Administrative Appeals Tribunal of Australia

Dreyfus and Attorney-General (Commonwealth of Australia) (Freedom of information) [2015] AATA 995 (22 December 2015)

Last Updated: 23 December 2015

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Division	General Division
File Number	**2014/4593**
Re	**Mark Dreyfus**
	APPLICANT
And	**Attorney-General (Commonwealth of Australia)**
	RESPONDENT

DECISION

Tribunal	**Justice Jagot**
Date	**22 December 2015**
Place	**Sydney**

1. The decision communicated to the applicant by letter dated 13 June 2014 that a practical refusal reason exists because the work involved in processing the request(s) in accordance with the *Freedom of Information Act 1982* (Cth) (the **Act**) would substantially and unreasonably interfere with the performance of the Attorney-General's functions be set aside.
2. In lieu thereof it be decided that no practical refusal reason exists under s 24 of the Act in relation to the request(s).

[sgd]
Justice Jagot

CATCHWORDS

FREEDOM OF INFORMATION - Freedom of information request – Request for access to diary of the Attorney-General – Whether practical refusal reason established – Whether request would constitute substantial and unreasonable interference with the performance of the Attorney-General's functions – Decision under review set aside.

LEGISLATION

Freedom of Information Act 1982 (Cth) ss 3, 4(1), 11, 11A, 11B, 22, 24, 24AA, 24AB, 27, 27A, 33, 34, 37, 47F, 47G, 61(1)(b), 93A
Privacy Act 1988 (Cth)

CASES

Davies and Department of the Prime Minister and Cabinet [2013] AICmr 10
Re Chandra and Department of Immigration and Ethnic Affairs [1984] AATA 437; (1984) 6 ALN N257
Wiseman v The Commonwealth [1989] FCA 434

SECONDARY MATERIALS

Office of the Australian Information Commissioner, Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (Version 1.3, October 2014)

REASONS FOR DECISION

THE APPLICATION

1. This application is for review of a decision of the delegate of the Attorney-General (Commonwealth of Australia) (the **Attorney-General**) to refuse a request for access to a document or documents under the *Freedom of Information Act 1982* (Cth) (the **FOI Act**), ss 24 and 24AA of which permit access to be refused if a "practical refusal reason exists in relation to the request".
2. It is common ground that the requests (two in number) may be identified as a single request for access to the Attorney-General's diary in a "weekly agenda" format for the period 18 September 2013 to 12 May 2014.
3. For the reasons set out below, I consider that the Attorney-General has not discharged the onus under s 61(1)(b) of the FOI Act that the decision is justified or that the Tribunal should give a decision adverse to the applicant. Accordingly, the decision of the Attorney-General's delegate that a practical refusal reason exists in relation to the requests should be set aside.

THE FOI ACT

4. The objects of the FOI Act are to give the Australian community access to information held by the Government of the Commonwealth by "providing for a right of access to documents" (s 3(1)(b)). The Act incorporates certain express statements of the intention of the Parliament in s 3(2)-(4) as follows:

(2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:

> *(a) increasing public participation in Government processes, with a view to promoting better-informed decision-making;*
>
> *(b) increasing scrutiny, discussion, comment and review of the Government's activities.*

(3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.

(4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

5. Relevant definitions in s 4(1) include:
   - "**document**" which is defined to include "any part of any of" specified matters including "any paper or other material on which there is writing", "any article on which information has been stored or recorded, either mechanically or electronically", or "any other record of information";
   - "**exempt document**" which means:
     a. a document that is exempt for the purposes of Part IV (exempt documents) (see s 31B); or
     b. a document in respect of which, by virtue of s 7, an agency, person or body is exempt from the operation of this Act; or
     c. an official document of a Minister that contains some matter that does not relate to the affairs of an agency or of a Department of State;

"**official document of a Minister or official document of the Minister**" which means a document that is in the possession of a Minister, or that is in the possession of the Minister concerned, as the case requires, in his or her capacity as a Minister, being a document that relates to the affairs of an agency or of a Department of State;

- "**personal information**" which has the same meaning as in the *Privacy Act 1988* (Cth), being "information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not...";
- "**practical refusal reason**" which has the meaning given by s 24AA.

6. By s 11(1) of the FOI Act "every person has a legally enforceable right to obtain access in accordance with" the Act to a document of an agency, other than an exempt document, or an official document of a Minister, other than an exempt document. Section 11(2) makes clear that this right is not affected by any reasons the person gives for seeking access or the agency's or Minister's belief as to what are his or her reasons for seeking access.
7. The general rule is that access must be given to a document (s 11A(3)) unless the document is an exempt document (s 11A(4)). If a document is only "conditionally exempt" then access must be given unless access at that time would, on balance, be contrary to the public interest (s 11A(5)). To work out whether access to a conditionally exempt document would, on balance, be contrary to the public interest the decision-maker must comply with s 11B. Factors which favour access are set out in s 11B(3) and include whether access to the document would:

(a) *promote the objects of this Act (including all the matters set out in sections 3 and 3A);*

(b) inform debate on a matter of public importance;

(c) promote effective oversight of public expenditure;

(d) allow a person to access his or her own personal information.

8. Factors which are irrelevant and must not be taken into account are set out in s 11B(4), being that:
   (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;

(aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;

(b) access to the document could result in any person misinterpreting or misunderstanding the document;

(c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;

(d) access to the document could result in confusion or unnecessary debate.

9. By s 11B(5), in working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of s 11B under s 93A. Guidelines have been issued under s 93A (Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*).
10. Section 22 requires an agency or Minister to delete irrelevant material from a document and provide access to an edited copy of the document if it is possible to do so.
11. Section 24 is central to the present debate. It provides that:
    (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:

    (a) must undertake a request consultation process (see section 24AB); and

    (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists – the agency or Minister may refuse to give access to the document in accordance with

the request.

(2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:

(a) the requests relate to the same document or documents; or

(b) the requests relate to documents, the subject matter of which is substantially the same.

