



The Hon Christian Porter MP
Attorney-General
Minister for Industrial Relations
Leader of the House

31 JAN 2020

The Hon Scott Morrison MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister *Prime Minister*

I refer to your letter dated 17 January 2020 in relation to the Auditor-General's *Report No.23 2019-2020 Award of Funding under the Community Sport Infrastructure Program (Report)*.

You have asked me for advice in light of the comments made by the Auditor-General in the Report concerning the Minister for Sport's role in the award of grants by the Australian Sports Commission (**Sport Australia**) under the Community Sport Infrastructure Program (**Program**).

Naturally, if I or any legal practitioner were to provide comprehensive legal advice on the legality of any particular individual grant or process, it would be necessary to obtain all of the relevant facts and circumstances in relation to that particular matter. You have not requested any such advice, and it is plainly not the purpose of this letter to give any such advice.

Accordingly, given that your request relates to comments by the Auditor-General regarding legal power and ministerial decision-making (rather than to any individual grant), my advice is necessarily confined to the general legal issue raised by the Auditor-General concerning the Minister's involvement in the Program, which has been left somewhat unresolved in the Auditor-General's report. Specifically, I refer to the finding in the Report that "[i]n the absence of a section 11 direction, there was no legal authority evident to the ANAO under which the Minister was able to be the approver of CSIG program grants to be paid from the money of Sports Australia".¹

Having consulted with AGS in the preparation of this advice, I consider that the Auditor-General's assumption arising out of his apparent interpretation of section 11 of the Australian Sports Commission Act 1989 (**Act**) is, with respect, not correct.

¹ See paragraph 2.19 of *Auditor-General Report No.23 2019-2020 Award of Funding under the Community Sport Infrastructure Program*.

PROTECTED

2

As a preliminary point, under Australia's Westminster system of government, Ministers, who are members of the Executive, may perform a wide variety of functions, including performing a role in the administration or functions of a government agency within their portfolio, without specific statutory authority. Their authority in this respect derives not from statute but rather from the office that they hold as a Minister.

In Australia, the non-statutory executive power of Ministers is complemented by a range of statutory powers.

In relation to Sports Australia, the Act confers broad powers on the relevant Minister regarding Sports Australia, which are consistent with the Minister having administrative responsibility and general oversight in relation to its administration. This includes, but is not limited to, the broad direction-giving power in section 11 of the Act.

Ministerial direction-giving powers are common in legislation establishing statutory authorities but they are rarely exercised. There is not necessarily any legal imperative or other requirement for a Minister to use a specific statutory directions power in order to perform a role in the administration or functions of a government agency within that Minister's portfolio. In the rare circumstances in which a ministerial direction is given, the purpose of the direction is ordinarily to resolve some intractable disagreement between the authority and the relevant Minister.

Indeed, it would be onerous and unnecessary to require a formal ministerial direction every time a Minister and statutory authority agreed to a Minister playing some role in the administration of the authority.

As such, the Auditor-General's apparent finding at paragraph 2.19 that the absence of a section 11 direction necessarily rendered the Minister's involvement as being without legal authority is, respectfully, incorrect.

Of course, in any particular decision making process, it is important that agencies and Ministers have a clear understanding of their respective roles and responsibilities. If an agency or its responsible Minister has concerns or doubts about the legal basis underpinning a decision making process or some other interaction between agency and Minister, then legal advice should be sought in relation to the specific decision making process or interaction.

I trust that this advice is of assistance. Please let me know if you have any questions or would like to discuss.

Yours sincerely

s. 22(1)(a)(ii)

The Hon Christian Porter MP
Attorney-General
Minister for Industrial Relations
Leader of the House

From: s. 22(1)(a)(ii)
To: [Moran, Celeste](#)
Subject: RE: s. 42 [AGSDMS-DMS.FID4184332] [SEC=PROTECTED, ACCESS=Legal-Privilege, CAVEAT=SH:CABINET]
Date: Friday, 4 September 2020 1:12:50 PM

PROTECTED//CABINET
Legal privilege

Yep will do it right now
Cheers

s. 22(1)(a)(ii)

From: Moran, Celeste
Sent: Friday, 4 September 2020 1:07 PM
To: s. 22(1)(a)(ii)
Subject: FW: s. 42 [AGSDMS-DMS.FID4184332] [SEC=PROTECTED, ACCESS=Legal-Privilege, CAVEAT=SH:CABINET]

PROTECTED//CABINET
Legal privilege

Hi s. 22(1)(a)(ii)
Please see email from Leonie below.

s. 42

Many thanks
Celeste

From: McGregor, Leonie <Leonie.McGregor@pmc.gov.au>
Sent: Friday, 4 September 2020 12:54 PM
To: Moran, Celeste <Celeste.Moran@pmc.gov.au>
Subject: RE: s. 42 [AGSDMS-DMS.FID4184332] [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Hi Celeste – sorry, missed it in the volume of emails!!

s. 42

Leonie
Leonie McGregor | First Assistant Secretary
Cabinet Division
Department of the Prime Minister and Cabinet
p. s. 22(1)(a)(ii) | m. s. 22(1)(a)(ii)

From: Moran, Celeste <Celeste.Moran@pmc.gov.au>
Sent: Friday, 4 September 2020 12:33 PM
To: McGregor, Leonie <Leonie.McGregor@pmc.gov.au>
Subject: FW: s. 42 [AGSDMS-DMS.FID4184332] [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Hi Leonie
s. 42
Very happy to discuss further.
Celeste

From: /O=DPMC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=37D789CD1C5D409FA814BFA667C1CFBB-MORAN, CELESTE

Sent: Monday, 31 August 2020 10:54 PM

To: McGregor, Leonie <Leonie.McGregor@pmc.gov.au>

Cc: s. 22(1)(a)(ii) [redacted] <[\[redacted\]@pmc.gov.au](mailto:[redacted]@pmc.gov.au)>

Subject: FW: s. 42 [redacted] [AGSDMS-DMS.FID4184332]

[SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Hi Leonie

s. 42

s. 47C

Grateful for your confirmation that:

1. s. 34(2) [redacted] and [redacted]
2. s. 47C [redacted]

s. 42

Happy to discuss further anytime.

Many thanks in advance

Celeste

From: s. 22(1)(a)(ii) [redacted] <[\[redacted\]@ags.gov.au](mailto:[redacted]@ags.gov.au)>

Sent: Wednesday, 19 August 2020 6:48 PM

To: s. 22(1)(a)(ii) [redacted] <[\[redacted\]@pmc.gov.au](mailto:[redacted]@pmc.gov.au)>

Cc: Hyland, Justin <Justin.Hyland@ags.gov.au>

Subject: s. 42 [redacted] [SEC=PROTECTED,

DLM=Sensitive:Cabinet] [AGSDMS-DMS.FID4184332]

PROTECTED

Sensitive: Cabinet

Dear s. 22(1)(a)(ii) [redacted]

s. 42

S. 42

If you have any questions, please contact me on the number below.

