIAL]

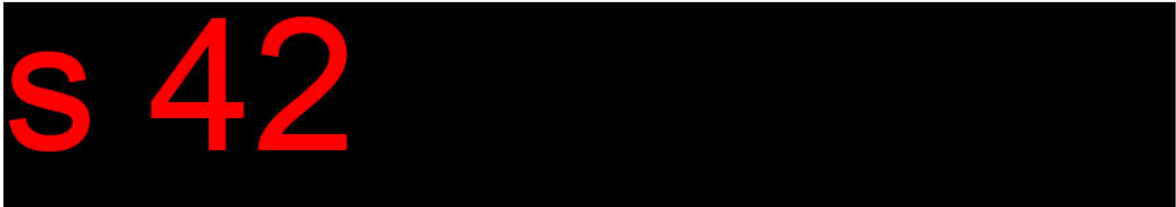


VFMA Snapshot	
Due date	7 March 2022
Fixed or flexible	Fixed
If fixed, why?	Advice has already been provided
Topic for clearance	In-principle approval
Product (e.g. brief / submission)	Procurement
Length / no. of pages	N/A
External party?	Norton Rose
Clearance & consultation	Emily Elliott
Responsible director	Emma Liddle/Caren Whip
Final Clearance by	Annamie Hale

Good morning Annamie

Legal-In-Confidence

I am writing to you to seek your in-principle approval to approve costs incurred by Norton Rose to provide legal services to the OAIC in judicial review proceedings in the Federal Court matter of Office of Senator Patrick v Australian Information Commissioner (VID519/2021). In particular, these costs relate to the drafting of the settlement template and legal advice to support the Commissioners offer for a maximum costs order.

Background

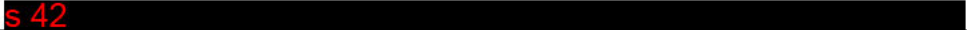
- 
- Senator Patrick’s revised application for maximum costs order was lodged with the court on 11 February 2022 and sought to cap the costs at \$50,000. 


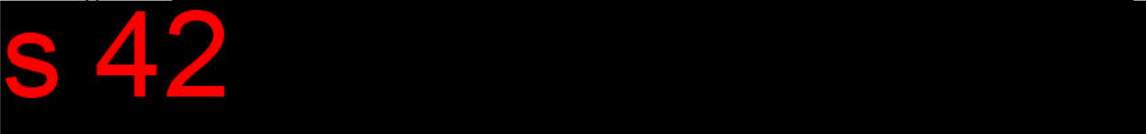
Quote

Norton Rose has provided the attached estimate of \$25,000 for the following tasks:

- Preparing the settlement request template form and considering attachments to that form;
- Drafting memoranda of advice; and
- Liaising with you, including meeting in conference, and taking instructions.

VFMA

I consider Norton Rose’s estimate is VFMA on the basis that Senator Patrick’s litigation is complex and high profile and Norton Rose was already providing legal assistance in relation to the litigation. 



Finance Requirements

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


--	--

Procurement need	The matter cannot be completed in house. (Not permissible pursuant to LSD)
Panel	Legal Services Panel
VFM	Norton Rose's quote has been assessed as representing value for money, as outlined above.
FY estimate	I estimate 100% will be undertaken in 21/22



Emily Elliott | Senior Lawyer
 Legal Services
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 +61 2 9284 9852 | emily.elliott@oaic.gov.au



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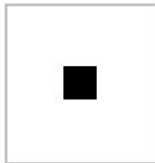
From: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>
Sent: Friday, 1 July 2022 6:42 AM
To: WHIP,Caren <Caren.Whip@oaic.gov.au>; DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>
Cc: HALE,Annamie <Annamie.Hale@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Subject: RE: Revised costs estimate [SEC=OFFICIAL]

Thanks Caren

In Mel's absence I provide approval for expenditure up to the revised costs estimate provided by Norton Rose.

Cheers

Libby



Elizabeth Hampton | Deputy Commissioner
 Office of the Australian Information Commissioner
 GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
 +61 2 9942 4137 | elizabeth.hampton@oaic.gov.au

From: WHIP,Caren <Caren.Whip@oaic.gov.au>
Sent: Thursday, 30 June 2022 5:07 PM
To: DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>
Cc: HALE,Annamie <Annamie.Hale@oaic.gov.au>; HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Subject: Revised costs estimate [SEC=OFFICIAL]

Dear Mel

I am seeking your approval to a revised costs estimate in respect of the proceedings Mr Patrick (former Senator) has taken against the Australian Information Commissioner in the Federal Court, VID519/2021.

Annamie/Libby/Leo, I have copied you in for visibility.

Snapshot	
Due date	As soon as possible – legal services in relation to the matter are ongoing.
Fixed or flexible	Flexible, but as soon as possible as costs are continuing to be expended on this proceeding
If fixed, why?	n/a
Topic for clearance	Request approval for revised estimate of \$479,008.20, inclusive of additional estimated costs of \$146, 797.00

Product (e.g., brief / submission)	Please find revised estimate from Norton Rose Fulbright (NRF)
Length / no. of pages	n/a
External parties	NRF
Clearance & consultation/Responsible Director	Caren Whip

Norton Rose Fulbright has advised that the current estimate of costs and counsel's costs for the matter (after it was revised in November 2021) is a total of **\$332,211.20** (inc. GST) (comprised of \$226,212.80 for NRFA and \$105,998.40 for counsel).

After accounting for their invoice in June 2022, NRF has advised it has approximately \$25,000 (inc. GST) left in approved funding.

NRF has advised that further funding is required to address the following key steps in the proceeding:

- Complete the lay evidence by undertaking further conferences with each of Elizabeth Hampton and Rocelle Ago, and preparing further drafts of the affidavits;
- Liaising with the OAIC (including providing advice in conference) regarding the strategy and approach for the affidavits;
- Reviewing the underlying correspondence for each of the 8 Separate IC Review applications;
- Reviewing any lay evidence in reply to be filed by the Applicant;
- Preparing outline of submissions for the 2 day hearing commencing on 26 September;
- Considering the Applicant's submissions for the 2 day hearing commencing on 26 September; and
- Preparing for and attending the 2 day hearing commencing on 26 September.

In my view, this revised estimate reflects value for money for the following reasons:

- **Relevant experience** – NRF is experienced and is *currently providing legal representation* for the Commissioner in relation to this proceeding.
- **Team composition** – A Partner, Senior Associate and Associate will be undertaking the work (along with counsel) which I consider appropriate for the complexity of the matter and the amount of work required.
- **Understanding of our needs** - NRF has indicated a clear understanding of the revised scope of the anticipated work required in representing the Commissioner in this matter, and the time and resources required, as set out in their quote attached to this email. I am of the view that the quote demonstrates a detailed understanding of what is required in this matter, and NRF has the specific skill sets to provide the services required.
- **Cost** – NRF has revised its original estimate in providing legal representation in respect of this proceeding. As NRF has noted, that while the original estimate of \$332,211.20 was for the purposes of the entire proceeding, the preparation of the OAIC's lay evidence - and considering the strategy for that lay evidence - has required more funding that initially anticipated.

Next steps

Upon receipt of your approval, I will send a copy of the approval, with this email, and the below information for Lorraine Nurney (OAIC invoices) to formalise the purchase order with finance:

Procurement need	The matter cannot be completed in house.
Need to participate in the process	Mr Patrick has brought these proceedings against the Commissioner and there is a need to participate in the process to assist the Tribunal in its consideration of the matter.
Panel	Yes
VFM	NRF's quote has been assessed as representing value for money for the reasons outlined above, though as I note it is possible the costs may increase if unforeseen complexities arise.
FY estimate	I estimate that 100% will be undertaken in the 2022/2023 financial year. I note the estimated date for substantive hearing is September 2022.

If you require any further information, please let me know.

Regards

Caren

O A I C logo




Caren Whip | General Counsel

Office of the Australian Information Commissioner

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+61 2 9942 4172 | Enquiries: 1300 363 992 | caren.whip@oaic.gov.au



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s 22(1)(a)(ii)

From: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>

Sent: Tuesday, 16 August 2022 3:33 PM

To: DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>; ELLIOTT,Emily <Emily.Elliott@oaic.gov.au>

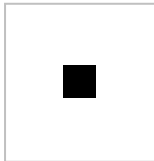
Cc: HALE,Annamie <Annamie.Hale@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>; LIDDLE,Emma <Emma.Liddle@oaic.gov.au>
Subject: RE: OAIC Patrick - estimate for further funding (4043359)[NRF-APAC.FID2978360]
[SEC=OFFICIAL]

Thanks Emily and Mel

This is approved by me.

Regards

Libby



Elizabeth Hampton | Deputy Commissioner
Office of the Australian Information Commissioner
GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
+61 2 9942 4137 | elizabeth.hampton@oaic.gov.au

From: DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>
Sent: Tuesday, 16 August 2022 3:28 PM
To: ELLIOTT,Emily <Emily.Elliott@oaic.gov.au>
Cc: HALE,Annamie <Annamie.Hale@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>; HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>; LIDDLE,Emma <Emma.Liddle@oaic.gov.au>
Subject: RE: OAIC Patrick - estimate for further funding (4043359)[NRF-APAC.FID2978360]
[SEC=OFFICIAL]

Hi Emily

Many thanks for this email.