12. I am satisfied that it is appropriate to treat the applicant's two requests (one for access to the Attorney-General's diary for the period 18 September 2013 to 27 March 2014 and the other for access to the same diary for the period 28 March 2014 to 12 May 2014) as a single request as contemplated by s 24(2). Whether or not the diary is treated as a single document (with each entry being a part of a document) or a multiplicity of documents (with each entry itself being a document), the request(s) relate to either the same document (in the former case) or to documents the subject matter of which is substantially the same (in the latter case).
13. Section 24AA is also a key provision. It provides that:

*(1) For the purposes of section 24, a **practical refusal reason** exists in relation to a request for a document if either (or both) of the following applies:*

(a) the work involved in processing the request:

(i) in the case of an agency – would substantially and unreasonably divert the resources of the agency from its other operations; or

(ii) in the case of a Minister – would substantially and unreasonably interfere with the performance of the Minister's functions;

(b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).

(2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:

(a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;

(b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:

(i) examining the document; or

(ii) consulting with any person or body in relation to the request;

(c) making a copy, or an edited copy, of the document;

(d) notifying any interim or final decision on the request.

(3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:

(a) any reasons that the applicant gives for requesting access; or

(b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or

(c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

14. In other words, on receipt of a request for access to documents under the FOI Act, the Minister or agency must decide by way of a process of hypothetical reasoning (that is, **if** the request is to be processed) whether the processing of the request would substantially and unreasonably interfere with the performance of the Minister's

functions (in the case of a Minister) or would substantially and unreasonably divert the resources of the agency from its other operations (in the case of an agency), having regard to the matters set out in s 24AA(2). As set out above, s 24AA(2) focuses on the resources that would have to be used, in effect, to process the request.

15. Because the process of reasoning involves a hypothetical situation the Minister's or agency's assessment will necessarily be based on estimates about which, I accept, reasonable minds might differ. It is fundamental, however, that the process of estimation reflects the requirements of the FOI Act. If, for example, the resources that would have to be used are estimated on the basis of requirements for consultation when the FOI Act does not require consultation, then the capacity to decide if a practical refusal reason exists would be able to be used to defeat the objects of the FOI Act, including not only the right of access granted by the Act but also the express intention of the Parliament that functions and powers given by the Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost. The same thwarting of the statutory objects and the intention of Parliament would result if, for example, the estimate was based on an expectation that examining the documents would require a detailed and time-consuming exercise of going behind the face of the documents to try to ascertain if any exemption might apply when, on any reasonable view, no exemption could be engaged.
16. In the present case neither party suggested that the reference in s 24AA(2) to "without limiting the matters to which the agency or Minister may have regard" enabled an agency or Minister to estimate the resources that would have to be used for the processing of the request by reference to tasks not required by the FOI Act or to criteria not set out in the Act or, for example, to criteria which the provisions of the Act make clear are irrelevant (see ss 11(2), 11B(4) and 24AA(3)). Nor, in my view, would such an approach to s 24AA(2) be legitimate; the risk of undermining the express statutory objects and Parliamentary intention would be too great. The kind of other matters which might be able to be considered under s 24AA(2) are those which, for example, the Guidelines identify, including the resources actually available to the agency or the Minister, whether the documents have otherwise been made publicly available, and the like. As noted, if it were otherwise ss 24 and 24AA would be able to be used to undermine the entire purpose of the FOI Act.
17. The requirements of s 24AB, relating to consultation with the applicant, have been satisfied in this case.
18. Part IV of the FOI Act concerns exempt documents. Exempt documents are regulated by Div 2 of Pt IV. Conditionally exempt documents are regulated by Div 3 of Pt IV.
19. Exempt documents include such matters as documents affecting national security, defence or international relations, cabinet documents, documents affecting enforcement of law and protection of public safety, and documents disclosing trade secrets or commercially valuable information.
20. Conditionally exempt documents include documents affecting personal privacy and business documents as described. Documents affecting personal privacy are documents the disclosure of which would involve the unreasonable disclosure of personal information about any person (s 47F). Business documents are documents the disclosure of which would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs or could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency (s 47G).
21. It will be apparent from these provisions that it is not any disclosure of personal information or of business activities that might be conditionally exempt. It is only such disclosures that would or could reasonably be expected to involve "unreasonable disclosure" of the specified matters.
22. The disclosure of documents affecting personal privacy is subject to s 27A which applies if it appears to the agency or Minister that the person or the person's legal personal representative (the **person concerned**) might reasonably wish to make a contention (the **exemption contention**) that the document is conditionally exempt under s 47F and access to the document would, on balance, be contrary to the public interest for the purposes of s 11A(5). In deciding if a person might reasonably wish to make an exemption contention the agency or Minister must take into account certain factors under s 27A(2) including the extent to which the information is well known, whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the information, and the availability of the information from publicly accessible sources. If s 27A applies (which means it must appear to the agency or Minister that the person concerned might reasonably wish to make an exemption condition), the agency or Minister must not decide to give the applicant access to documents unless the person concerned is given a reasonable opportunity to make submissions in support of the

exemption contention and the agency or Minister has regard to any submissions so made. The disclosure of business documents is subject to an equivalent provision and consultation requirement in s 27. In other words, s 27 also applies only if it appears that the person concerned might reasonably wish to make an exemption contention. In deciding whether it appears that a person concerned might reasonably wish to make an exemption contention, it must be remembered that an exemption contention is one to the effect that the disclosure would (or could reasonably be expected to) involve unreasonable disclosure of the specified matter.

23. By s 61(1)(b) the agency or Minister carries the onus of establishing that the decision is justified or that the Tribunal should give a decision adverse to the applicant.
24. Section 93A, as noted, relates to certain guidelines which must be taken into account, relevantly, in determining public interest factors and in making a decision on any request for access to documents.