Kind regards

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Senior Lawyer

Australian Government Solicitor

T s. 22(1)(a)(ii)

s. 22(1)(a)(ii) [@ags.gov.au](mailto:s.22(1)(a)(ii)@ags.gov.au)

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

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.

From: s. 22(1)(a)(ii)
To: [Hupalo, Paul](#)
Subject: FW: s. 42 [AGSDMS-DMS.FID4184332] [SEC=PROTECTED, CAVEAT=SH:CABINET]
Date: Monday, 14 September 2020 10:48:57 AM

PROTECTED//CABINET

Hi Paul

FYI below, as A/g FAS this week. LII are ready to assist in this matter, but it's not clear if Celeste and Leonie had an opportunity to discuss late last week. Have you heard anything since?

s. 42

Thanks

s. 22(1)(a)(ii) | Director
p. s. 22(1)(a)(ii) m: s. 22(1)(a)(ii)
e. s. 22(1)(a)(ii) [@pmc.gov.au](#)

Making Flexibility Work - If you receive an email from me outside of normal business hours, I'm sending it at a time that suits me. Unless it's marked urgent, I'm not expecting you to read or reply until normal business hours.

From: Moran, Celeste
Sent: Friday, 11 September 2020 2:36 PM
To: McGregor, Leonie
Cc: s. 22(1)(a)(ii)
Subject: FW: s. 42 [AGSDMS-DMS.FID4184332] [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Hi Leonie

One for us to discuss please.

s. 42

Let me know and thanks in advance
Celeste

From: Hyland, Justin <Justin.Hyland@ags.gov.au>
Sent: Friday, 11 September 2020 7:12 AM
To: s. 22(1)(a)(ii) [@pmc.gov.au](#); Moran, Celeste <Celeste.Moran@pmc.gov.au>
Cc: s. 22(1)(a)(ii) [@ags.gov.au](#)
Subject: RE: s. 42 [SEC=PROTECTED, DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET] [AGSDMS-DMS.FID4184332]

**PROTECTED
Sensitive: Cabinet**

Dear Celeste s. 22(1)(a)(ii)

s. 42

s. 42

I look forward to hearing from you.
Regards

Justin Hyland

Senior Executive Lawyer
Australian Government Solicitor
T 02 6253 7417 M [s. 22\(1\)\(a\)\(ii\)](#)
justin.hyland@ags.gov.au
Find out more about AGS at <http://www.ags.gov.au>

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

From: [s. 22\(1\)\(a\)\(ii\)](#) [@pmc.gov.au](mailto:)

Sent: Friday, 4 September 2020 1:26 PM

To: [s. 22\(1\)\(a\)\(ii\)](#) [@ags.gov.au](mailto:)

Cc: Hyland, Justin <Justin.Hyland@ags.gov.au>; Moran, Celeste <Celeste.Moran@pmc.gov.au>

Subject: RE: [s. 42](#) [AGSDMS-DMS.FID4184332]

[SEC=PROTECTED, DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET]

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

PROTECTED//CABINET
Sensitive: Cabinet

Dear [s. 22\(1\)\(a\)\(ii\)](#)

s. 42

s. 42

Please let us know if we can assist further.

Regards

s. 22(1)(a)(i)

s. 22(1)(a)(ii)

A/g Senior Advisor

FOI & Privacy Section

Legal Policy Branch | Government Division

Department of the Prime Minister and Cabinet

p. s. 22(1)(a)(ii) (Ext: s. 22(1)(a)(ii)) or s. 22(1)(a)(ii)

e. s. 22(1)(a)(ii)@pmc.gov.au | foi@pmc.gov.au | www.pmc.gov.au

One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600



The Department acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respect to their Cultures, Country and Elders both past and present.

From: s. 22(1)(a)(ii)@ags.gov.au

Sent: Monday, 31 August 2020 6:43 PM

To: s. 22(1)(a)(ii)@pmc.gov.au

Cc: Hyland, Justin <Justin.Hyland@ags.gov.au>

Subject: RE: s. 42 [SEC=PROTECTED,

DLM=Sensitive:Cabinet] [AGSDMS-DMS.FID4184332]

PROTECTED
Sensitive: Cabinet

Dear s. 22(1)(a)(i)

s. 42

Should you have any questions or wish to discuss, please let us know.

Kind regards

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Senior Lawyer

Australian Government Solicitor

T s. 22(1)(a)(ii)

s. 22(1)(a)(ii)@ags.gov.au

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

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

From: s. 22(1)(a)(ii)@ags.gov.au

Sent: Thursday, 20 August 2020 2:17 PM

To: s. 22(1)(a)(ii)@pmc.gov.au

Cc: Hyland, Justin <Justin.Hyland@ags.gov.au>

Subject: RE: s. 42 [SEC=PROTECTED,
DLM=Sensitive:Cabinet] [AGSDMS-DMS.FID4184332]

PROTECTED
Sensitive: Cabinet

Dear ^{s. 22(1)(a)}

s. 42

Kind regards

^{s. 22(1)(a)(i)}

^{s. 22(1)(a)(ii)}

Senior Lawyer

Australian Government Solicitor

T ^{s. 22(1)(a)(ii)}

^{s. 22(1)(a)(ii)} r@ags.gov.au

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

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

From: ^{s. 22(1)(a)(ii)} @ags.gov.au

Sent: Wednesday, 19 August 2020 6:48 PM

To: ^{s. 22(1)(a)(ii)} @pmc.gov.au

Cc: ^{s. 22(1)(a)(ii)} @ags.gov.au>

Subject: FOI IC review – Cabinet exemption consultation [SEC=PROTECTED,
DLM=Sensitive:Cabinet] [AGSDMS-DMS.FID4184332]

PROTECTED
Sensitive: Cabinet

Dear ^{s. 22(1)(a)}

s. 42

s. 42

If you have any questions, please contact me on the number below.

Kind regards

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Senior Lawyer

Australian Government Solicitor

T s. 22(1)(a)(ii)

s. 22(1)(a)(ii) [@ags.gov.au](mailto:s.22(1)(a)(ii)@ags.gov.au)

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

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.

IMPORTANT: This message, and any attachments to it, contains information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.

Document 4

From: s. 22(1)(a)(ii)
To: s. 22(1)(a)(ii)
Subject: RE: s. 42 [AGSDMS-DMS.FID4184332] [SEC=PROTECTED, DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET]
Date: Thursday, 24 September 2020 3:51:58 PM

PROTECTED//CABINET

Sensitive: Cabinet

Thanks! Actually I missed your email of last night (thanks for reminding) – let me know if I can assist further =)

From: s. 22(1)(a)(ii)
Sent: Thursday, 24 September 2020 3:50 PM
To: s. 22(1)(a)(ii)
Subject: RE: s. 42 [AGSDMS-DMS.FID4184332] [SEC=PROTECTED, DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Sensitive: Cabinet

Thanks s. 22(1)(a)(ii) It's currently with Leonie (you might have seen my email last night) – I'll follow up with s. 22(1)(a)(ii) and s. 22(1)(a)(ii) if she has time for a telecon.

s. 22(1)(a)(ii) Director
p. s. 22(1)(a)(ii) m: s. 22(1)(a)(ii)
e. s. 22(1)(a)(ii)@pmc.gov.au

Making Flexibility Work - If you receive an email from me outside of normal business hours, I'm sending it at a time that suits me. Unless it's marked urgent, I'm not expecting you to read or reply until normal business hours.