I don't think I'm the best person to approve this revised costs estimate seeing I am not wearing the Acting Deputy hat anymore.

Libby, over to you.

Thanks
Mel

From: ELLIOTT,Emily <Emily.Elliott@oaic.gov.au>
Sent: Tuesday, 16 August 2022 2:48 PM
To: DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>
Cc: HALE,Annamie <Annamie.Hale@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>; HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>; LIDDLE,Emma <Emma.Liddle@oaic.gov.au>
Subject: OAIC Patrick - estimate for further funding (4043359)[NRF-APAC.FID2978360]

Dear Mel

I am seeking your approval to a revised costs estimate in respect of the proceedings Mr Patrick (former Senator) has taken against the Australian Information Commissioner in the Federal Court, VID519/2021.

Annamie/Libby/Leo, I have copied you in for visibility.

Snapshot	
Due date	As soon as possible – legal services in relation to the matter are ongoing.
Fixed or flexible	Flexible, but as soon as possible as costs are continuing to be expended on this proceeding
If fixed, why?	n/a
Topic for clearance	Request approval for revised estimate of \$613,810.20, inclusive of additional estimated costs of \$134,802.00
Product (e.g., brief / submission)	Please find revised estimate from Norton Rose Fulbright (NRF)
Length / no. of pages	n/a
External parties	NRF
Clearance & consultation/Responsible Director	Caren Whip

Norton Rose Fulbright had advised that the estimate of costs and counsel's costs for the matter (after it was revised in June 2022) was a total of **\$479,008.20** (inc. GST). They have now sought an additional \$134,802.00 to address the following key steps in the proceeding:

- Liaising with the OAIC (including providing advice in conference) regarding the strategy and approach for the submissions;
- Preparing and lodging supplementary affidavit for Rocelle (if necessary)
- Revising concise statement
- Reviewing the underlying correspondence for each of the 8 Separate IC Review applications;
- Reviewing any lay evidence in reply to be filed by the Applicant;
- Preparing outline of submissions for the 2 day hearing commencing on 26 September;
- Considering the Applicant's submissions for the 2 day hearing commencing on 26 September;
- Preparing Libby and Rocelle for cross examination (if necessary); and
- Preparing for and attending the 2 day hearing commencing on 26 September.

In my view, this revised estimate reflects value for money for the following reasons:

- **Relevant experience** – NRF is experienced and is *currently providing legal representation* for the Commissioner in relation to this proceeding.
- **Team composition** – A Partner, Senior Associate and Associate will be undertaking the work (along with counsel) which I consider appropriate for the complexity of the matter

and the amount of work required.

- **Understanding of our needs** - NRF has indicated a clear understanding of the revised scope of the anticipated work required in representing the Commissioner in this matter, and the time and resources required, as set out in their quote attached to this email. I am of the view that the quote demonstrates a detailed understanding of what is required in this matter, and NRF has the specific skill sets to provide the services required.
- **Cost** – NRF has revised its original estimate in providing legal representation in respect of this proceeding. As NRF has noted, that while the current estimate of \$479,008.20 was for the purposes of the entire proceeding, the preparation of the OAIC’s lay evidence - and considering the strategy for that lay evidence - has required more funding that initially anticipated.

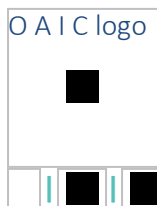
Next steps

Upon receipt of your approval, I will send a copy of the approval, with this email, and the below information for Lorraine Nurney (OAIC invoices) to formalise the purchase order with finance:

Procurement need	The matter cannot be completed in house.
Need to participate in the process	Mr Patrick has brought these proceedings against the Commissioner and there is a need to participate in the process to assist the Court in its consideration of the matter.
Panel	Yes
VFM	NRF’s quote has been assessed as representing value for money for the reasons outlined above, though as I note it is possible the costs may increase if unforeseen complexities arise.
FY estimate	I estimate that 100% will be undertaken in the 2022/2023 financial year. I note the estimated date for substantive hearing is September 2022.

If you require any further information, please let me know.

Regards
Caren



Caren Whip | General Counsel
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s 22(1)(a)(ii)

s 22(1)(a)(ii)

OFFICIAL: Sensitive//Legal Privilege

From: CROXALL,Sarah <Sarah.Croxall@oaic.gov.au>
Sent: Friday, September 22, 2023 4:12 PM
To: MASO,Kylie <Kylie.Maso@oaic.gov.au>; HALE,Annamie <Annamie.Hale@oaic.gov.au>
Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; LIDBETTER,Samantha <Samantha.Lidbetter@oaic.gov.au>
Subject: RE: [FOR IN-PRINCIPLE APPROVAL] VFMA - LIT23/00033 Rex Patrick v Australian Information Commissioner - Norton Rose Fulbright [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

Approved, thanks Kylie.

Many thanks

Sarah

OFFICIAL: Sensitive//Legal Privilege

From: MASO,Kylie <Kylie.Maso@oaic.gov.au>
Sent: Friday, September 22, 2023 3:54 PM
To: HALE,Annamie <Annamie.Hale@oaic.gov.au>; CROXALL,Sarah <Sarah.Croxall@oaic.gov.au>
Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; LIDBETTER,Samantha <Samantha.Lidbetter@oaic.gov.au>
Subject: [FOR IN-PRINCIPLE APPROVAL] VFMA - LIT23/00033 Rex Patrick v Australian Information Commissioner - Norton Rose Fulbright [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive//Legal Privilege

VFMA Snapshot	
Due date	As soon as possible
Fixed or flexible	Flexible

If fixed, why?	
Topic for clearance	LIT23/00033 – engagement of Norton Rose Fulbright
Product (e.g. brief / submission)	Procurement
Length / no. of pages	Not applicable
External party?	Norton Rose Fulbright
Clearance & consultation	Caren Whip, Principal Lawyer
Responsible director	Caren Whip, General Counsel and Kylie Maso, Principal Lawyer
Final Clearance by	Sarah Croxall, Acting Assistant Commissioner Corporate or Annamie Hale, Assistant Commissioner Corporate

Our Reference: LIT23/00033

Dear Annamie/Sarah,

I am writing to you to seek your in-principle approval to engage Norton Rose Fulbright (NRF) to act for the Australian Information Commissioner in the Full Federal Court matter of *Rex Patrick v Australian Information Commissioner* (VID765/2023). The matter has not yet been listed for a directions hearing.

Mr Patrick is appealing the Federal Court's (Wheelahan J) orders given on 22 August 2023 on that basis that Wheelahan J erred in holding that Mr Patrick had not established that there had been unreasonable delay in the sense required to engage s 7(1) of the ADJR Act in connection with the IC Reviews under the FOI Act.

Assistance sought

On 20 September 2023, NRF provided a cost estimate of **\$54,813.00 including disbursements (GST exc)/\$60,294.00 including disbursements (GST inc)** (see attached and below). This fee estimate only covers fees and disbursements up until the first case management hearing.

Details (all under one purchase order)	\$ Amount (GST Ex)
Professional Fees	38,389.00
Counsel fee - Senior/Junior Gender - Barrister Name 1 (list separate barristers and fees)	16,424.00
Cyber Expertise Consultant Disbursement	0
Other disbursement (transcript costs / court fees / other experts)	0

VFMA

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

- **Relevant experience** – NRF is experienced in representing the OAIC in Federal Court matters. NRF acted in this matter when it was before a single judge of the Federal Court.
- **Understanding of our needs** – In my opinion the estimate demonstrates an understanding of the work that is required in this matter. NRF have the history and background in this matter from acting for us previously.
- **Cost** – NRF's quote is reasonable in light of the complexity of the matter. It will require both Junior and Senior Counsel to be briefed, which is included in the quote.

Finance Requirements

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

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

Kind Regards,

Kylie

s 22(1)(a)(ii)

From: HALE,Annamie <Annamie.Hale@oaic.gov.au>
Sent: Monday, 17 October 2022 8:30 AM
To: WHIP,Caren <Caren.Whip@oaic.gov.au>
Cc: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>; FALK,Angelene <Angelene.Falk@oaic.gov.au>; CRONE,Simon <Simon.Crone@oaic.gov.au>
Subject: RE: Revised estimate in Patrick matter [SEC=OFFICIAL]

Morning Caren

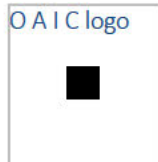
I have reviewed the updated estimate carefully and consider it is reasonable in response to the changed proceedings, amended court date and our further requests from Norton Rose (which includes briefing a junior barrister Alice to assist Zoe).

I provide my approval for the revised cost estimate.

I'd be happy to discuss with anyone.