DISCUSSION

25. Paul O'Sullivan gave evidence by affidavit for the Attorney-General. Mr O'Sullivan is the Attorney-General's Chief of Staff and holds the only delegation from the Attorney-General to determine FOI applications requesting access to documents of the Attorney-General. He made the decision the subject of this review application that a practical refusal reason exists in relation to the processing of the request(s). Mr O'Sullivan has held numerous senior governmental roles before being appointed as the Chief of Staff for the Attorney-General in October 2013. Mr O'Sullivan also gave oral evidence.
26. Based on Mr O'Sullivan's evidence it was contended that the following work would be involved in processing the request:

Task	**Time for task**	**Consequence in hours**
searching and retrieving relevant documents	0 hours	0 hours
consulting third parties	1-2 hours per party; 130-263 parties	130-526 hours
examining the documents to make a decision	2 minutes per entry	64.33 hours
deleting irrelevant/exempt material	3 minutes per calendar day	11.75 hours
preparing schedules	at 3-4 minutes per calendar day	11.75-15.66 hours
preparing statement of reasons	10-12 hours	10-12 hours
total		228-630 hours

27. Debra Biggs and Edgar Laurens gave evidence by affidavit for the applicant. Ms Biggs has been a senior diary manager to a number of senior federal politicians including a former Prime Minister. Mr Laurens' evidence was confined to the production of documents relating to the production of diaries by other politicians including the current Minister for Foreign Affairs. Ms Biggs also gave oral evidence.
28. Having regard to Ms Biggs' evidence it is clear that the Attorney-General's diary can be produced in a "weekly agenda" format as sought by the applicant. Mr O'Sullivan no longer suggests otherwise. The diary can be produced in this format (and others) because it is an electronic document created using Microsoft Outlook software.
29. It is also apparent that, insofar as Mr O'Sullivan considered that the diary to which access was sought included documents other than the Outlook calendar, he was acting on the basis of the original application which has now been overtaken by the applicant's clarification of what is sought. The current position is that the applicant does not seek any invitations, correspondence, or background or briefing documents which might be attached to or otherwise kept in the Outlook calendar. All that is sought is access to the Outlook calendar in a weekly format (that is, a view showing a week to a page) for the periods indicated.
30. From material tendered in evidence (six weeks of extracts from the diary in a daily format, it being common

ground that the weekly format will show no more than the daily format), it is apparent that the "weekly agenda" format shows only the date, time and certain limited meeting or appointment details such as the identity of the person(s) involved in the meeting or appointment and, in some cases, brief (one or two words) descriptions of the nature or purpose of the meeting. It also shows times and general modes of travel and booking references. It does not show any related invitations, correspondence, or background or briefing documents. These facts are fundamental to my assessment below.

31. Despite the applicant's clarification of the confined scope of the request(s), the estimate of the work involved to process the request(s) remained the same. This is because Mr O'Sullivan remained of the view that it would still be necessary to check the background or meeting records associated with each diary entry in order to decide whether the entry itself is an exempt or conditionally exempt document in respect of which consultation is required. As explained below, given the request(s) as currently framed, I am unable to agree.
32. Mr O'Sullivan's evidence discloses some basic facts which should be accepted:
    - The Attorney-General works six and sometimes seven days a week.
    - He has, on average, about 12 appointments a day.
    - The diary contains all of his appointments – in his capacity as a Minister, in his capacity as a senior member of the Liberal/National Coalition, and in his personal capacity (although, I should note, that the extracts from the diary tendered in evidence on a confidential basis did not appear to contain personal appointments).
    - The Office of the Attorney-General has 17 staff (10 Ministerial and four electorate staff), supported by three liaison officers from the Attorney-General's Department. The Department is much larger (perhaps about 1300 people).
    - Mr O'Sullivan alone is authorised to make decisions about requests of the Attorney-General under the FOI Act. Others conduct the underlying work and present Mr O'Sullivan with a draft decision. If satisfied, Mr O'Sullivan will decide in accordance with the draft decision. If not satisfied, Mr O'Sullivan will undertake further work or require it to be undertaken and may also consult the Attorney-General in "difficult or sensitive cases".
    - The request relates to 237 days which involves about 1930 individual entries in the diary. As noted, my inspection of the diary extracts discloses that most entries are brief, one line, entries.
    - It will not be difficult or take much time to prepare and print the diary over the requested period in the "weekly agenda" format.
33. Other evidence given by Mr O'Sullivan requires more detailed consideration.
34. Mr O'Sullivan considered that there may be security risks in disclosing Ministerial movements or travel arrangements, particularly if they reflect regular movements or arrangements. Two observations need to be made about this concern. First, to be relevant to the task required under the FOI Act there must be a provision to which the concern attaches. For example, it may be that this concern, in an appropriate case, could call up for consideration s 37(1)(c) of the FOI Act which provides that a document which would or could reasonably be expected to endanger the life or physical safety of any person is an exempt document. Second, and of more direct relevance to the present case, is that the present request(s) relate to a document (or documents) which is now more than eighteen months old. No current or proposed movements of the Attorney-General will be disclosed.
35. Mr O'Sullivan, based on his current role and previous experience, has particular experience in the assessment of security risks. His concern thus warrants careful consideration. I am not satisfied, however, that his concern is based on the actual contents of the diary to which access is sought. His concern appears to operate at a more general level that these request(s) might set a precedent for disclosure of current and proposed appointments of the Attorney-General. I do not consider request(s) for diary extracts more than 18 months old to set a precedent for any request for access to records of current and future appointments. Any such request in the future would have to be evaluated on its own terms but would be likely to give rise to different considerations from the request(s) in issue in this matter which seek access to diary entries more than 18 months old and then only in the weekly format.
36. Otherwise, the only basis for this concern apparent from Mr O'Sullivan's evidence was that the request(s), if processed, might involve some disclosure of a pattern of behaviour (which he described as a "mosaic" of information). The diary extracts in evidence do not give support to this concern. While I accept that the potential disclosure of regular pick-up or drop-off locations might raise a security risk, the diary extracts identify only one location that I infer might not be a secure space and that is in terms only of a general suburb or area, not an address. Otherwise the fact that the Attorney-General is frequently collected and dropped off at Parliament House is common knowledge. Despite this, I accept that there may be other risks which I am unable to discern from the diary extracts. I accept also that potential disclosure of a preferred form of transport (such as an airline choice)

might be a security risk.