From: s. 22(1)(a)(ii)@pmc.gov.au
Sent: Thursday, 24 September 2020 3:48 PM
To: s. 22(1)(a)(ii)@pmc.gov.au
Cc: Hupalo, Paul <Paul.Hupalo@pmc.gov.au>; McGregor, Leonie <Leonie.McGregor@pmc.gov.au>; Moran, Celeste <Celeste.Moran@pmc.gov.au>
Subject: RE: s. 42 [AGSDMS-DMS.FID4184332] [SEC=PROTECTED, DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Sensitive: Cabinet

Hi s. 22(1)(a)(ii)

s. 42

Happy to arrange the meeting/telecon with Justin, if it helps.

Regards

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii)
Sent: Tuesday, 22 September 2020 12:01 PM
To: s. 22(1)(a)(ii)@pmc.gov.au
Cc: Hupalo, Paul <Paul.Hupalo@pmc.gov.au>; McGregor, Leonie <Leonie.McGregor@pmc.gov.au>; Moran, Celeste <Celeste.Moran@pmc.gov.au>
Subject: FW: s. 42 [AGSDMS-DMS.FID4184332]

[SEC=PROTECTED, DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET]

Importance: High

PROTECTED//CABINET

Sensitive: Cabinet

Hi s. 22(1)(a)(ii)

s. 42

Let us know if we can assist your team in any way.

Regards

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii) <[@ags.gov.au](mailto: @ags.gov.au)>

Sent: Tuesday, 22 September 2020 9:54 AM

To: s. 22(1)(a)(ii) <[@pmc.gov.au](mailto: @pmc.gov.au)>; Moran, Celeste <[Celeste.Moran@pmc.gov.au](mailto: Celeste.Moran@pmc.gov.au)>

Cc: Hyland, Justin <[Justin.Hyland@ags.gov.au](mailto: Justin.Hyland@ags.gov.au)>

Subject: RE: **s. 42** [SEC=PROTECTED, DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET] [AGSDMS-DMS.FID4184332]

PROTECTED//CABINET

Sensitive: Cabinet

Dear s. 22(1)(a)(ii) Celeste

s. 42

Should you have any questions or wish to discuss, please contact us on the details below.

Kind regards

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Senior Lawyer

Australian Government Solicitor

T s. 22(1)(a)(ii)

s. 22(1)(a)(ii) <[@ags.gov.au](mailto: @ags.gov.au)>

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

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

PROTECTED//CABINET

Sensitive: Cabinet

From: Hyland, Justin [<mailto:Justin.Hyland@ags.gov.au>]
Sent: Friday, 11 September 2020 7:12 AM
To: s. 22(1)(a)(ii) @pmc.gov.au; Moran, Celeste <Celeste.Moran@pmc.gov.au>
Cc: s. 22(1)(a)(ii) @ags.gov.au
Subject: RE: s. 42 [SEC=PROTECTED, DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET] [AGSDMS-DMS.FID4184332]

PROTECTED

Sensitive: Cabinet

Dear Celeste s. 22(1)(a)(ii)

S. 42

I look forward to hearing from you.

Regards

Justin Hyland

Senior Executive Lawyer

Australian Government Solicitor

T 02 6253 7417 M s. 22(1)(a)(ii)

justin.hyland@ags.gov.au

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

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

From: s. 22(1)(a)(ii) @pmc.gov.au
Sent: Friday, 4 September 2020 1:26 PM
To: s. 22(1)(a)(ii) @ags.gov.au
Cc: Hyland, Justin <Justin.Hyland@ags.gov.au>; Moran, Celeste <Celeste.Moran@pmc.gov.au>

Subject: RE: s. 42 [AGSDMS-DMS.FID4184332]

[SEC=PROTECTED, DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET]

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

PROTECTED//CABINET

Sensitive: Cabinet

Dear ^{s. 22(1)(a)(ii)}

s. 42

Please let us know if we can assist further.

Regards

^{s. 22(1)(a)(ii)}

s. 22(1)(a)(ii)

A/g Senior Advisor

FOI & Privacy Section

Legal Policy Branch | Government Division

Department of the Prime Minister and Cabinet

p. +61 s. 22(1)(a)(ii) or s. 22(1)(a)(ii)

e. s. 22(1)(a)(ii)@pmc.gov.au | foip@pmc.gov.au | www.pmc.gov.au

One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600



The Department acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respect to their Cultures, Country and Elders both past and present.

From: s. 22(1)(a)(i) s. 22(1)(a)(ii)@ags.gov.au>

Sent: Monday, 31 August 2020 6:43 PM

To: s. 22(1)(a)(ii)@pmc.gov.au>

Cc: Hyland, Justin <Justin.Hyland@ags.gov.au>

Subject: RE: s. 42 [SEC=PROTECTED,

DLM=Sensitive:Cabinet] [AGSDMS-DMS.FID4184332]

PROTECTED

Sensitive: Cabinet

Dear s. 22(1)(a)

s. 42

Should you have any questions or wish to discuss, please let us know.

Kind regards

s. 22(1)(a)

s. 22(1)(a)(ii)

Senior Lawyer

Australian Government Solicitor

Ts. 22(1)(a)(ii)

s. 22(1)(a)(ii) [@ags.gov.au](mailto: @ags.gov.au)

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

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

From: s. 22(1)(a)(ii) [@ags.gov.au](mailto: @ags.gov.au)

Sent: Thursday, 20 August 2020 2:17 PM

To: s. 22(1)(a)(ii) [@pmc.gov.au](mailto: @pmc.gov.au)

Cc: Hyland, Justin <[Justin.Hyland@ags.gov.au](mailto: Justin.Hyland@ags.gov.au)>

Subject: RE: s. 42 [SEC=PROTECTED,
DLM=Sensitive:Cabinet] [AGSDMS-DMS.FID4184332]

PROTECTED
Sensitive: Cabinet

Dear s. 22(1)(a)

s. 42

Kind regards

s. 22(1)(a)

s. 22(1)(a)(ii)

Senior Lawyer

Australian Government Solicitor

Ts. 22(1)(a)(ii)

s. 22(1)(a)(ii) [@ags.gov.au](mailto: @ags.gov.au)

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

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

From: s. 22(1)(a)(ii) [redacted] @ags.gov.au]

Sent: Wednesday, 19 August 2020 6:48 PM

To: s. 22(1)(a)(ii) [redacted] @pmc.gov.au

Cc: Hyland, Justin <Justin.Hyland@ags.gov.au>

Subject: s. 42 [redacted] [SEC=PROTECTED,
DLM=Sensitive:Cabinet] [AGSDMS-DMS.FID4184332]

PROTECTED
Sensitive: Cabinet

Dear s. 22(1)(a) [redacted]

S. 42

If you have any questions, please contact me on the number below.