Many thanks

Annamie



Annamie Hale | Assistant Commissioner
Corporate
Office of the Australian Information Commissioner
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+61 2 9942 4097 (m) **s 47E(d)** | annamie.hale@oaic.gov.au



From: WHIP,Caren <Caren.Whip@oaic.gov.au>
Sent: Friday, 14 October 2022 8:00 AM
To: HALE,Annamie <Annamie.Hale@oaic.gov.au>
Cc: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>; FALK,Angelene <Angelene.Falk@oaic.gov.au>
Subject: Revised estimate in Patrick matter [SEC=OFFICIAL]

Dear Annamie

I am seeking your approval to a revised costs estimate in respect of the proceedings Mr Patrick (former Senator) has taken against the Australian Information Commissioner in the Federal Court, VID519/2021.

Libby/Leo/Angelene, I have copied you in for visibility.

Snapshot	
Due date	As soon as possible – legal services in relation to the matter are ongoing.

Fixed or flexible	Flexible, but as soon as possible as costs are continuing to be expended on this proceeding
If fixed, why?	n/a
Topic for clearance	Request approval for revised estimate of \$795,108.20, inclusive of additional estimated costs of \$181,298.00
Product (e.g., brief / submission)	Please find revised estimate from Norton Rose Fulbright (NRF)
Length / no. of pages	n/a
External parties	NRF
Clearance & consultation/Responsible Director	Caren Whip

Norton Rose Fulbright has advised that the current estimate of costs and counsel's costs for the matter (after it was revised in August 2022) is a total of **\$795,108.20 (inc. GST)**

On 28 September 2022, NRF advised that further funding (which was for an amount of \$159,441 inc. GST) was required to address the certain key steps in the proceeding in light of the rescheduled hearing and the procedural steps that the parties are likely to undertake prior to the hearing to commence on 21 November including:

1. The Applicant seeking leave to amend parts of his case to address the competency issue (now filed and served on 11 October 2022),
2. Us considering the Applicant's application for leave, and any consequential amendments that may need to be made to our Concise Statement in Response (to be filed and served 17 October 2022)
3. Us filing further lay evidence to address the status of the 8 IC Review applications the subject of the separate question
4. The filing of further submissions to address any further amendments to the parties' respective cases

On 12 October 2022, NRF advised that the revised estimate had been further amended following the briefing (on our instructions) of junior junior counsel to assist on the matter and subsequent to receiving the Applicant's proposed amendments to his pleadings. The amendments to the funding request spreadsheet (attached) are in red font, and they increase the funding requested by approximately \$22,000 inc. GST to an additional total of \$181,298 (inc. GST).

NRF explained that they have considered the revisions to our further funding request to account for the following:

- the work involved in briefing Alice
- the work Alice will undertake;
- more involved preparation of witnesses for cross-examination;
- the novel nature of the alternative argument that the Applicant raises concerning ADJR Act s6 and "conduct" which will require closer consideration when we receive the Applicant's submissions.

In my view, this revised estimate reflects value for money for the following reasons:

- **Relevant experience** – NRF is experienced and is *currently providing legal representation* for the Commissioner in relation to this proceeding.
- **Team composition** – A Partner, Senior Associate and Associate will be undertaking the work (along with junior counsel and now junior junior counsel) which I consider appropriate for the complexity of the matter, the amount of work required and the risks associated with the court making an unfavourable decision against the OAIC/Commissioner in this matter.
- **Understanding of our needs** - NRF has indicated an understanding of the anticipated work required in representing the Commissioner in this matter, and the time and resources required, as set out in their quote attached to this email. I am of the view that the quote demonstrates a detailed understanding of what is required in this matter, and NRF has the specific skill sets to provide the services required.
- **Cost** –As NRF has noted, that while the present revised estimate of \$613,810.20 was for the purposes of the entire proceeding, the preparation of the OAIC’s lay evidence - and considering the strategy for that lay evidence – as well as the need to engage additional counsel - has required more funding that initially anticipated.

Next steps

Upon receipt of your approval, I will send a copy of the approval, with this email, and the below information for OAIC invoices to formalise the purchase order with finance:

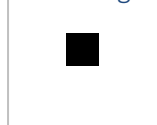
Procurement need	The matter cannot be completed in house.
Need to participate in the process	Mr Patrick has brought these proceedings against the Commissioner and there is a need to participate in the process and cooperate with the court.
Panel	Yes
VFM	NRF’s quote has been assessed as representing value for money for the reasons outlined above. Though it is possible, in the absence of unforeseen complexities arising, it is unlikely that costs will increase from this revised point.
FY estimate	I estimate that 100% will be undertaken in the 2022/2023 financial year. The estimated date for substantive hearing is now 21-22 November 2022.

If you require any further information, please let me know.

Regards

Caren

OAIC logo



Caren Whip | General Counsel
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+61 2 9942 4172 | Enquiries: 1300 363 992 | caren.whip@oaic.gov.au



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s 22(1)(a)(ii)

From: Bruce Cooper <bruce.cooper@oaic.gov.au>

Sent: Tuesday, 9 November 2021 8:01 AM

To: Emily Elliott <emily.elliott@oaic.gov.au>

Cc: Caren Whip <caren.whip@oaic.gov.au>; Emma Liddle <emma.liddle@oaic.gov.au>; Elizabeth Hampton <elizabeth.hampton@oaic.gov.au>

Subject: RE: Revised [Request for in-principle approval] Patrick v Australian Information Commissioner - judicial review [SEC=OFFICIAL]

Dear Emily

Thank you for providing the details of the revised quote. I understand that preparation of the matter is proving more complex than initially predicted, both for us and NR. I approve the revised estimate and encourage you and the team to continue being mindful of the level of service being provided to ensure the costs are kept in check.

Kind regards

Bruce



Bruce Cooper | A/g Deputy Commissioner
Office of the Australian Information Commissioner
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+61 2 9284 9708 or (mob) [s.47E\(d\)](tel:0477477477) | bruce.cooper@oaic.gov.au

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From: Emily Elliott <emily.elliott@oaic.gov.au>

Sent: Monday, 8 November 2021 5:25 PM

To: Bruce Cooper <bruce.cooper@oaic.gov.au>

Cc: Caren Whip <caren.whip@oaic.gov.au>; Emma Liddle <emma.liddle@oaic.gov.au>

Subject: FW: Revised [Request for in-principle approval] Patrick v Australian Information Commissioner - judicial review [SEC=OFFICIAL]

VFMA Snapshot	
Due date	12 November 2021
Fixed or flexible	Fixed
If fixed, why?	Interlocutory hearing listed for 26 November 2021
Topic for clearance	In-principle approval
Product (e.g. brief / submission)	Procurement
Length / no. of pages	N/A
External party?	Norton Rose
Clearance & consultation	Emily Elliott
Responsible director	Caren Whip
Final Clearance by	Bruce Cooper

Dear Deputy Commissioner

Legal-In-Confidence

I am writing to you to seek your in-principle approval to a **revised quote** from Norton Rose (NR) to provide legal services to the OAIC in judicial review proceedings in the Federal Court matter of Office of Senator Patrick v Australian Information Commissioner (VID519/2021)

Background

On 9 September 2021 Senator Patrick served the Australian Information Commissioner (Commissioner/Respondent) with an unsealed statement of claim and originating application for judicial review in the Federal Court (Melbourne Registry). Senator Patrick seeks orders, pursuant to s 16(3)(a) of the ADJR Act, that the Commissioner decides each of the long-term outstanding IC review applications (as outlined at Appendix A to the originating application) within 30 days, or such alternate timeframes as the court considers appropriate. Senator Patrick is also claiming interlocutory relief, capping maximum party/party costs that may be recovered in the proceeding at \$10. A concise statement was lodged in the proceedings on 1 November 2021. A case management and interlocutory hearing is set for 26 November 2021.

Quote

NR quoted \$153,250 in relation to the proceedings (comprised of \$77,000 for NR and \$76,250 for counsel). However, based on the work undertaken to date in preparing the concise statement in response and for the case management hearing on 26 November, it has become apparent that the matter is far more involved than we initially anticipated. The work to date has comprised of:

- corresponding with you over the course of some 120 emails, primarily regarding strategy and sources documents / correspondence for each of the Applicant's IC Review applications;
- reviewing approximately 500 source documents / correspondence and OAIC internal documents;
- reviewing the Applicant's six interlocutory affidavits; and
- attending four conferences with the Commissioner.

Costs incurred to date are invoiced costs of \$39,713.57 (inc. GST) for the period 27 September – 25 October 2021. In addition, there is also approximately \$20,000 (inc. GST) worth of fees for NR and \$12,643.63 for counsel for the period 26 October – 1 November 2021. NR also notes that it has written off approximately \$10,000 of WIP in the process of generating the October invoice.

On this basis, NR has submitted a revised estimate of \$178,961 in addition to the original quote of \$153,250 (refer to attached spreadsheet for breakdown of revised estimate costs). This increases the quote to \$332,211.