37. To my mind, however, the most important facts are two in number. First, based on the diary extracts in evidence I consider that it would be relatively straightforward for a decision to be made about which classes of information, if any, engage s 37(1)(c). I do not accept that this decision would require consultation with bodies such as the Australian Federal Police, State and Territory police or intelligence agencies. It is a decision Mr O'Sullivan is readily able to make. Second, that decision having been made, the offending information could readily be deleted (and, pursuant to s 22, should be deleted and the balance of the document produced). I also do not consider that there would be a great deal of work involved in this task given the capacity Ms Biggs described to export the contents of a diary in Outlook into a Microsoft Word format, which would allow electronic searches of words such as "Comcar" and "booking" or of airline names. Even if electronic searching is not possible for some reason, the searching task is straightforward. I can see no basis upon which disclosure of an edited version of the diary in this form would involve any risk to safety, even if by disclosure of a mosaic of information to which Mr O'Sullivan referred, or would itself require consultation with bodies such as the Australian Federal Police, State and Territory police or intelligence agencies.
38. I reach similar conclusions about Mr O'Sullivan's concerns in respect of security-related meetings. If it is the fact that the mere occurrence of a meeting or meetings with security bodies more than 18 months ago, by some other statute, must not be disclosed irrespective of the FOI Act (a possibility implicit in Mr O'Sullivan's oral evidence), then that other statute would operate according to its terms. Again, I expect it would be a relatively simple exercise to search the diary electronically or otherwise for entries of that kind using various keyword searches such as "ASIO" or "National Security Council/Committee". Otherwise, the relevant provision is s 33 of the FOI Act. Regard needs to be had to the actual terms of this section which are as follows:

A document is an exempt document if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to:

(i) the security of the Commonwealth;

(ii) the defence of the Commonwealth; or

(iii) the international relations of the Commonwealth; or

(b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

39. I am unable to accept that the mere fact that the Attorney-General had a meeting with ASIO or attended a meeting of the National Security Council/Committee more than 18 months ago could cause damage or divulge information of the required kind if a diary entry says nothing more than "meeting with ASIO" or "meeting of National Security Council/Committee". However, apart from the possible existence of other legislation making the very fact of those meetings exempt from disclosure to which Mr O'Sullivan adverted, this appeared to be the basis for his concern that significant work would be required to ascertain if disclosure would cause damage or divulge information of the required kind. As noted, I am unable to agree. Moreover, the diary extracts provided indicate that most of the entries in this regard are indeed as innocuous as "meeting with ASIO" or "meeting of National Security Council/Committee". And as I have said, in those cases where something more does appear in the diary which might engage s 33 (which I consider will be rare based on the diary extracts) then the additional information could be deleted without too much effort. Again, it seemed to me that the issues being raised were based on perceptions pitched at a high level of generality and without regard to the actual contents of the Attorney-General's diary when produced in weekly format as disclosed by the extracts in evidence.
40. I accept that, as Mr O'Sullivan said, the Attorney-General will meet from time to time with representatives of business and individuals. Entries of this kind will be identified only by inspection of each individual entry. Again, however, Mr O'Sullivan's evidence appeared to be based on a view that if nothing more than the name of the business representative or individual appears in the diary it will nevertheless be necessary in every case to go behind the entry and examine associated documents and undertake a complex process of working out whether, by the disclosure of some pattern or mosaic, the disclosure of the information might unreasonably disclose personal or business information of the relevant kind such as to require consultation with the person concerned. I am

unable to accept that this approach is contemplated by the FOI Act.

41. In terms of representatives of businesses, given that the diary in "weekly agenda" format is nothing more than a list of meetings with, perhaps, a short description of the purpose of the meeting, I have considerable difficulty accepting the proposition that disclosure of such information would, or could reasonably be expected to, **unreasonably** affect such a person (that is, a person who had a scheduled meeting with the Attorney-General) adversely in respect of his or her lawful business or professional affairs or could **reasonably** be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency (etc), which are the pre-conditions to exemption under s 47G(1). This is particularly so given that the diary relates to events now at least 18 months old.
42. It was put that the relevant consideration is that contained in s 27, namely, whether it appears to the Minister that the person, organisation or proprietor of the undertaking (the **person or organisation concerned**) might reasonably wish to make a contention that the document is conditionally exempt under s 47G (business information) and access to the document would, on balance, be contrary to the public interest for the purposes of sub-s 11A(5) and that, for this purpose, the Minister needs to consider the required matters in s 27(3). I accept that s 27 is relevant. However, the test is not whether it appears that a person might wish to make an exemption contention. It is that it appears a person might **reasonably** wish to make an exemption contention. In other words, there must be some rational basis which the agency or Minister can discern indicating that disclosure of the document would, or could be expected to, **unreasonably** affect such a person adversely in respect of his or her lawful business or professional affairs (etc).
43. As the applicant correctly noted, whether or not disclosure would be "unreasonable" is a question of fact and degree which calls for a balancing of all the legitimate interests involved (citing, in support, *Wiseman v The Commonwealth* [1989] FCA 434 (***Wiseman***)) which includes the legitimate interest in knowing with whom Ministers are meeting. In *Wiseman* at [5] the Full Court referred to *Re Chandra and Department of Immigration and Ethnic Affairs* [1984] AATA 437; (1984) 6 ALN N257 (at 259) to the following effect:

> *Whether a disclosure is "unreasonable" requires ... a consideration of all the circumstances including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent and whether the information has any current relevance. Plainly enough what s 41 seeks to do is to provide a ground for preventing unreasonable invasion of the privacy of third parties.*
>
> *... However, consistently with the stated object of the Act (see s 3), it is also necessary ... to take into consideration the public interest recognised by the Act in the disclosure of information in documentary form in the possession of an agency and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party whose personal affairs may be unreasonably disclosed by granting access to the document.*

44. Where there is nothing more than an entry in the diary of a name or names of a business representative (and the business name) who might have met with the Attorney-General some 18 months or more ago (recognising that the mere fact that a meeting is scheduled does not mean it took place), I am unable to discern a rational basis upon which it could appear in every such case that the person(s) concerned might **reasonably** wish to make an exemption contention. I also do not accept that it is necessary to go behind the face of such an entry in order to try to find if there is any reason which might found the appearance of such a reason. If it does not appear from the face of the entry (which is all that will be disclosed) or from anything else actually known to the decision-maker (even if not apparent from the face of the diary entry) that a person might reasonably wish to make an exemption contention then that is the end of the matter. In my view, there is no requirement to do more, in effect, by trying to discover something which might amount to a rational foundation for it appearing that a person might reasonably wish to make an exemption contention.
45. Given this, I do not accept the suggestion that for every meeting with a business representative there would need to be a lengthy process of considering whether the person must be given the opportunity to make an exemption contention as contemplated by s 27. In my view, that suggestion invites an approach to the administration of the FOI Act which is contrary to its objects in s 3, in particular, the object of performing and exercising functions under the Act "as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost". I consider that the qualification on the wish of a person to make an exemption contention that it appears the wish be **reasonable** casts an obligation on the agency or Minister concerned to assess whether, in the circumstances of each particular case, there is some rational basis either apparent from the

face of the document to which access is sought or otherwise known to the decision-maker upon which the person involved could reasonably seek to rely upon the actual terms of the exemption (in distinction from, for example, a mere preference or even a strong preference, for the fact of their meeting with the Attorney-General not to be disclosed). I do not accept that, otherwise, the decision-maker is obliged to make inquiries or search for some basis upon which it might appear that a person might reasonably wish to make an exemption contention.

46. In other words, there is no need to consult a person in order to decide whether the Act makes it necessary to consult that person. Consultation is only required once the relevant appearance (of a reasonable wish to make an exemption contention) arises. Such an appearance can arise from the face of the document to which access is sought or from something known to the decision-maker. There is no obligation on the decision-maker to search for things not apparent from the face of the document to which access is sought or not known to the decision-maker.
47. Accordingly, in the present case, insofar as it can be anticipated that there is a class of entries in the diary in which a representative of a business has been scheduled to meet the Attorney-General within the period of the request and the diary entry contains nothing but the name(s) of the person(s) involved and the business name I do not accept that such entries in the ordinary course will require extensive consideration and consultation under s 27.
48. I accept that there might be another class of entries in the diary where more than the name(s) of the person(s) involved and the business name are disclosed or there is some reason which makes the entry particularly sensitive, although I saw no obvious examples of such in the diary extracts. Given this, I consider that such entries will be rare. It is possible but by no means certain that in such a case further consideration or even consultation under s 27 might be required because the view might be reached that such a person might reasonably wish to make an exemption contention.
49. A similar position applies to the personal privacy exemption. Where an entry in the diary discloses the name of a person who was scheduled to meet the Attorney-General within the period of the requests and nothing more, I am unable to accept that in the ordinary course disclosure of that fact would or even could "involve the unreasonable disclosure of personal information about any person". As such, I am unable to see a rational basis upon which it could appear that every one of these person(s) might **reasonably** wish to make an exemption contention. As above, I do not accept that the decision-maker is obliged to search for something not apparent on the face of the document or not otherwise known. If there is nothing apparent on the face of the document and nothing otherwise known to the decision-maker then it cannot appear to the decision maker that a person might reasonably wish to make an exemption contention. The mere appearance of a person's name in the diary, in my view, is insufficient for it to be apparent on the face of the document that a person might reasonably wish to make an exemption contention. Where, however, something more is disclosed such as the purpose of the meeting or there is some known sensitivity I accept that further consideration or even consultation under s 27A might be required because the view might be reached that such a person might reasonably wish to make an exemption contention. Again, however, my review of the diary extracts indicates that this will be a rare case.
50. It is also appropriate to record that I accept the applicant's contention that insofar as the names of public servants are disclosed as having attended meetings with the Attorney-General, I see no basis upon which the personal privacy exemption could apply.
51. For these reasons I do not accept the estimate that some 263 people will need to be consulted if the request was to be processed. As noted, this estimate appears to assume that every named individual who is not a Ministerial adviser or media representative whose name appears in the diaries would need to be consulted. As explained I do not agree with this approach. It follows that the estimate of between 130 and 526 hours for consulting third parties has been calculated on an incorrect basis. While I accept some consultation might be required because of the personal privacy and business documents exemptions it has not been proved that anything like 130 - 526 hours might be involved. I consider it likely that any consultation required by the FOI Act will be very many orders of magnitude less than has been proposed.
52. Because it is fundamental to the proper administration of the FOI Act, I should reiterate my view that I consider that it would be wrong to approach the required task on the basis that: (i) some people might be sensitive to or concerned about the fact that they have met a Minister in the Minister's official capacity or that such people might prefer, even strongly prefer, that the fact of their meeting not be disclosed; or (ii) the decision-maker is subject to some obligation to search for material not known or otherwise apparent from the face of the document to which access is sought to try to find some basis for it to appear that a person might reasonably wish to make an exemption contention. There is no foundation in the FOI Act to perform the functions which it requires with a view to such sensitivities. To administer the FOI Act on some other basis would work against the intention of the Parliament. It would elevate personal sensitivities which on a rational view could not involve an unreasonable

disclosure of personal information about any person into something that an agency or Minister would have to assess, thereby running the risk (as in the present case) that the agency or Minister perceives that an extraordinary amount of time and effort would be involved in processing the FOI request. By such means, if permitted, the intentions of the Parliament as identified in s 3 would be thwarted.