Kind regards

s. 22(1)(a)(ii) [redacted]

s. 22(1)(a)(ii) [redacted]

Senior Lawyer

Australian Government Solicitor

Ts. 22(1)(a)(ii) [redacted]

s. 22(1)(a)(ii) [redacted] @ags.gov.au

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

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent

to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.

IMPORTANT: This message, and any attachments to it, contains information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.

s. 42

s. 42

s. 42

s. 42

s. 42

s. 42

s. 42

s. 42

s. 42

s. 42

Document 5

From: s. 22(1)(a)(ii)
To: [Hyland, Justin](#)
Cc: s. 22(1)(a)(ii)
Subject: Re: s. 42 [SEC=PROTECTED, DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET] [AGSDMS-DMS.FID4184332]
Date: Friday, 25 September 2020 9:50:57 AM

No worries I'll dial in shortly after 10

Sent from my iPhone

On 25 Sep 2020, at 9:44 am, Hyland, Justin wrote:

PROTECTED//CABINET

Sensitive: Cabinet

Thanks for letting us know s. 22(1)(a)(ii) I will open the line at 10am and just join as soon as you can after that.

Regards

Justin Hyland

Senior Executive Lawyer

Australian Government Solicitor

T 02 6253 7417 M s. 22(1)(a)(ii)

justin.hyland@ags.gov.au

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

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

PROTECTED//CABINET

Sensitive: Cabinet

From: s. 22(1)(a)(ii) @pmc.gov.au]

Sent: Friday, 25 September 2020 9:41 AM

To: s. 22(1)(a)(ii) ; Hyland, Justin

Cc: s. 22(1)(a)(ii)

Subject: RE: s. 42 [AGSDMS-DMS.FID4184332] [SEC=PROTECTED, DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET]

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

PROTECTED//CABINET

Sensitive: Cabinet

Hi all,

We are juggling a number of things this morning, but are keen to discuss with you – just flagged it may be 10:05-10:10 by the time I'm able to dial in.

Apologies for this.

Thanks

s. 22(1)(a)(ii)

s. 22(1)(a)(ii) Director
p. s. 22(1)(a)(ii) m: s. 22(1)(a)(ii)
e. s. 22(1)(a)(ii) @pmc.gov.au

Making Flexibility Work - If you receive an email from me outside of normal business hours, I'm sending it at a time that suits me. Unless it's marked urgent, I'm not expecting you to read or reply until normal business hours.

From: s. 22(1)(a)(ii) @ags.gov.au>
Sent: Thursday, 24 September 2020 5:07 PM
To: s. 22(1)(a)(ii) @pmc.gov.au>; Hyland, Justin
<Justin.Hyland@ags.gov.au>
Cc: s. 22(1)(a)(ii) @pmc.gov.au>
Subject: RE: s. 42 [SEC=PROTECTED,
DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET] [AGSDMS-DMS.FID4184332]

Dear s. 22(1)(a)(ii)
Thank you for your email. Yes, we think that would be helpful and confirm we are available at 10 am tomorrow.

For the call, we can use a message stick conferencing number. The phone number is s. 22(1)(a)(ii) and the participant passcode is s. 22(1)(a)(ii).

Kind regards

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Senior Lawyer
Australian Government Solicitor

T s. 22(1)(a)(ii)
s. 22(1)(a)(ii) @ags.gov.au

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

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

From: s. 22(1)(a)(ii) @pmc.gov.au]
Sent: Thursday, 24 September 2020 4:02 PM
To: Hyland, Justin <Justin.Hyland@ags.gov.au>; s. 22(1)(a)(ii) s. 22(1)(a)(ii) @ags.gov.au>
Cc: s. 22(1)(a)(ii) @pmc.gov.au>
Subject: RE: s. 42 [AGSDMS-DMS.FID4184332] [SEC=PROTECTED, DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET]

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

PROTECTED//CABINET

Sensitive: Cabinet

Dear Justin, s. 22(1)(a)(ii)

s. 42

Would 10am tomorrow be possible for you?

Leonie has a Board meeting this afternoon which is now expected to go through

beyond close of business.

Kind Regards

s. 22(1)(a)(ii)

s. 22(1)(a)(ii) | Director

s. 22(1)(a)(ii) m: s. 22(1)(a)(ii)

e: s. 22(1)(a)(ii)@pmc.gov.au

Making Flexibility Work - If you receive an email from me outside of normal business hours, I'm sending it at a time that suits me. Unless it's marked urgent, I'm not expecting you to read or reply until normal business hours.

From: s. 22(1)(a)(ii)

Sent: Tuesday, 22 September 2020 12:01 PM

To: s. 22(1)(a)(ii)@pmc.gov.au

Cc: Hupalo, Paul <Paul.Hupalo@pmc.gov.au>; McGregor, Leonie

<Leonie.McGregor@pmc.gov.au>; Moran, Celeste <Celeste.Moran@pmc.gov.au>

Subject: FW: s. 42 [AGSDMS-

DMS.FID4184332] [SEC=PROTECTED, DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET]

Importance: High

PROTECTED//CABINET

Sensitive: Cabinet

Hi s. 22(1)(a)(ii)

s. 42

Let us know if we can assist your team in any way.

Regards

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii)@ags.gov.au

Sent: Tuesday, 22 September 2020 9:54 AM

To: s. 22(1)(a)(ii)@pmc.gov.au; Moran, Celeste

<Celeste.Moran@pmc.gov.au>

Cc: Hyland, Justin <Justin.Hyland@ags.gov.au>

Subject: RE: s. 42 [SEC=PROTECTED,

DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET] [AGSDMS-DMS.FID4184332]

PROTECTED//CABINET

Sensitive: Cabinet

Dear s. 22(1)(a)(ii) Celeste

s. 42

S. 42

Should you have any questions or wish to discuss, please contact us on the details below.

Kind regards

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Senior Lawyer

Australian Government Solicitor

s. 22(1)(a)(ii)

s. 22(1)(a)(ii) [@ags.gov.au](mailto:s.22(1)(a)(ii)@ags.gov.au)

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

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

PROTECTED//CABINET

Sensitive: Cabinet

From: Hyland, Justin [<mailto:Justin.Hyland@ags.gov.au>]

Sent: Friday, 11 September 2020 7:12 AM

To: s. 22(1)(a)(ii) [@pmc.gov.au](mailto:s.22(1)(a)(ii)@pmc.gov.au); Moran, Celeste
<Celeste.Moran@pmc.gov.au>

Cc: s. 22(1)(a)(ii) [@ags.gov.au](mailto:s.22(1)(a)(ii)@ags.gov.au)

Subject: RE: s. 42 [SEC=PROTECTED,
DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET] [AGSDMS-DMS.FID4184332]

PROTECTED

Sensitive: Cabinet

Dear Celeste s. 22(1)(a)(ii)

S. 42

s. 42

I look forward to hearing from you.