VFMA

I recommend accepting NR's revised quote on the basis of:

- **Complexity of the matter** – this is a complex matter that looks at issues not previously considered by the Court. Prior to commencing work, NR estimate was based on their understanding of the matter. However, this estimate needed to be revised based on the work undertaken to date in completing the concise statement. The revised estimate is now based on a more comprehensive understanding of the work required in this matter.
- **Counsel fees** – the Commissioner has requested that counsel attend four conferences to date. The initial quote did not provide for this level of engagement with counsel. To continue this engagement requires additional funds for counsel.
- **Cost** – Even though the revised estimate has substantially increased the costs from \$153,250 to \$332,211 I consider that the quote still provides best value for money based on the complexity of the matter and the work completed to date.

Finance Requirements

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

Procurement need	The matter cannot be completed in house. (Not permissible pursuant to LSD)
Panel	Legal Services Panel
VFM	Norton Rose's quote has been assessed as representing value for money, as outlined above.
FY estimate	I estimate 100% will be undertaken in 21/22

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

Regards,

OAIC logo



Emily Elliott | Senior Lawyer
Legal Services
Office of the Australian Information Commissioner
GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
+61 2 9284 9852 | emily.elliott@oaic.gov.au

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s 22(1)(a)(ii)

s 22(1)(a)(ii)

From: HALE,Annamie <Annamie.Hale@oaic.gov.au>
Sent: Wednesday, 8 March 2023 7:27 PM
To: DAVEY,Adam <Adam.Davey@oaic.gov.au>
Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; LIDDLE,Emma <Emma.Liddle@oaic.gov.au>
Subject: RE: Patrick - NRF uplift VFMA [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

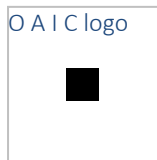
OFFICIAL: Sensitive//Legal Privilege

Thanks Adam

I have discussed with Caren and now provide my in-principle approval.

Many thanks

Annamie



Annamie Hale | Assistant Commissioner
Corporate
Office of the Australian Information Commissioner
GPO Box 5288 Sydney NSW 2001 | oaic.gov.au
+61 2 9942 4097 (m) s 47E(d) | annamie.hale@oaic.gov.au



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From: DAVEY,Adam <Adam.Davey@oaic.gov.au>
Sent: Wednesday, 8 March 2023 6:06 PM
To: HALE,Annamie <Annamie.Hale@oaic.gov.au>
Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; LIDDLE,Emma <Emma.Liddle@oaic.gov.au>
Subject: Patrick - NRF uplift VFMA [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

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Snapshot	
Due date	As soon as possible
Fixed or flexible	Flexible
If fixed, why?	N/A
Topic for clearance	Patrick litigation
Product (e.g. brief / submission)	Request for approval of revised cost estimate, totalling \$851,895.70 (incl GST)
Length / no. of pages	3 page (email and detailed estimate attached)
External party?	Norton Rose Fulbright
Clearance & consultation	Emma Liddle, Director; Caren Whip, General Counsel.
Responsible director	Emma Liddle, Director.
Final Clearance by	Annamie Hale, Assistant Commissioner

Dear Assistant Commissioner,

We are seeking your in-principle approval for an uplift of Norton Rose Fulbright's estimate to undertake work on the Patrick matter.

Quote from Norton Rose Fulbright

Norton Rose Fulbright requested an uplift of AUD **\$56,788.00 (incl GST)** to take the Patrick matter to trial, taking the total revised estimate to **\$851,895.70 (incl GST)**.

Your approval

I **attach** a copy of the quote received from Norton Rose Fulbright on 22 February 2023. The quote offers value for money for the following reasons:

- **Relevant experience** – Norton Rose Fulbright has the requisite skills and expertise for assisting with this matter. Norton Rose Fulbright has performed satisfactorily on this matter to date.
- **Team composition** – Norton Rose Fulbright's team composition is appropriate for a matter of this type and complexity.
- **Understanding of our needs** – Norton Rose Fulbright has demonstrated a clear understanding of the work required in assisting the OAIC in this matter, and the time and resources required, as set out in their quote attached to this e-mail. We are of the view that the quote demonstrates a detailed understanding of what is required for this matter.
- **Cost** – Norton Rose Fulbright has requested an uplift of **\$56,788.00 (incl GST)**, taking the total revised estimate to **\$851,895.70 (incl GST)**. We consider that this to be a realistic estimate for what is required for this matter to be taken to trial.

For Finance

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

Procurement need	There is limited capacity to complete this work in-house
Panel	Legal Services Panel
VFM	Norton Rose Fulbright's quote has been assessed as representing value for money for the reasons outlined above.
FY estimate	We estimate 100% of the work will be undertaken in the 2022-23 financial year.

Kind regards,

Adam



Adam Davey | Senior Lawyer
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GPO Box 5288 Sydney NSW 2001 | oaic.gov.au
+61 2 9942 4083 | adam.davey@oaic.gov.au



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From: [HALE,Annamie](#)
To: [DAVEY,Adam](#)
Cc: [SAUNDERS,Maggie](#); [WHIP,Caren](#)
Subject: RE: Patrick uplift VFMA (LIT21/00014) [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Date: Monday, 29 May 2023 4:22:59 PM
Attachments: [image004.jpg](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image009.jpg](#)
[image010.jpg](#)
[image001.jpg](#)

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I approve.

Thanks Adam.

A



Annamie Hale (she/her)
 Assistant Commissioner, Corporate
 Office of the Australian Information Commissioner
 Melbourne | GPO Box 5288 Sydney NSW 2001
P 02 9942 4097 **M** [s 47E\(d\)](#) **E** annamie.hale@oaic.gov.au



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From: DAVEY,Adam <Adam.Davey@oaic.gov.au>
Sent: Monday, May 29, 2023 4:18 PM
To: HALE,Annamie <Annamie.Hale@oaic.gov.au>
Cc: SAUNDERS,Maggie <Maggie.Saunders@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>
Subject: Patrick uplift VFMA (LIT21/00014) [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

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Snapshot	
Due date	As soon as possible
Fixed or flexible	Flexible
If fixed, why?	N/A
Topic for clearance	Patrick litigation
Product (e.g. brief / submission)	Request for approval of revised cost estimate, totalling \$866,352.56 (incl GST)
Length / no. of pages	1
External party?	Norton Rose Fulbright
Clearance & consultation	Adam Davey, Senior Legal Officer
Responsible director	Maggie Saunders, A/g Director.
Final Clearance by	Annamie Hale, Assistant Commissioner

Dear Assistant Commissioner,

We seek your in-principle approval for an uplift of Norton Rose Fulbright's estimate to undertake work on the Patrick matter following the recent handing down of the judgement and accompanying orders in that matter. The orders (**attached**) require the parties to take certain steps over the next few days and the currently allocated funding for the matter is almost exhausted, so your urgent attention would be greatly appreciated.

Quote from Norton Rose Fulbright

Norton Rose Fulbright requested an uplift of **\$14,456.86 (incl GST)** to act on our behalf for certain steps required under the orders accompanying the recently handed down judgement, taking the total revised estimate to **\$866,352.56 (incl GST)**.

Your approval

I **attach** a copy of the uplift request received from Norton Rose Fulbright on 29 May 2023. The quote offers value for money for the following reasons:

- **Relevant experience** – Norton Rose Fulbright has the requisite skills and expertise for assisting with this matter. Norton Rose Fulbright has performed satisfactorily on this matter to date.
- **Team composition** – Norton Rose Fulbright's team composition is appropriate for a matter of this type and complexity.
- **Understanding of our needs** – Norton Rose Fulbright has demonstrated a clear understanding of the work required in assisting the OAIC in this matter, and the time and resources required, as set out in their quote attached to this e-mail. We are of the view that the quote demonstrates a detailed understanding of what is required for this matter.
- **Cost** – Norton Rose Fulbright has requested an uplift of **\$14,456.86 (incl GST)**, taking the total revised estimate to **\$866,352.56 (incl GST)**. We consider that this to be a realistic estimate for what is required for this matter to be taken to trial.

For Finance

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

Procurement need	There is limited capacity to complete this work in-house
Panel	Legal Services Panel
VFM	Norton Rose Fulbright's quote has been assessed as representing value for money for the reasons outlined above.
FY estimate	We estimate 85% of the work will be undertaken in the 2022-23 financial year.

Kind regards,

Adam

Adam Davey
Senior Lawyer
Office of the Australian Information Commissioner



Brisbane

P +61 2 9942 4083 **E** Adam.Davey@oaic.gov.au

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s 22(1)(a)(ii)

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From: HALE,Annamie <Annamie.Hale@oaic.gov.au>

Sent: Thursday, May 25, 2023 10:51 AM

To: WHIP,Caren <Caren.Whip@oaic.gov.au>; LIU,Jian <Jian.Liu@oaic.gov.au>; DAVEY,Adam <Adam.Davey@oaic.gov.au>

Cc: OAIC - Finance <Finance@oaic.gov.au>

Subject: FW: VID519/2021 OAIC Patrick -matter - increase in estimate [SEC=OFFICIAL]

Morning Caren and Adam

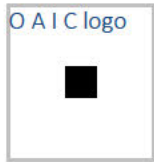
I approve the uplift to the estimate as proposed:

Care and Adam – can you please provide the PO to OAIC finance?