53. I should also reiterate the relevance to my conclusions in the present case of the fact that the diary extracts in evidence seem to me to consist, in the main, of a series of brief and anodyne entries relating to appointments and work arrangements of the Attorney-General now more than 18 months old. While an underlying issue which was discussed at a meeting might be ongoing, the entries in the diary merely describe who was to be met, not the contents of the meeting, and are now essentially historical.
54. I take a similar view about the other exemptions which were mentioned in Mr O'Sullivan's evidence. One example is Cabinet documents. The exemption for Cabinet documents is in s 34 as follows:

(1) A document is an exempt document if:

(a) both of the following are satisfied:

(i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;

(ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or

(b) it is an official record of the Cabinet; or

(c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or

(d) it is a draft of a document to which paragraph (a), (b) or (c) applies.

(2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.

(3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

(4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.

...

55. Assume that a diary entry said merely "Cabinet meeting" (which does appear in the diary extracts in this form or its equivalent). I do not accept that such an entry could attract the operation of s 34 in any circumstances. The fact contemplated by Mr O'Sullivan that someone might put together the day with a Cabinet decision in order to glean what the meeting might have been about is immaterial. It does not turn a diary record of a scheduled Cabinet meeting into a Cabinet document for the purpose of s 34. Assume now that the entry in the diary contained some additional information such as the purpose of the Cabinet meeting (I note, no such example is apparent to me from the diary extracts). In that event it is possible but not certain that s 34(3) might apply. Further consideration of those entries might be required. If required and it is decided access should not be granted to any such entry then s 22 would also apply – the exempt part of the diary entry could be deleted. No significant work would be involved. In any event, as I have said, the diary extracts in evidence simply show the fact and nothing more of a scheduled Cabinet meeting.
56. Assume further, as Mr O'Sullivan did, that the diary disclosed the subject-matter of a meeting but it is not clear whether this was a Cabinet meeting or not. First, I do not consider it likely that a diary in a "weekly agenda" view will disclose the subject-matter of any meeting, let alone a Cabinet meeting (an anticipation which is consistent with the diary extracts). Second, I consider it likely that Cabinet meetings will clearly be identified as such (another anticipation which is consistent with the diary extracts). Third, even if there is such an entry the relevant exemption does not relate to anything other than documents which "reveal a Cabinet deliberation or decision". I do not see how another meeting, which is not a meeting of Cabinet, could reveal this other than in the most unusual case. Finally, even if it does, I do not consider that applying s 34(3) and s 22 to the entry will involve any practical difficulty or be particularly time consuming. I consider the same approach applies to the other

exemptions mentioned by Mr O'Sullivan.

57. As noted, a sample of extracts from the diary was provided, albeit in a daily rather than weekly format. These extracts led to Mr O'Sullivan's initial view that about 130 people would have to be consulted about disclosure (subsequently revised to 263 people). It also led to his view that he would have to consult the Attorney-General about at least 20% of the entries. As should be apparent, I have examined each entry in the extracts provided (six weeks in total). As an aside I note that it does not take very long (indeed, mere seconds) to read each entry and my overall impression was that many entries in the diary could not trigger anything in the FOI Act. In any event, as anticipated, by far the majority of entries relating to meetings disclose only a name and sometimes an organisation. As also anticipated, there are location references (albeit not specific) which might call for deletion based on personal safety concerns in which event s 22 is engaged. There are references to "Cabinet meeting", but as far as I can see, no references which go beyond that. There are references to Liberal and Coalition party meetings (discussed below), but nothing beyond the mere fact of such meetings is disclosed. More importantly, and also as anticipated, I am unable to see anything in the entries which would suggest extensive consultation would be required with any person including the Attorney-General for any reason under the FOI Act.
58. Mr O'Sullivan pointed to some specific examples in the diary extracts where he considered consultation might be required. Those examples support the conclusions I have reached.
59. From the face of the entry, I do not accept that consultation would be required of the person mentioned as having met the Attorney-General at 3.00pm on 17 March 2014. Unless some other fact is known which provides a rational foundation for it to appear that such a person might reasonably wish to make an exemption contention (and no such matter was identified) then I consider that no more need be done.
60. Similarly, I do not accept that an entry "Meeting with Prime Minister; PMO", which was pointed to by Mr O'Sullivan, could give rise to any exemption. As far as I can understand it, Mr O'Sullivan believed that he might have to go behind this and every such entry to ascertain what was discussed at the meeting in order to work out if some exemption, such as Cabinet documents, might apply. I do not accept that the FOI Act requires any such approach. An entry "Meeting with Prime Minister; PMO" cannot, on any view, amount to a Cabinet document as defined in s 34. It cannot "reveal a Cabinet deliberation or decision" even by any process of the building of a mosaic by reference to date and published announcements as seemed to have been of concern to Mr O'Sullivan. The unremarkable fact that the Attorney-General had a meeting with the Prime Minister in the Prime Minister's office, in my view, cannot involve any exemption at all under the FOI Act.
61. Nor, as explained further below, do I consider that the possibility that there might have been discussed at this meeting some things which did not "relate to the affairs of an agency or of a Department of State" (para (c) of the definition of exempt document in s 4(1)) creates a valid reason for going behind the entry to try to work out what might have been discussed (no doubt, an impractical endeavour in any event given that the entry is now more than 18 months old).
62. The same considerations apply to the meeting at 1.00pm on 19 March 2014. Mr O'Sullivan suggested that the business documents exemption might require consultation about this meeting. I am unable to accept that suggestion, at least from the face of the entry, and no other foundation for the view expressed was given. Two names are mentioned and a topic. On its face the entry appears to relate to a local government and not a business issue. Even if a business was involved I am unable to discern why the fact of the meeting and the topic mentioned could unreasonably affect any person adversely in respect of his or her lawful business or professional affairs (etc). I cannot see any basis why that entry would suggest, let alone require, consultation.
63. There is one aspect of the case put for the Attorney-General which I do accept, however. It is that the definition of "exempt document" includes "an official document of a Minister that contains some matter that does not relate to the affairs of an agency or of a Department of State". Because the Attorney-General apparently keeps all appointments in the one diary there will be entries in the diary that do not relate to the affairs of an agency or of a Department of State. Some entries of this kind are clear. The extracts from the diary, for example, show party political meetings. Where so identified I consider that part of the document (or that document – whether the diary is one or a multiplicity of documents does not matter for this purpose) is an exempt document. Section 22 then applies and those entries are to be deleted and the balance of the diary produced. As the extracts show, party political meetings are clearly identified in the diary as such and thus may readily be seen and deleted.
64. Otherwise I do not consider that there is much of an issue about this part of the definition of exempt document. I accept that someone, properly informed about the Attorney-General's activities and instructed about the FOI Act, will have to look at every entry. I do not accept, however, that where it is merely possible that a meeting might have traversed issues other than those relating to the affairs of an agency or of a Department of State it is necessary or even appropriate to attempt to work out what was discussed at the meeting. It can reasonably be inferred that many meetings with other Ministers might involve both the affairs of an agency or of a Department