Regards

Justin Hyland

Senior Executive Lawyer

Australian Government Solicitor

T 02 6253 7417 M **s. 22(1)(a)(ii)**

justin.hyland@ags.gov.au

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

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

From: **s. 22(1)(a)(ii)** [@pmc.gov.au](mailto: @pmc.gov.au)

Sent: Friday, 4 September 2020 1:26 PM

To: **s. 22(1)(a)(ii)** [@ags.gov.au](mailto: @ags.gov.au)

Cc: **s. 22(1)(a)(ii)** [@ags.gov.au](mailto: @ags.gov.au); Moran, Celeste

[<Celeste.Moran@pmc.gov.au>](mailto: Celeste.Moran@pmc.gov.au)

Subject: RE: **s. 42** [AGSDMS-DMS.FID4184332] [SEC=PROTECTED, DLM=Sensitive:Cabinet, CAVEAT=SH:CABINET]

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

PROTECTED//CABINET

Sensitive: Cabinet

Dear **s. 22(1)(a)(ii)**

s. 42

s. 42

Please let us know if we can assist further.

Regards

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

A/g Senior Advisor

FOI & Privacy Section

Legal Policy Branch | Government Division

Department of the Prime Minister and Cabinet

p. +61 s. 22(1)(a)(ii)) or s. 22(1)(a)(ii)

e. s. 42 @pmc.gov.au | foi@pmc.gov.au | www.pmc.gov.au

One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600

The Department acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respect to their Cultures, Country and Elders both past and present.

From: s. 22(1)(a)(ii) @ags.gov.au>

Sent: Monday, 31 August 2020 6:43 PM

To: s. 22(1)(a)(ii) @pmc.gov.au>

Cc: s. 22(1)(a)(ii) @ags.gov.au>

Subject: RE: FOI s. 42 [SEC=PROTECTED,

DLM=Sensitive:Cabinet] [AGSDMS-DMS.FID4184332]

PROTECTED

Sensitive: Cabinet

Dear s. 22(1)(a)

s. 42

Should you have any questions or wish to discuss, please let us know.

Kind regards

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Senior Lawyer

Australian Government Solicitor

T s. 22(1)(a)(ii)

s. 22(1)(a)(ii) @ags.gov.au

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

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

From: s. 22(1)(a)(ii) @ags.gov.au]

Sent: Thursday, 20 August 2020 2:17 PM

To: s. 22(1)(a)(ii)@pmc.gov.au

Cc: Hyland, Justin <Justin.Hyland@ags.gov.au>

Subject: RE: s. 42 [SEC=PROTECTED,
DLM=Sensitive:Cabinet] [AGSDMS-DMS.FID4184332]

PROTECTED

Sensitive: Cabinet

Dear s. 22(1)(a)

s. 42

Kind regards

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Senior Lawyer

Australian Government Solicitor

T s. 22(1)(a)(ii)

s. 22(1)(a)(ii)@ags.gov.au

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

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

From: s. 22(1)(a)(ii)@ags.gov.au

Sent: Wednesday, 19 August 2020 6:48 PM

To: s. 22(1)(a)(ii)@pmc.gov.au

Cc: Hyland, Justin <Justin.Hyland@ags.gov.au>

Subject: FOI IC review – Cabinet exemption consultation [SEC=PROTECTED,
DLM=Sensitive:Cabinet] [AGSDMS-DMS.FID4184332]

PROTECTED

Sensitive: Cabinet

Dear s. 22(1)(a)

s. 42

s. 42

If you have any questions, please contact me on the number below.

Kind regards

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Senior Lawyer

Australian Government Solicitor

T s. 22(1)(a)(ii)

s. 22(1)(a)(ii) [@ags.gov.au](mailto:s.22(1)(a)(ii)@ags.gov.au)

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

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.

IMPORTANT: This message, and any attachments to it, contains information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect

of information in the e-mail or attachments.

IMPORTANT: This message, and any attachments to it, contains information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

PROTECTED//CABINET

Sensitive: Cabinet

If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.

IMPORTANT: This message, and any attachments to it, contains information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.

From: s. 22(1)(a)(ii)
To: s. 22(1)(a)(ii); Mckenzie, Angie
Subject: RE: For Angie's review - FOR COMMENT: Draft submissions in reply - 2021/299IC [SEC=OFFICIAL:Sensitive]
Date: Monday, 19 December 2022 4:56:37 PM

OFFICIAL: Sensitive

s. 47C

From: s. 22(1)(a)(ii)
Sent: Monday, 19 December 2022 4:53 PM
To: s. 22(1)(a)(ii) @pmc.gov.au; Mckenzie, Angie
<Angie.Mckenzie@pmc.gov.au>
Subject: RE: For Angie's review - FOR COMMENT: Draft submissions in reply - 2021/299IC [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks s. 22(1)(a)(ii)

s. 47C

Give me a call if you want to discuss.

Thanks

s. 22(1)(a)(ii)

s. 22(1)(a)(ii) | Director
Legal Information Integrity | Cabinet Division
Department of the Prime Minister and Cabinet
p. s. 22(1)(a)(ii) | m. s. 22(1)(a)(ii)
Ngunnawal Country, One National Circuit Barton ACT 2600 PO Box 6500 CANBERRA ACT 2600
e. s. 22(1)(a)(ii)@pmc.gov.au w: www.pmc.gov.au

From: s. 22(1)(a)(ii) @pmc.gov.au
Sent: Monday, 19 December 2022 4:29 PM
To: s. 22(1)(a)(ii) @pmc.gov.au; Mckenzie, Angie
<Angie.Mckenzie@pmc.gov.au>
Subject: RE: For Angie's review - FOR COMMENT: Draft submissions in reply - 2021/299IC [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s. 22(1)(a)(ii), Angie,

S. 47C

Thank you,

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii) [@pmc.gov.au](mailto: @pmc.gov.au)>

Sent: Monday, 19 December 2022 3:05 PM

To: s. 22(1)(a)(ii) [@pmc.gov.au](mailto: @pmc.gov.au)>

Cc: s. 22(1)(a)(ii) [@pmc.gov.au](mailto: @pmc.gov.au)>; FOI - Cabinet Division

<s. 22(1)(a)(ii) [@pmc.gov.au](mailto: @pmc.gov.au)>

Subject: FW: For Angie's review - FOR COMMENT: Draft submissions in reply - 2021/299IC
[SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s. 22(1)(a)(ii)

Attached are our comments on the submissions. Grateful if you could give me a call to discuss when you have a moment.

Kind regards

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii)
Sent: Monday, 19 December 2022 2:31 PM
To: Mckenzie, Angie <Angie.Mckenzie@pmc.gov.au>
Cc: s. 22(1)(a)(ii) <[REDACTED]@pmc.gov.au>
Subject: For Angie's review - FOR COMMENT: Draft submissions in reply - 2021/299IC [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi Angie

s. 47C

I will try and find someone to accompany me to the basement shortly.

Thanks

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii) <[REDACTED]@pmc.gov.au>
Sent: Monday, 19 December 2022 12:44 PM
To: s. 22(1)(a)(ii) <[REDACTED]@pmc.gov.au>; FOI - Cabinet Division
s. 22(1)(a)(ii) <[REDACTED]@pmc.gov.au>
Cc: FOI <FOI@pmc.gov.au>
Subject: FOR COMMENT: Draft submissions in reply - 2021/299IC [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Dear s. 22(1)(a)(ii)

Please find **attached** proposed submissions in reply relevant to IC review MR22/00038.