- Counsel: 4 hours at \$321.95 per hour ex. GST
- Partner: 2 hours at **s 47(1)(b)** per hour ex. GST
- Senior Associate: 4 hours at **s 47(1)(b)** per hour ex. GST
- **Total: \$4,357.20 ex. GST; \$4,792.70 inc. GST**

Prachi – are you able to insert this uplift?

Annamie



Annamie Hale (she/her)

Assistant Commissioner, Corporate
Office of the Australian Information Commissioner
Melbourne | GPO Box 5288 Sydney NSW 2001

P 02 9942 4097 M **s 47E(d)** E annamie.hale@oaic.gov.au



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From: Guru Kugananthan <guru.kugananthan@nortonrosefulbright.com>

Sent: Wednesday, May 24, 2023 1:18 PM

To: HALE,Annamie <Annamie.Hale@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>;
DAVEY,Adam <Adam.Davey@oaic.gov.au>

Cc: Andrew Riordan <andrew.riordan@nortonrosefulbright.com>; Tess Waldron
<tess.waldron@nortonrosefulbright.com>; Helaine Ktenas
<helaine.ktenas@nortonrosefulbright.com>

Subject: VID519/2021 OAIC Patrick - Judgment delivery this Friday 26 May, 2.15pm (4045403)
[NRF-APAC.FID2997534]

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

Hi Annamie, Caren and Adam,

We have been informed that judgment in the above matter will be delivered this **Friday, 26 May at 2.15pm.**

Funding

We acknowledge that the current funding that was approved was for the purposes of the separate question (including delivery of judgment). However, our current funding in the matter has been effectively exhausted in preparing for and attending the hearing of the separate question.

We accordingly request a further discrete amount of funding to enable us / counsel to prepare for and attend the judgment delivery, and to consider the reasons for judgment:

- Counsel: 4 hours at \$321.95 per hour ex. GST
- Partner: 2 hours at **s 47(1)(b)** per hour ex. GST
- Senior Associate: 4 hours at **s 47(1)(b)** per hour ex. GST
- **Total: \$4,357.20 ex. GST; \$4,792.70 inc. GST**

Should there be any further substantive steps to address that arise from the judgment, we can prepare a further estimate for additional funding for your consideration.

Kind regards,

Guru Kugananthan | Senior Associate
Norton Rose Fulbright Australia
Level 38, Olderfleet, 477 Collins Street, Melbourne, Australia
Tel +61 3 8686 6449 | Mob +61 400 998 556 | Fax +61 3 8686 6505
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From: [DRAYTON, Melanie](#)
To: [WHIP, Caren](#)
Cc: [CRONE, Simon](#); [CASTALDI, Andre](#)
Subject: Re: Request for approval of revised cost estimate - OAIC Patrick appeal [SEC=OFFICIAL:Sensitive]
Date: Thursday, 14 December 2023 8:35:16 AM
Attachments: [image001.jpg](#)
[image003.jpg](#)

OFFICIAL: Sensitive

Thanks Caren, I provide in-principle approval.

Mel

OFFICIAL: Sensitive

From: WHIP, Caren <Caren.Whip@oaic.gov.au>
Sent: Wednesday, December 13, 2023 7:36 pm
To: DRAYTON, Melanie <Melanie.Drayton@oaic.gov.au>
Subject: Request for approval of revised cost estimate - OAIC Patrick appeal [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

VFMA Snapshot	
Due date	As soon as possible
Fixed or flexible	Flexible
If fixed, why?	n/a
Topic for clearance	LIT23/00033 -- engagement of Norton Rose Fulbright
Product (e.g. brief / submission)	Procurement, request for approval of revised total cost estimate: \$155, 243.08 (including disbursements and GST).
Length / no. of pages	Not applicable
External party	Norton Rose Fulbright
Clearance & consultation	n/a
Responsible director	Caren Whip, General Counsel and Kylie Maso, Principal Lawyer
Final Clearance by	Mel Drayton, acting Deputy Commissioner

Our Reference: LIT23/00033

Dear Mel

I am writing to you to seek your in-principle approval for a revised cost estimate in the Full Federal Court matter of *Rex Patrick v Australian Information Commissioner* (VID765/2023). The matter has been listed for hearing on 26 February 2024.

Mr Patrick is appealing the Federal Court's (Wheelahan J) orders given on 22 August 2023 on that basis that Wheelahan J erred in holding that Mr Patrick had not established that there had been unreasonable delay in the sense required to engage s 7(1) of the ADJR Act in connection with the IC Reviews under the FOI Act.

Assistance sought

An original cost estimate of \$60,294.08 (including GST) was approved by acting Asst Commissioner Corporate, Sarah Croxall, on 22 September 2023. This fee estimate only covered fees and disbursements up until the first case management hearing. Current funding left in the matter is approximately \$9,000 (inc. GST). NRF have consequently revised the estimate, with a further amount of **\$94,949 (inc. disbursements and GST)** requested, making the total revised estimate **\$155,243.08**.

As the funding that was initially approved was intended to cover work up until the first case management hearing (for the timetabling steps leading to the hearing), the further funding required is for work that will be undertaken up to and including the receipt of judgment.

In preparing this estimate for further funding, NRF adopted the following assumptions.

s 42

S 42

Details (all under one purchase order)	\$ Amount (GST Ex)
Professional Fees	38,389.00
Counsel fee - Senior/Junior Gender - Barrister Name 1 (list separate barristers and fees)	16,424.00
Cyber Expertise Consultant Disbursement	0
Other disbursement (transcript costs / court fees / other experts)	0

VFMA

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

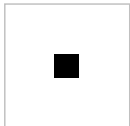
- **Relevant experience** – NRF is experienced in representing the OAIC in Federal Court matters. NRF is currently acting for the OAIC in this matter.
- **Understanding of our needs** – In my opinion the estimate demonstrates an understanding of the work that is required in this matter. NRF have the history and background in this matter – they are currently engaged in the appeal proceedings, and represented the Commissioner at first instance.
- **Cost** – NRF's quote is reasonable in light of the complexity of the matter. Further it should be noted that the original cost estimate only covered to the first case management hearing. It was therefore expected further costs would accrue to date of hearing/judgment. NRF has incorporated the costs of a contingency plan while junior counsel is on leave, which is sensible given it will reduce the risk of further revisions of cost approvals being needed.

Finance Requirements

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

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

Regards
Caren



Caren Whip (she/her)
General Counsel
Office of the Australian Information Commissioner
Sydney | GPO Box 5288 Sydney NSW 2001
P +61 2 9942 4172 E caren.whip@oaic.gov.au

*Note: I am not in the office on Fridays.
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From: [HALE,Annemie](#)
To: [GRAY,Isabella](#)
Cc: [WHIP,Caren](#); [MASO,Kylie](#); [SAUNDERS,Maggie](#)
Subject: RE: VMA – LIT23/00033 – Approval of uplift for Senator Rex Patrick Litigation [SEC=OFFICIAL:Sensitive]
Date: Wednesday, 21 February 2024 5:05:20 PM
Attachments: [image004.jpg](#)
[image005.png](#)
[image006.png](#)
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[image008.png](#)
[image009.jpg](#)
[image010.jpg](#)
[image011.jpg](#)

OFFICIAL: Sensitive

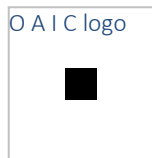
Thanks Bella

I provide my in principle approval.

I note I am not 100% sure why this is so last minute and hasn't come up so close to the hearing?

Many thanks

Annemie



Annemie Hale (she/her)
Assistant Commissioner, Corporate
Office of the Australian Information Commissioner
Melbourne | GPO Box 5288 Sydney NSW 2001
M s 47E(d) **E** annemie.hale@oaic.gov.au



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OFFICIAL: Sensitive

From: GRAY,Isabella <Isabella.Gray@oaic.gov.au>
Sent: Wednesday, February 21, 2024 4:58 PM
To: HALE,Annemie <Annemie.Hale@oaic.gov.au>
Cc: WHIP,Caren <Caren.Whip@oaic.gov.au>; MASO,Kylie <Kylie.Maso@oaic.gov.au>; SAUNDERS,Maggie <Maggie.Saunders@oaic.gov.au>
Subject: VMA – LIT23/00033 – Approval of uplift for Senator Rex Patrick Litigation [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Snapshot	
Due date	ASAP
Fixed or flexible	Flexible
If fixed, why?	N/A
Topic for clearance	LIT23/00033 – engagement of Norton Rose Fulbright
Product (e.g., brief / submission)	Procurement, please find below an uplift request for \$40,000 (including disbursements and GST) for work up to and including the hearing
Length/no. of pages	Not applicable
External Party	Norton Rose Fulbright
Clearance & Consultation	Maggie Saunders, Principal Lawyer
Responsible Director	Kylie Maso, Executive Director
Final Clearance by	Annamie Hale, Assistant Commissioner Corporate Caren Whip, General Counsel, for visibility

Our Reference: LIT33/00033

Dear Annamie

I am urgently seeking your in-principle approval of an uplift of **\$40,000 (incl GST)**, for the Full Federal Court matter of *Rex Patrick v Australian Information Commissioner* (VID765/2023).