of State and other matters such as party political matters. For present purposes, however, the important fact is that all that is required to be produced is the diary which records, in most cases disclosed by the extracts, the mere fact of a meeting and who it was with. Given this, the exemption is not attracted. The diary entry remains an entry relating to the affairs of an agency or of a Department of State even if the actual meeting related to such matters and other matters. In any event, the notion that the Attorney-General or other Ministers might now need to be consulted to see if they can try to remember whether they might have discussed something other than the affairs of an agency or of a Department of State at a meeting more than 18 months ago, as was suggested, is impractical and contrary to the express intent of the Parliament about how the FOI Act should be applied. That said, I accept that there may be some few entries (not apparent to me from the diary extracts) where there might be some suggestion on the face of the entry that the meeting related to something other than the affairs of an agency or of a Department of State and, if there are related notes, it might be appropriate to examine the notes to ascertain whether the entry even if only in part related to the affairs of an agency or of a Department of State.

65. It will be apparent that I consider the approach that has been taken to the request(s), other than in the one respect set out in the paragraph above, is largely based on a view of the requirements of the FOI Act with which I am unable to agree and, importantly, consider would work against the objects of that Act. That approach has resulted in a substantial overestimate of the work and consultation that will be required to ensure compliance with the FOI Act. That said, I accept that a person with knowledge about the operations of the Office of the Attorney-General will need to undertake a review of each and every entry. With such knowledge I consider that it is likely that for numerous entries a glance or two will suffice. For some (albeit, in my view, a small number of) others, however, I accept that a more detailed consideration may be required. For some entries (but in my view very few cases) I accept that a decision to consult might be taken.
66. In other words I accept the submissions for the applicant as follows:

> *Mr O'Sullivan appears to have formed the view that where the Attorney has met with any individual, peak body or business, he is obliged by ss 27 and 27A to consult with the other party before determining to grant access to the information requested.*
>
> *The Act requires consultation be undertaken before granting access to the document if it appears to the decision maker that the other party might "reasonably wish to make a contention" that the document falls within an exemption. The decision maker must take into account the matters in ss 27(3) and 27A(2) in determining whether a business or person might reasonably wish to make an exemption contention; these are the same factors in the conditional exemption provisions, ss 47F and 47G. Neither Mr O'Sullivan's correspondence, nor his evidence, discloses any process of taking into account these matters in forming his view that such extensive consultation would be required. The Applicant submits that if these factors are taken into account, keeping in mind the information that will be disclosed, then it will be a rare case where consultation is required.*

67. I do not consider that the fact that I have rejected the estimates put forward for the Attorney-General **necessarily** means that the onus has not been discharged. The question of discharge of the onus under s 61(1)(b) of the FOI Act requires consideration of all of the available material. The difficulty I have, however, given my rejection of the estimates put forward is assessing how much work and consultation, including with the Attorney-General personally, might actually be involved.
68. As the applicant submitted, s 24AA focuses on whether the work involved in processing the request in the case of an agency will "substantially and unreasonably divert the resources of the agency from its other operations" and in the case of a Minister will "substantially and unreasonably interfere with the performance of the Minister's functions". As set out in the Guidelines (3.101):

> *The evident purpose of this practical refusal ground is to ensure that the capacity of agencies and ministers to discharge their normal functions is not undermined by processing FOI requests that are unreasonably burdensome. On the other hand, it is implicit in the objectives of the FOI Act that agencies must ensure that appropriate resources are allocated to dealing with FOI matters.*

69. I accept some other principles proposed by the applicant. The case for a practical refusal reason must be clear. Moreover, the amount of work involved is not the ultimate test. It is whether that work will involve a substantial and unreasonable interference of the relevant kind.

70. Neither party could identify any case in which the test of "substantially and unreasonably interfere with the performance of the Minister's functions" which is relevant in the present matter has been considered. I consider that such interference may occur in at least two ways. First, the Minister might have to be asked to review documents (in this case, some of the diary entries) in order to ascertain in particular but perhaps not exclusively whether the entry does or does not relate to the affairs of an agency or of a Department of State. This has the potential, at least, to interfere with the performance of the Minister's functions by reason of the time necessary to undertake the required task. Second, the performance of the Minister's functions may be the subject of interference if the time of senior staff is required to examine entries with the result that they are unable to assist the Minister in a timely manner. In both cases, in my view, the key is how much work will actually be involved. Not every requirement for a Minister to examine a diary entry or entries personally will constitute an interference with the performance of functions by the Minister, let alone a substantial and unreasonable interference. Nor does the fact that appropriate staff of the Attorney-General's Office will have to look at every entry in the diary over the relevant period necessarily mean that there will be such interference.
71. At this point I should note that the fact that Mr O'Sullivan has the only delegation from the Attorney-General to make a final decision about any FOI request does not change my views. The applicant submitted that:

> *... the extent of Mr O'Sullivan's required involvement cannot be used as a basis for invoking a "practical refusal reason". The Respondent has not demonstrated why it is necessary for his Chief of Staff to be the only person responsible for dealing with FOI requests in the office.*

72. I do not accept this submission. The fact is that Mr O'Sullivan holds the only delegation. The final decision will be his or that of the Attorney-General personally. However, it is clear from his evidence that Mr O'Sullivan is able to rely on the work of others to a very large extent in his decision-making process under the FOI Act. I do not consider there to be any possibility that Mr O'Sullivan will be personally required to review each entry in the diary or anything more than, perhaps, a sample of entries and to make a final recommendation or decision. This is not a case where there can be any suggestion that the required tasks if the request(s) are to be processed would involve depriving the Attorney-General of the services of his Chief of Staff for any material period.
73. To my mind the most important fact in the present case is that the request relates to about eight months of diary entries totalling 1930 individual entries and each entry will have to be examined by someone within the Attorney-General's Office with sufficient knowledge about the operations of that Office and clear instructions about the FOI Act. I am aware that the Information Commissioner has considered requests for diaries involving much shorter periods of time and has concluded that there would be a substantial and unreasonable interference of the required kind. For example, in *Davies and Department of the Prime Minister and Cabinet* [2013] AICmr 10 requests for access to three months of former Prime Minister Rudd's diary (1500 entries) and one month of Prime Minister Gillard's diary (500 entries) were both found to constitute substantial and unreasonable interferences with the Prime Ministers' functions. The reasons of the Information Commissioner, however, did not disclose the quality of the material relating to the estimates of time involved which was before the Information Commissioner nor (perhaps critically) the nature of the diary entries. In the present case, for the reasons given, I find the estimates of the work and time involved unconvincing having regard to the actual diary extracts available.
74. Mr O'Sullivan estimated that each entry would need to be examined for two minutes leaving aside any entries which then required further consideration. Consistent with the conclusions expressed above, I also find this unpersuasive. Based on my review of the extracts I consider that a comfortable majority of entries will not require anything like two minutes to examine. I am also not persuaded that the Attorney-General will need to be consulted about anything like 20% of the entries. If I assume one minute per entry, which I consider generous based on what I have seen, then the time involved for the initial review would be 32 hours to be divided amongst the appropriate staff of the Attorney-General's Office. I do not consider it likely that much of the Attorney-General's personal time will be involved at all. The applicant otherwise accepted the (generous) allowances made for preparing a statement of reasons (10 to 12 hours). On that basis, I consider the task of preparing schedules for which an allowance of 11.75 to 15.66 hours was made largely to be a duplication of this work. Beyond this, an allowance would have to be factored in for further time to be involved in respect of a minority of entries including possible consultation. The problem is that the material relied on by the Attorney-General, as I have said, does not provide any form of reliable indicator of what might be involved in this regard. Based on the extracts, my inclination is that very little additional work might be required. More relevantly, given the existence of the onus, I am not persuaded that much more work will be required. Further, as the applicant submitted, for all work where no judgment is involved the work may be delegated to the Department including, if necessary, the sending of consultation letters and collation of responses.

75. Insofar as the work of actual deletion is concerned, I do not accept that this is capable of involving a substantial and unreasonable interference with the performance of the Attorney-General's functions. The fact that only one person in the Attorney-General's Office can perform this function because this person is the only one with the relevant software available (as Mr O'Sullivan indicated) and that the task of deletion involves a number of steps is not particularly material to the performance of the Attorney-General's functions unless, perhaps, the person doing the deletions is the Attorney-General himself or a senior member of staff, neither of which was suggested to be the case.
76. Given the matters set out above, this is a case where my conclusion is ultimately based on the onus of proof. It has not been established that processing the request would substantially or unreasonably interfere with the performance of the Attorney-General's functions having regard to the matters required to be considered in s 24AA(2) of the FOI Act. Accordingly, the onus of establishing that the decision is justified or that the Tribunal should give a decision adverse to the applicant has not been discharged.
77. To the extent I am able to make findings about what work will be likely to be involved I do not consider that work will substantially interfere with the performance of the Attorney-General's functions. I accept that the work itself will not be trivial or insignificant, but that does not mean that such work is likely to involve a substantial interference with the performance of the Attorney-General's functions. Nor do I accept that any interference as there might be will be unreasonable. Against this, at the level of principle, I consider that there is a significant public interest in knowing the outline of the daily activities of elected representatives, particularly a senior Minister in charge of such an important portfolio as the Attorney-General. I accept the applicant's submission that to the extent there is any interference with the Attorney-General performing his functions (which, in my view, has not been proved), the interference would be reasonable having regard to several factors, being:

    i) There is considerable public interest in the release of the Attorney's diary;
    ii) No steps have been taken to make the diary public; and

iii. *The actual diversion of resources involved in responding to the request should be minimal.*

DECISION

78. For these reasons I consider that the decision communicated to the applicant by letter dated 13 June 2014 that a practical refusal reason exists because the work involved in processing the request(s) would substantially and unreasonably interfere with the performance of the Attorney-General's functions should be set aside and, in lieu thereof, I decide that no practical refusal reason under s 24 of the FOI Act exists in relation to the request(s), with the consequence that the request(s) are required to be processed in accordance with the FOI Act.

I certify that the preceding 78
(seventy-eight) paragraphs are a true
copy of the reasons for the decision
herein of Justice Jagot

Associate

Dated 22 December 2015

Date of hearing	**6 November 2015**
Counsel for the Applicant	**Mr M Dreyfus QC and Mr L Corbett**
Solicitors for the Applicant	**Maurice Blackburn**
Solicitors for the Respondent	**Mr J Davidson of Australian Government Solicitor**