The draft submissions respond to the applicant's recent submissions and questions posed by the OAIC (relevant email **attached** for your reference).

Grateful if you could:

- Advise of the **outcome of your physical record search(es)**, and
- **consider and provide comments** on the **attached** draft submissions,

by **4pm today (Monday 19 December 2022)** where possible.

Thank you,

s. 22(1)(a)(ii)

Document 6 - Attachment

From: s. 22(1)(a)(ii)
To: [FOI](#)
Cc: s. 22(1)(a)(ii)
Subject: IC review MR22/00038 - Correspondence (PMC reference 2021/299IC) [SEC=OFFICIAL]
Date: Wednesday, 7 December 2022 1:52:36 PM
Attachments: [image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image010.png](#)
[20221206 Submissions in Response.pdf](#)
[20221107 Sports Rorts Review.pdf](#)
[cabinet-handbook-13th-edition.pdf](#)
[20201030 - Non-confidential version of original submission - IC Review MR20-00544 SIGNED.pdf](#)

Our reference: MR22/00038
Agency reference: FOI/2021/299

By email: FOI@pmc.gov.au

Dear s. 22(1)(a)(ii)

In relation to IC review MR22/00038, the applicant has provided submissions in response to the Department's submissions of 22 November 2022, which I have attached for your consideration.

I draw your attention to the applicant's submissions which appear to indicate that an electronic search for the document in question would likely not yield any results and has therefore requested the Department re-consider its searches approach.

I would now invite the Department to consider the applicant's submissions and provide submissions in response, having regard to the matters raised by the applicant and the FOI Guidelines at [3.85] - [3.94], specifically:

- the subject matter of the document in question
- the past file management system, and
- the records management system in place.

I would also welcome the Departments comments in response to the applicant's submission that *"Requests for access to Cabinet documents and Cabinet related-material under the FOI Act must be handled in consultation with the Freedom of Information Coordinator of PM&C"*.

Please provide the Department's submissions in response by **21 December 2022**.

Should you wish to discuss this IC review, please contact me directly and quote **MR22/00038**.

Kind regards,



s. 22(1)(a)(ii) Senior Review Adviser (Legal)
Systemic & Significant Reviews and Regulatory Advice
FOI Regulatory Group
Office of the Australian Information Commissioner
GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
+61 s. 22(1)(a)(ii) s. 22(1)(a)(ii) [@oaic.gov.au](mailto:s. 22(1)(a)(ii)@oaic.gov.au)

[f](#) | [in](#) | [t](#) | [✉](#) [Subscribe to Information Matters](#)



Please note the OAIC will be closed from Saturday 24 December 2022 and will reopen on Tuesday 3 January 2023.

From: s. 22(1)(a)(ii) <[REDACTED]@oaic.gov.au>
Sent: Monday, 5 December 2022 12:36 PM
To: FOI <FOI@pmc.gov.au>
Cc: s. 22(1)(a)(ii) <[REDACTED]@oaic.gov.au>
Subject: RE: IC review MR22/00038 - Correspondence (PMC reference 2021/299IC)
[SEC=OFFICIAL]

Our reference: MR22/00038
Agency reference: FOI/2021/299

By email: FOI@pmc.gov.au

Dear s. 22(1)(a)(ii)

Thank you for your correspondence on 1 December 2022 confirming all relevant records have been provided as attachments to your correspondence of 22 November 2022.

We will now share these submissions with the applicant and provide you with an update on next steps in due course.

Should you wish to discuss this IC review, please contact me directly and quote **MR22/00038**.

Kind regards,



s. 22(1)(a)(ii) | Senior Review Adviser (Legal)
Systemic & Significant Reviews and Regulatory Advice
FOI Regulatory Group
Office of the Australian Information Commissioner
GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
+61 2 [REDACTED] | s. 22(1)(a)(ii) [@oaic.gov.au](mailto:[REDACTED]@oaic.gov.au)

[f](#) | [in](#) | [t](#) | [e](#) | [Subscribe to Information Matters](#)



Please note the OAIC will be closed from Saturday 24 December 2022 and will reopen on Tuesday 3 January 2023.

From: FOI <FOI@pmc.gov.au>
Sent: Thursday, 1 December 2022 10:27 AM
To: s. 22(1)(a)(ii) <[REDACTED]@oaic.gov.au>
Cc: FOI <FOI@pmc.gov.au>
Subject: RE: IC review MR22/00038 - Correspondence (PMC reference 2021/299IC)
[SEC=OFFICIAL]

You don't often get email from foi@pmc.gov.au. [Learn why this is important](#)

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.

OFFICIAL

Dear s. 22(1)(a)(ii) and colleagues,

Thank you for your email.

I confirm that all relevant records have been provided as attachments to our correspondence of 22 November 2022.

As described in our submissions, the delegate undertook searches and inquiries informally. They were well equipped to do so due to their direct knowledge of the subject matter, and the specific nature of the applicant's request. No further records are available.

Should you wish to discuss, I am available on the contact details below, or by reply email.

Kindest regards,

s. 22(1)(a)(ii)

s. 22(1)(a)(ii) | Adviser*

FOI Section | Legal Policy Branch

Department of the Prime Minister and Cabinet

Ngunnawal Country | One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600

p. s. 22(1)(a)(ii) | e. s. 22(1)(a)(ii) @pmc.gov.au



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

**Please note I do not work Fridays*

From: OAIC - FOI DR <foidr@oaic.gov.au>
Sent: Thursday, 24 November 2022 3:43 PM
To: FOI <FOI@pmc.gov.au>
Cc: s. 22(1)(a)(ii) @oaic.gov.au <[s.22\(1\)\(a\)\(ii\)@oaic.gov.au](mailto:s.22(1)(a)(ii)@oaic.gov.au)>
Subject: RE: IC review MR22/00038 - correspondence (PMC reference 2021/299IC) [SEC=OFFICIAL]

Our reference: MR22/00038
Agency reference: FOI/2021/299

By email: FOI@pmc.gov.au

Notice of IC review and request for documents

Dear s. 22(1)(a)(ii)

Thank you for your correspondence on 22 November 2022 providing a copy of the respondent's submissions in this IC review. We will share these submissions with the applicant.

Can you please provide a copy of any records:

- evidencing the inquiries made of relevant Departmental officers, and
- searches for documents conducted by the Department, at the time it processed the applicant's original FOI request.

Alternatively, if you do not hold any records evidencing the above, please advise us of this.

Please provide a response by **2 December 2022**.

Should you wish to discuss this IC review, please contact me directly and quote **MR22/00038**.