The Australian Information Commissioner is represented by Norton Rose Fulbright Australia and a two-person counsel team. This uplift of \$40,000 comprising \$25,000 in NRFA fees and \$15,000 in disbursements (comprising counsel fees including travel costs and transcript fees), would bring the total revised estimate to \$195,243.08 (including disbursements and GST).

NRFA have advised that counsel are actively preparing for the hearing (on Monday, 26 February 2024) and their current funding is likely to be insufficient to cover their fees up to and including the hearing.

Background

Since the last estimate in December 2023, NRF claims fees (including counsel's fees) have been higher than anticipated, **s 42** and also because counsel's fees up to and including the hearing will be higher than originally forecasted.

VFMA

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

- **Relevant experience** – NRF is experienced in representing the AIC in Federal Court matters. NRF is currently acting for the AIC in this matter.
- **Understanding of our needs** – In my opinion the estimate demonstrates an understanding of the work that is required in this matter. NRF have the history and background in this matter – they are currently engaged in the appeal proceedings and represented the

Commissioner at first instance.

- **Cost** – NRF’s quote is reasonable in light of the complexity of this matter.

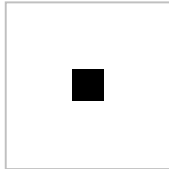
Finance Requirements

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

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

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

Kind regards,
Isabella



Isabella Gray
Paralegal
Office of the Australian Information Commissioner
Brisbane
P +61 2 9942 4141 **E** isabella.gray@oaic.gov.au

My working days are Monday - Friday.
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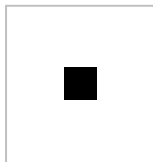
OFFICIAL: Sensitive

From: [Elizabeth Hampton](#)
To: [Caren Whip](#)
Cc: [Ruth Mackay](#); [Deputy Commissioner](#); [Megan McKenna](#)
Subject: RE: [FOR APPROVAL - By 7 May 2020] - in principle approval - LIT20/00007 [SEC=OFFICIAL]
Date: Friday, 22 May 2020 8:46:29 AM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Thanks Caren – approved. And grateful that you’ve gone back to get them to tell us when we get to 80%.

Cheers

Libby



Elizabeth Hampton | Deputy Commissioner
Office of the Australian Information Commissioner
GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
+61 2 9284 9832 | elizabeth.hampton@oaic.gov.au



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From: Caren Whip <caren.whip@oaic.gov.au>
Sent: Thursday, 21 May 2020 6:29 PM
To: Elizabeth Hampton <elizabeth.hampton@oaic.gov.au>
Cc: Ruth Mackay <ruth.mackay@oaic.gov.au>; Deputy Commissioner <deputy@oaic.gov.au>; Megan McKenna <megan.mckenna@oaic.gov.au>
Subject: RE: [FOR APPROVAL - By 7 May 2020] - in principle approval - LIT20/00007 [SEC=OFFICIAL]

Libby



s 42

Are you please able to approve based on the above information and the preceding 'value for money assessment' email?

Thanks

Caren



Caren Whip | Principal Lawyer


Legal Services

Office of the Australian Information Commissioner

GPO Box 5218 Sydney NSW 2001 | oaic.gov.au

+61 2 9284 9826 | Enquiries: 1300 363 992 | caren.whip@oaic.gov.au



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From: Elizabeth Hampton <elizabeth.hampton@oaic.gov.au>

Sent: Tuesday, 5 May 2020 7:18 PM

To: Megan McKenna <megan.mckenna@oaic.gov.au>; Deputy Commissioner <deputy@oaic.gov.au>

Cc: Ruth Mackay <ruth.mackay@oaic.gov.au>; Caren Whip <caren.whip@oaic.gov.au>

Subject: RE: [FOR APPROVAL - By 7 May 2020] - in principle approval - LIT20/00007 [SEC=OFFICIAL]

Hi Megan

Thanks for this. I've drawn out the Counsel and expert costs below, which are disbursements rather than AGS 'fees' (although AGS pays them on our behalf) below. I also wondered about this part of the quote:

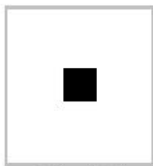
s 42

S 42

Thanks very much – happy to discuss

Cheers

Libby



Elizabeth Hampton | Deputy Commissioner
Office of the Australian Information Commissioner
GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
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From: Megan McKenna <megan.mckenna@oaic.gov.au>

Sent: Tuesday, 5 May 2020 4:17 PM

To: Deputy Commissioner <deputy@oaic.gov.au>

Cc: Elizabeth Hampton <elizabeth.hampton@oaic.gov.au>; Ruth Mackay <ruth.mackay@oaic.gov.au>; Caren Whip <caren.whip@oaic.gov.au>

Subject: [FOR APPROVAL - By 7 May 2020] - in principle approval - LIT20/00007 [SEC=OFFICIAL]

Snapshot	
Due date	ASAP – by 7 May 2020
Fixed or flexible	Fixed
Topic for clearance	In-principle approval
Product (e.g. brief / submission)	Procurement
Length / no. of pages	N/A
External party?	Australian Government Solicitor
Clearance & consultation	Caren Whip
Responsible director	Caren Whip
Final Clearance by	Elizabeth Hampton

Dear Deputy Commissioner

I am seeking your in-principle approval to instruct the Australian Government Solicitor (AGS) to

represent the OAIC before the Federal Court in a civil penalty proceeding against Facebook, pursuant to s 13G of the *Privacy Act 1988* (Cth) (Privacy Act).

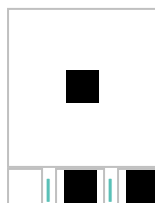
I consider AGS's quote offers value for money for the following reasons:

- **Relevant experience** – AGS have been assisting the OAIC on the Facebook investigation, they are familiar with the matter, the relevant legislation and OAIC processes. The primary lawyer put forward for work on this matter has proven skills and expertise in this area of law, and has previously worked on behalf of the OAIC on a number of matters.
- **Team composition** – AGS has nominated a Senior Executive Lawyer, a Senior Lawyer and a Lawyer to undertake work on this matter which I consider appropriate for the complexity of the matter and the amount of work required.
- **Understanding of our needs** – AGS has indicated a clear understanding of the work required in representing the OAIC in this matter, and the time and resources required, as set out in detail in the quote.
- **Cost** - AGS proposes an estimate of **\$685,000** for reviewing documents, preparing for, and appearing at the hearing. **This amount includes Counsel's fees and disbursements for experts of \$310,000.**
- AGS's charge out rate, from the Whole of Government Legal Services Panel, is \$395/hour for Senior Executive level, \$320/hour for Senior Lawyer level and \$245/hour for Lawyer level.

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

Procurement need	The OAIC requires legal expertise and representation in proceedings before the Federal Court for this matter, and cannot complete it in-house.
Need to participate in the process	This matter involves civil penalty proceedings under s 13G of the <i>Privacy Act 1988</i> (Cth)
Panel	AGS is selected from a panel.
VFM	AGS's quote has been assessed as representing value for money, as outlined in the email to Libby.
FY estimate	I estimate 20% will be undertaken in 19/20 and 80% in 20/21

Regards



Megan McKenna | Lawyer
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From: [Melanie Drayton](#)
To: [Caren Whip](#)
Cc: [Annamie Hale](#); [Elizabeth Hampton](#)
Subject: RE: [For approval]: Costs estimate in relation to FB Inc's application for special leave to High Court [SEC=OFFICIAL]
Date: Wednesday, 9 March 2022 12:27:56 PM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Thank you Caren.

I approve the expenditure related to FB Inc's application for special leave to the High Court.

Kind regards

Melanie



Melanie Drayton |
 A/g Deputy Commissioner
 Office of the Australian Information Commissioner
 GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
 +61 2 9284 9812 | **s 47E(d)**

From: Caren Whip <caren.whip@oaic.gov.au>

Sent: Tuesday, 8 March 2022 6:55 PM

To: Melanie Drayton <melanie.drayton@oaic.gov.au>

Cc: Annamie Hale <annamie.hale@oaic.gov.au>; Elizabeth Hampton <elizabeth.hampton@oaic.gov.au>

Subject: [For approval]: Costs estimate in relation to FB Inc's application for special leave to High Court [SEC=OFFICIAL]

Snapshot	
Due date	As soon as possible – legal services in relation to the matter have already commenced
Fixed or flexible	Flexible, but as soon as possible as costs are already being expended on this application
If fixed, why?	n/a
Topic for clearance	Request approval for estimate of \$115,800 for legal representation in the matter of FB's application for special leave to the High Court
Product (e.g., brief / submission)	Please find cost estimate from AGS
Length / no. of pages	n/a
External parties	AGS
Clearance & consultation/Responsible Director	Caren Whip

Dear acting Deputy Commissioner

Since my earlier email of 22 February 2022 in which I requested approval for the revised estimate on costs of \$1,357,595 in the matter of *Australian Information Commissioner v Facebook Inc*, Facebook has made an application for special leave to the High Court.