Kind regards,



s. 22(1)(a)(ii) | Senior Review Adviser (Legal)
Systemic & Significant Reviews and Regulatory Advice
FOI Regulatory Group
Office of the Australian Information Commissioner
GPO Box 5218 Sydney NSW 2001 | oaic.gov.au
+61 s. 22(1)(a)(ii) s. 22(1)(a)(ii) @oaic.gov.au

 |  |  |  [Subscribe to Information Matters](mailto:s.22(1)(a)(ii)@oaic.gov.au)

From: FOI <FOI@pmc.gov.au>
Sent: Tuesday, 22 November 2022 10:51 AM
To: s. 22(1)(a)(ii) <[REDACTED]@oaic.gov.au>
Cc: FOI <FOI@pmc.gov.au>; s. 22(1)(a)(ii) <[REDACTED]@oaic.gov.au>
Subject: IC review MR22/00038 - correspondence (PMC reference 2021/299IC) [SEC=OFFICIAL]

You don't often get email from foi@pmc.gov.au. [Learn why this is important](#)

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.

OFFICIAL

Dear [REDACTED] and colleagues,

Please find **attached** correspondence regarding MR22/00038 (PM&C reference 2021/299IC).

Kind regards,

[REDACTED]

Adviser | FOI Section

Department of the Prime Minister and Cabinet

p. [REDACTED]

Ngunnawal Country | One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600

e. FOI@pmc.gov.au w. pmc.gov.au



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

IMPORTANT: This message, and any attachments to it, contains information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and

delete all copies of this transmission together with any attachments.

IMPORTANT: This message, and any attachments to it, contains information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

~~PROTECTED CABINET~~



Document 6 - Attachment

Australian Government

Department of the Prime Minister and Cabinet

SECRETARY

Ref: EC20-000008

The Hon Scott Morrison MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

I refer to your letter of 17 January 2020 in which you requested my advice, under clause 7.4 of the *Statement of Ministerial Standards* (the Standards), on recent matters arising in relation to the application of the Standards to Senator the Hon Bridget McKenzie, currently the Minister for Agriculture.

Specifically, you sought my advice on any apparent breaches of the Standards in relation to Senator McKenzie's administration of the Community Sport Infrastructure Grant Program (the Program), as then Minister for Sport. Concerns are raised by the recent report by the Auditor-General, *Award of Funding under the Community Sport Infrastructure Program* (the ANAO report), and subsequent public reporting concerning Senator McKenzie's membership of certain organisations. My advice is provided at Attachment A. Your request for advice is at Attachment B and the ANAO Report is at Attachment C.

In preparing my advice I wrote to Senator McKenzie on two occasions, on 22 and 24 January 2020 (Attachment D) seeking answers to several questions. I received her response on 24 January 2020 (Attachment E). I also considered publicly available information and records of my department.

The questions I asked Senator McKenzie were aimed at establishing facts relating to her knowledge of the administration of the Program in order to inform my advice to you. I met with Senator McKenzie on 29 January 2020 to discuss her response, after which she provided some further information by email on 29, 30 and 31 January 2020.

The Standards are principles-based and consistent with that I have formed my advice to you on the basis of whether a reasonable person would consider

~~PROTECTED CABINET~~

~~PROTECTED CABINET~~

whether the principles of integrity and fairness have been met. I did not have access to all of the material on which the findings of the ANAO report are based.

My advice only relates to apparent breaches of the Standards. It does not cover the matter of whether or not the Minister had legal authority to provide final approval for eligible applications. I note you have sought advice from the Attorney-General on this legal matter. In my advice to you, I have accepted the fact that the Minister provided final approval and apply the principles of the Standards to that fact.

As a general observation, it is of the utmost importance that Ministers promptly and completely declare their private interests to the Parliament and to you, in accordance with the Standards. In order to maintain the trust of the Australian people, Ministers must be vigilant in avoiding any perceived or actual conflict between their ministerial responsibilities and their private interests.

In relation to the Government's consideration of the ANAO's recommendation 4, where the Minister is the final approver, this should include a requirement for official records to be maintained, which would also provide a basis for Ministers to demonstrate they have followed the Standards' fairness requirements.

Whilst not material to my conclusions, my review of the data available to me raises some concerns about the ANAO's analysis and conclusions. I propose to raise these concerns with the Auditor-General.

I understand that this advice is being sought for the consideration of the Governance Committee of Cabinet.

Yours sincerely

Philip Gaetjens
1 February 2020

~~PROTECTED CABINET~~

Advice to the Prime Minister relating to apparent breaches of the Statement of Ministerial Standards by the Minister for Sport in administering the Community Sport Infrastructure Grant Program

Summary

All Ministers are expected to conduct themselves in line with the Statement of Ministerial Standards (the Standards) in order to maintain the trust of the Australian people.

In addition to the expectations that Ministers should act at all times to the highest possible standards of probity, the following sections of the Standards are particularly relevant in this case:

In recognition that public office is a public trust, therefore, the people of Australia are entitled to expect that, as a matter of principle, Ministers will act with due regard for integrity, fairness, accountability, responsibility, and the public interest... (1.2)

Ministers must also comply with any additional requirements for declarations of interests to the Prime Minister as may be determined by the Prime Minister, and notify the Prime Minister of any significant change in their private interests within 28 days of its occurrence. (2.2)

Ministers must be able demonstrate that they have taken all reasonable steps to observe relevant standards of procedural fairness and good decision making applicable to decisions made by them in their official capacity. (3.1)

Having considered the findings of the Australian National Audit Office (ANAO) Report into the Community Sport Infrastructure Grant Program (the Program), and information gained through my subsequent inquiries, I conclude that, in exercising her role as decision maker for the Program, Senator McKenzie acted within the remit of the *Community Sport Infrastructure Grant Program: Program Guidelines (August 2018)* (the Guidelines). I note in particular Section 8.1 of those Guidelines which give the Minister “final approval” rights, and specify that “other factors may be considered when deciding which projects to fund”. This Ministerial discretion is not constrained by the Guidelines. I also note Senator McKenzie’s advice that her decisions were intended to ensure a fair spread of grants according to state, region, party, funding stream and sport, in addition to the criteria assessed by the Australian Sports Commission (Sport Australia), and that the data available to me supports this advice. Finally, I note that I found no evidence that the outcomes of the Minister’s decisions were biased towards marginal or targeted seats.

~~PROTECTED CABINET~~

There were, in my view, some significant shortcomings with respect to the Minister's decision making role. Key among these were the lack of transparency for applicants around the other factors being considered, and the disconnect between the assessment process run by Sport Australia and the assessment and decision making process in the Minister's Office. This lack of transparency coupled with the significant divergences between projects recommended by Sport Australia and those approved by the Minister has given rise to concerns about the decision-making.

I considered whether a reasonable person might conclude that these shortcomings were inconsistent with the principles of fairness and good decision making outlined under Sections 1.2 and 3.1 of the Standards. I also considered the question of fairness in the context of community expectations, and specifically from the perspective of applicants to the program. It was clear however in the program guidelines that the Minister was the final approver and that she could consider other factors in making her decisions.

There has been considerable commentary on the ANAO's reference to the Minister's decisions being influenced by the identification of 'marginal' and 'targeted' electorates in a records obtained by the ANAO. After careful analysis of the outcomes of the Minister's decisions, I can find no basis for the suggestion that political considerations were the primary determining factor in the Minister's decision to approve the grants. This is consistent with the Minister's advice to me that she has never seen this spreadsheet and that neither she nor her staff based their assessments on it.