The revised estimate quoted in my 22 Feb 2022 email did not include the costs in respect of such an application. AGS has since provided confirmation of those costs of an estimate up to

\$115,800. The estimate comprises an allowance of \$75,000 for counsel fees and AGS fees of approximately \$40,800. It assumes two things: firstly, that there will be a brief oral hearing on the application; and secondly, that the application will be dismissed. It is likely that a majority of this cost figure will be spent in the remainder of FY22. The AGS cost estimate is attached.

AGS also advises that 'the novelty of the issues may also necessitate consultation with the Solicitor-General's office', and that their estimate 'includes the likely costs of this consultation'. AGS has advised it is best to run this as a **separate procurement** (AGS will open a separate file) to ensure that costs of the special leave application and the costs relating to the substantive matter remain separate.

Can you accordingly approve the attached estimate of \$115,800? *Work on this matter has already commenced*, so I would be grateful if this could be approved as soon as possible.

I also note as a result of this application being treated as a separate procurement, the revised estimate on costs for the substantive proceeding (as per my 22 February 2022 email) remains valid and the approval on that estimate remains outstanding.

Until the outcome of Facebook Inc's application for special leave has been decided, it is unlikely that substantive work (if any) will be progressed in respect of the substantive proceedings. That said, approval for the revised sum of \$1,357,595 still need to be provided in due course (assuming Facebook's application for special leave to the High Court is dismissed).

Many thanks.

Regards

Caren



Caren Whip | General Counsel

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From: [Melanie Drayton](#)
To: [Caren Whip](#)
Cc: [Annamie Hale](#); [Brenton Attard](#)
Subject: RE: Revised costs estimate re Facebook matter [SEC=OFFICIAL]
Date: Friday, 29 April 2022 1:00:13 PM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Thank you Caren, for your consideration and recommendation. I approve this expenditure.

Please keep in regular contact with Annamie and Brenton about this expenditure as the matter progresses.

Kind regards

Melanie

From: Caren Whip <caren.whip@oaic.gov.au>
Sent: Thursday, 14 April 2022 5:37 PM
To: Melanie Drayton <melanie.drayton@oaic.gov.au>
Cc: Annamie Hale <annamie.hale@oaic.gov.au>; Brenton Attard <brenton.attard@oaic.gov.au>
Subject: Revised costs estimate re Facebook matter [SEC=OFFICIAL]

OAIC ref: LIT20/00007

Dear Mel

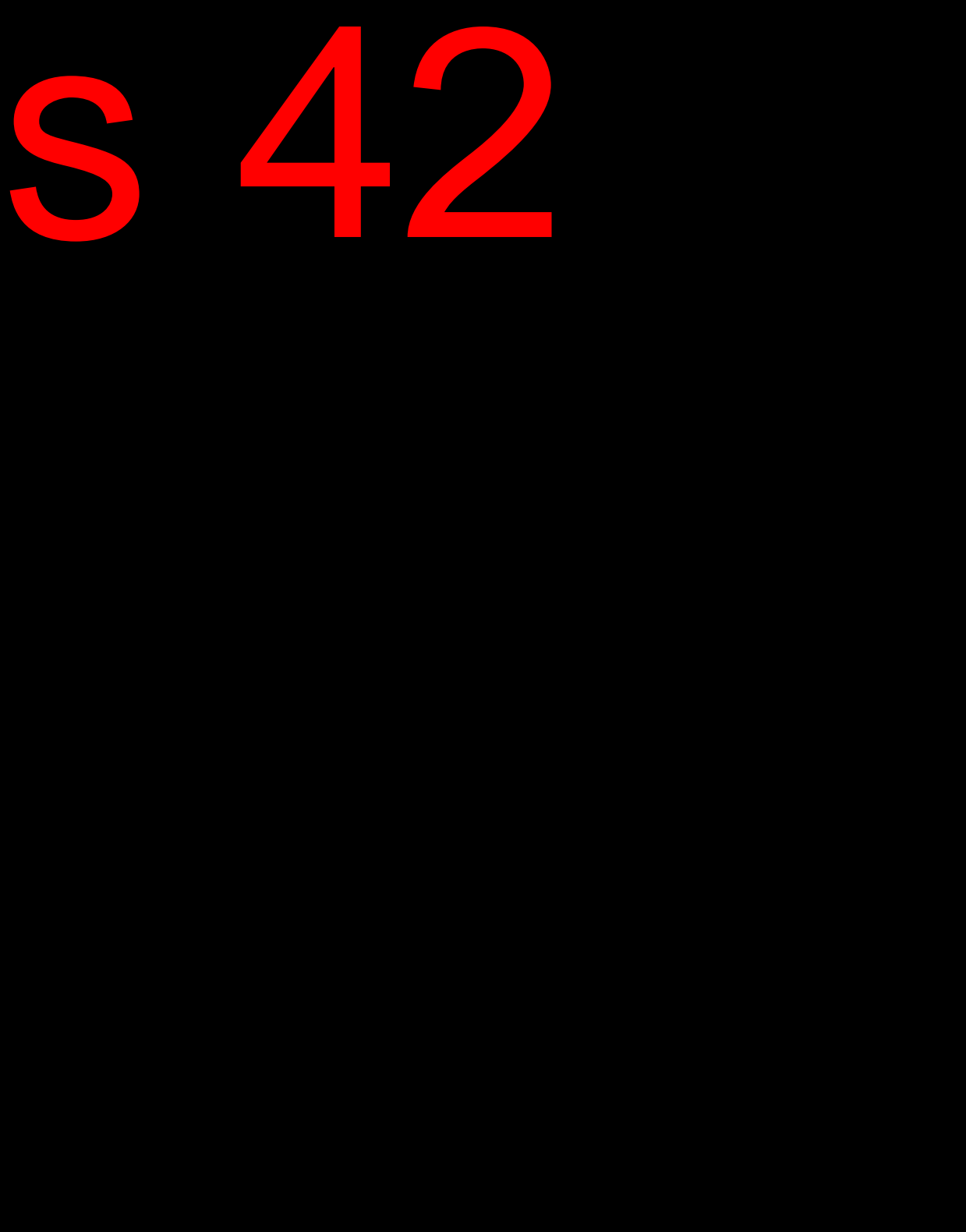
I am seeking your approval to the revised costs estimate for the proceedings against Facebook Inc and Facebook Ireland. This is an updated request to my original request of 22 April 2022.

Brenton/Annamie, given the significant estimated costings involved in this proceeding against our current litigation budget, I have copied you in for visibility.

Snapshot	
Due date	As soon as possible – legal services in relation to the matter are ongoing.
Fixed or flexible	Flexible, but as soon as possible as currently work on the substantive proceedings has ceased until further expenditure is approved
If fixed, why?	n/a
Topic for clearance	Request approval for revised estimate of \$1,357,595, inclusive of disbursements estimated at \$532,510.
Product (e.g., brief / submission)	Please find revised estimate from AGS
Length / no. of pages	5 pages
External parties	AGS

Clearance & consultation/Responsible Director | Caren Whip

AGS has prepared a revised quote of **\$1,357,595**. In preparing its estimate as set out in the attached email, AGS has assumed the following:



Disbursements

AGS estimate the following disbursements from the date of this estimate (including GST):

--	--	--

Disbursement	Days (if applicable)	Estimate
Total Counsel fees in respect of special leave application		\$75,000
Ruth Higgins SC's fees (\$3,500 per day)	40	\$140,000
Tom Prince's fees (\$1,475 per day)	40	\$59,000
Emma Bathurst's fees (\$1,325 per day)	40	\$53,000
Expert expenses (incl GST)		\$150,000
Transcript fees (incl GST)		\$20,000
Mediator fees (incl GST)		\$10,000
Photocopying (incl GST)		\$10,000
Hearing fees	9	\$15,510
Total	 	\$532,510

In my view, this revised estimate reflects value for money for the following reasons:

- **Relevant experience** – AGS is experienced and is *currently providing legal representation* for the Commissioner in relation to this proceeding.
- **Team composition** – A Senior Executive Lawyer, an acting Senior Executive Lawyer and an additional Lawyer will be undertaking the work, which I consider appropriate for the complexity of the matter and the amount of work required.
- **Understanding of our needs** - AGS has indicated a clear understanding of the revised scope of the anticipated work required in representing the Commissioner in this matter, and the time and resources required, as set out in their quote attached to this email. I am of the view that the quote demonstrates a detailed understanding of what would be required in this matter, and AGS has the specific skill sets to provide the services required.

Nonetheless I note that some of the outlined assumptions made (highlighted above in yellow) may not be accurate, and ***if that is the case, further costs will be incurred.***

- **Cost** – AGS has revised its original estimate in providing legal representation in respect of this proceeding.

The revised costs estimate does **NOT** include costs associated with the special leave application lodged with the High Court by Facebook in March 2022. Those estimated costs of \$115,800 have been approved as a separate procurement

Next steps

Upon receipt of your approval, I will send a copy of the approval, with this email, and the below information for Lorraine Nurney (OAIC invoices) to formalise the purchase order with finance:

Procurement need	The matter cannot be completed in house.
Need to participate in the process	The Commissioner has brought these proceedings against Facebook and therefore there is a need to participate in the process.
Panel	N/A
VFM	AGS' quote has been assessed as representing value for money for the reasons outlined above, though as I note it is possible the costs may increase if some of the assumptions made about the proceedings are proven incorrect.
FY estimate	<p>I estimate 5-10% will be undertaken in 2021/2022 with 60% of the balance being undertaken in 2022/2023; and then 25-30% being undertaken in the 2023/24.</p> <p>I note the estimated date for substantive hearing is late 2023. It has been acknowledged by AGS that this is an optimistic view. It is possible that the hearing may not be heard until 2024.</p> <p>I further note that, given the conduct of the respondent party to date, it is very likely that there may be further interlocutory proceedings, further delays and other challenges, which will further inflate the estimate.</p>

If you require any further information, please let me know.

Regards
Caren



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s 22(1)(a)(ii)

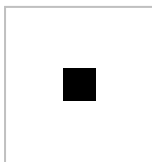
From: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>
Sent: Tuesday, 27 September 2022 3:26 PM
To: WHIP,Caren <Caren.Whip@oaic.gov.au>
Cc: HALE,Annamie <Annamie.Hale@oaic.gov.au>; LIDDLE,Emma <Emma.Liddle@oaic.gov.au>; STEVENS,David <David.Stevens@oaic.gov.au>
Subject: RE: Revised estimate in matter of the special leave application to the High Court (OAIC v Facebook Inc & Anor) [SEC=OFFICIAL]

Thank you Caren – this is approved by me.

Grateful if you could ensure that AGS invoices are provided promptly, so that we can keep on top of these costs. As you are aware, we have been asked on a number of occasions through Parliament about the costs incurred in this and other matters.

Regards

Libby



Elizabeth Hampton | Deputy Commissioner
Office of the Australian Information Commissioner
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+61 2 9942 4137 | elizabeth.hampton@oaic.gov.au

From: WHIP,Caren <Caren.Whip@oaic.gov.au>
Sent: Tuesday, 27 September 2022 3:17 PM
To: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>
Cc: HALE,Annamie <Annamie.Hale@oaic.gov.au>; LIDDLE,Emma <Emma.Liddle@oaic.gov.au>; STEVENS,David <David.Stevens@oaic.gov.au>
Subject: Revised estimate in matter of the special leave application to the High Court (OAIC v

Facebook Inc & Anor) [SEC=OFFICIAL]

OAIC ref: LIT20/00007

Dear Libby

I am seeking your approval to the revised costs estimate for the HC appeal in the OAIC's civil penalty proceeding against Facebook Inc and Facebook Ireland. AGS' original estimate of \$115,800 for the special leave application to the High Court was provided on the assumption that special leave would not be granted. **Please see revised costs estimate attached.**

As you know, special leave was granted on 16 September 2022. Consequently the revised estimate goes to the additional cost to be incurred as a result of special leave being granted and the matter proceeding to hearing.

AGS has indicated that in relation to monies spent thus far, although AGS is still waiting for counsel's invoices, they expect to remain below 50% of the original estimate.

Annamie, I have copied you in for visibility.

Snapshot	
Due date	As soon as possible – legal services in relation to the matter are ongoing.
Fixed or flexible	Flexible, but as soon as possible
If fixed, why?	n/a
Topic for clearance	Request approval for revised estimate of \$353,000, inclusive of disbursements (including senior and junior counsel) estimated at \$173,800.
Product (e.g., brief / submission)	Please find revised estimate from AGS
Length / no. of pages	3 pages
External parties	AGS
Clearance & consultation/Responsible Director	Caren Whip

AGS has prepared a revised quote of approximately **\$353,000**, comprised of:

- AGS's fees of approximately **\$180,000**; and
- Disbursements, including senior and junior counsel, of approximately **\$173,800**, incl GST.

AGS have prepared this estimate on the basis of certain assumptions, set out below.

s 42

S 42

Disbursements

AGS estimate the following disbursements from the date of this estimate (including GST):

Disbursement	Days (if applicable)	Estimate
Total Counsel fees in respect of High Court appeal		\$163,800
Ruth Higgins SC's fees (\$3,500 per day)	26	\$91,000
Tom Prince's fees (\$1,475 per day)	26	\$38,350
Emma Bathurst's fees (\$1,325 per day)	26	\$34,450
Printing / Photocopying (incl GST)		\$5,000
Counsel travel and accommodation expenses (excl GST)		\$5,000
Total		\$173,800

If the Solicitor-General were to accept a brief in relation to this matter, disbursements would be lower. The Solicitor-General's services are budget-funded. Persons or bodies are not billed for the Solicitor-General's work.

In my view, this revised estimate reflects value for money for the following reasons:

- **Relevant experience** – AGS is experienced and is *currently providing legal representation* for the Commissioner in relation to this proceeding.
- **Team composition** – Two Senior Executive Lawyers, an acting Senior Executive Lawyer and an additional Lawyer will be undertaking the work, which I consider appropriate for the complexity of the matter and the amount of work required.

- **Understanding of our needs** - AGS has indicated a clear understanding of the revised scope of the anticipated work required in representing the Commissioner in this matter, and the time and resources required, as set out in their quote attached to this email. I am of the view that the quote demonstrates a detailed understanding of what would be required in this matter, and AGS has the specific skill sets to provide the services required.

Nonetheless I note that some of the outlined assumptions made (highlighted above in yellow) may not be accurate, and **if that is the case, further costs will be incurred.**

- **Cost** – AGS has revised its original estimate in providing legal representation in respect of this proceeding.

Next steps

Upon receipt of your approval, I will send a copy of the approval, with this email, and the below information to OAIC invoices for processing:

Procurement need	The matter cannot be completed in house.
Need to participate in the process	The Commissioner has brought these proceedings against Facebook and therefore there is a need to participate in the process.
Panel	N/A
VFM	AGS' quote has been assessed as representing value for money for the reasons outlined above, though as I note it is possible the costs may increase if some of the assumptions made about the proceedings are proven incorrect.
FY estimate	I estimate 60% will be undertaken in 2022/2023 with 40% of the balance being undertaken in 2023/2024; though it does depend when the hearing is listed for. I note the estimated date for the special leave hearing is up to September 2024.

If you require any further information, please let me know.

Regards
Caren



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s 22(1)(a)(ii)

From: HALE,Annamie <Annamie.Hale@oaic.gov.au>

Sent: Tuesday, 8 November 2022 3:51 PM

To: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>

Subject: RE: Facebook Inc v AIC - HCA appeal - Revised estimate [AGSDMS-DMS.FID4738918]
[SEC=OFFICIAL]

No, I can approve.

Thanks Libby.



Annamie Hale | Assistant Commissioner

Corporate

Office of the Australian Information Commissioner

GPO Box 5218 Sydney NSW 2001 | oaic.gov.au

+61 2 9942 4097 (m) **s 47E(d)** | annamie.hale@oaic.gov.au



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s 22(1)(a)(ii)

s 22(1)(a)(ii)

From: s 47F [redacted] <[redacted]@ags.gov.au>

Sent: Friday, 4 November 2022 2:27 PM

To: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>; WHIP,Caren <Caren.Whip@oaic.gov.au>; HALE,Annamie <Annamie.Hale@oaic.gov.au>

Cc: Close, Katrina <Katrina.Close@ags.gov.au>; Smith, Helen <Helen.Smith@ags.gov.au>

Subject: Facebook Inc v AIC - HCA appeal - Revised estimate [SEC=OFFICIAL] [AGSDMS-DMS.FID4738918]

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OFFICIAL

Hi Libby, Caren and Annamie

We have prepared a revised estimate in the Facebook Inc High Court appeal, for the purpose of incorporating the Commonwealth consultation with the ACCC and ASIC (**attached**).

In short, we consider the Commonwealth consultation is likely to add up to around \$73,000 in AGS fees and disbursements.

- \$27,000 for an additional 10-12 hours of conferences with Counsel (AGS - \$13,650; Counsel - \$10,499).
- \$13,000 for two additional days from each of Counsel for consideration and implementation of OAIC and regulator comments throughout the process, including the written notes.
- \$33,000 for an additional 3 days from AGS staff reviewing other regulators' written notes, potentially drafting an OAIC note (if necessary), implementing changes/comments from the OAIC and regulators, and managing consultation and correspondence.

This would amount to an adjusted estimate of \$353,000 + \$73,000 = **\$426,000**, comprised of:

- AGS fees of approximately \$180,000 + \$47,000 = **\$227,000**
- Disbursements of approximately \$173,800 + \$25,000 = **\$199,000**

Please let us know if you would like to discuss this estimate. If you are content with it, we will share it with the ACCC and ASIC to enable them to obtain formal approval to fund up to one third of this sum.

Kind regards

s 47F [redacted]

s 47F [redacted]

A/g Senior Lawyer

Australian Government Solicitor

T s 47F
s 47F @ags.gov.au

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

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