On the question of any conflict of interest, I note that Senator McKenzie was a member of the Wangaratta Clay Target Club at the time she approved funding under the Program to that organisation. I consider the Minister's approval of funding to an organisation of which she is a member represents an actual conflict of interest which should and could have been avoided, and is an apparent breach of the Standards.

The timing is such that the potential of conflict should have been clear to the Minister. By failing to put appropriate arrangements in place to avoid the potential for conflict, such as asking another Minister to make any decisions relating to organisations of which she was a member, the Minister has failed to maintain the trust of the Australian people.

I accept that the actual personal benefit of her membership of the Club may be negligible and that the Minister may not have considered the interest to be significant. However, the Minister's failure to declare and manage the conflict that arises between her responsibility for approving funding under the Program and her interests as a member of the Club, fails to meet the Standards.

Senator McKenzie was at the relevant time (and remains) a member of the Bendigo branch of Field and Game Australia and approved grants for two branches of Field and Game Australia under the Program. While the Minister

~~PROTECTED CABINET~~

~~PROTECTED CABINET~~

was not a member of either branch that received a grant, her approval of funding to those branches could be perceived as a conflict of interest because of her membership of Field and Game Australia.

The Minister failed to declare her membership of either of these organisations in a timely manner, as required by the Standards. Neither had been declared at the time of her decision making in relation to the grants. I consider this failure to declare is an apparent breach of the Standards.

Should you and the Governance Committee of Cabinet agree with my view in respect of the application of the Standards in this case, a decision in relation to any sanction is a matter for you and the Committee.

Background

Ministerial accountability

As you said in your address to the Australian Public Service in 2019,

Ministers are accountable to the Parliament and to the public through our democratic process for the policies of the Government... ultimately it is the Minister who must decide, whether approve or not approve, to provide comment, feedback, as they appreciate, because ultimately it is the Minister who will be held accountable by the public. And that's how it should be.

A central tenet of our system requires decision-making authority to reside with elected Ministers. Ministers will be advised, and recommendations will be provided by the Australian Public Service. Those recommendations and that advice may be accepted or rejected by the Minister; it is Ministers who must be accountable for decisions.

It is therefore vital that Ministers act according to the highest standards of probity, as stated in the Foreword to the Standards and must do so in a manner that is open to public scrutiny and explanation.

Additionally, and as you pointed out in letters to all Ministers and Assistant Ministers after the 2019 election, it is necessary for all Ministers to ensure that there is nothing in their private interests that could foreseeably conflict with their ministerial responsibilities.

The Program

After funding was provided in the 2018-19 budget, the Program was established in 2018 to ensure that more Australians have access to quality sporting facilities, encouraging greater community participation in sport and physical activity.

~~PROTECTED CABINET~~

~~PROTECTED CABINET~~

In summary, the Program was administered by Sport Australia. The Guidelines outlined that all eligible applications would be assessed against three weighted selection criteria, with final funding approval being provided by the Minister for Sport after which successful applicants would enter into a funding agreement with Sport Australia. The Guidelines further set out that funding announcements were expected from 1 November 2018 onwards and that projects were expected to be completed by 30 June 2019.

Applications opened on 2 August 2018 and closed on 14 September 2018. Sport Australia received 2056 project proposals seeking more than \$396.6 million in Australian Government funding. Funding totalling \$100 million was awarded to 684 projects across three rounds completed in December 2018, February 2019 and April 2019.

Fairness and Transparency of Ministerial Process

The Guidelines published in August 2018 were approved by the then Minister.¹ They clearly set out both eligibility criteria and assessment (selection) criteria which would be applied to grant applications.² Against each of three assessment criteria (community participation, community need, and project design and delivery), the Guidelines identified weighting to be given to ten sub-criteria in clear terms. It was against these criteria that grant applicants drafted their submissions. It was also against these criteria that Sport Australia provided recommendations to the Minister, including scoring each application out of 100.

For completeness I note that section 8.1 *Final Approval* of the Guidelines set out that:

The Minister for Sport will provide final approval. In addition to the application and supporting material, other factors may be considered when deciding which projects to fund.

The Report found that the Minister's Office relied on a "parallel" assessment process to identify which applications should be awarded funding and that the parallel process drew upon considerations other than those identified in the Guidelines.³ The Report also found that the Minister's Office applied considerations that were inconsistent with the Guidelines and that it was this parallel process that predominantly informed the Minister's funding decisions.⁴

In her response to questions in my letter of 22 January 2020, Senator McKenzie stated that "No parallel process was conducted." She further noted that under the

¹ Minister's answer to Question 1 in my letter of 22 January 2020

² Guidelines, sections 5 and 6.

³ ANAO Report, paragraph 10.

⁴ *ibid.*

~~PROTECTED CABINET~~

~~PROTECTED CABINET~~

guidelines, "... the Minister is entitled to consider other factors when deciding which projects to fund."⁵

In her letter, Senator McKenzie also noted that "In order to ensure geographic spread and fairness across communities and funding streams a spreadsheet was kept updated by my staff. This was the basis in determining final grant recipients, and was provided to Sport Australia. Electorates were noted on this record."⁶

Senator McKenzie characterised her Office's additional process as "not part of the assessment criteria. It was an assessment to ensure a fair spread of grants according to state, party, funding stream and sport, as outlined in Appendix 5 of the ANAO report."⁷ The Minister's Office provided to the ANAO a list of 14 further considerations or principles which the Office applied in considering the final approval of applications.⁸ Nevertheless, the Minister maintains⁹

The process I followed in my deliberation of funding decisions was consistent with the published guidelines.

As stated in Appendix 5 of the ANAO report the ranking from Sport Australia's assessment, which I understood to reflect the assessment criteria of community participation, community need and project design and delivery, was my key decision factor. Points 3 to 16 reflect additional factors.

Senator McKenzie also provided further information relating to the assessment process and, in particular, her exercise of ministerial discretion to ensure a fair spread of grants. As noted above, the Guidelines provide for the Minister to consider other factors in addition to the application and supporting material (which I take to include the assessment as per the published selection criteria) in granting final approval for the successful applicants.

In making an assessment of the impact of the other factors, the ANAO report found that 41 per cent (91) of the 224 first round approvals by the Minister were not included in the 426 initially supported by the Sport Australia Board. It is relevant to note that the Minister's decision making took into account the possibility of additional funding being made available under the Program, which was not apparent to Sport Australia when the first cohort of recommendations was made to the Minister.

The ANAO found that in the first round of Program funding, while the Sport Australia Board had recommended 426 applications for funding, it did not submit

⁵ Minister's response to question 4 in my letter.

⁶ Minister's response to question 12 in my letter.

⁷ Minister's response to question 9 in my letter.

⁸ ANAO Report, Appendix 5.

⁹ Minister's response to question 6 in my letter.

~~PROTECTED CABINET~~

those to the Minister as her office had already informed Sport Australia that she had approved 236 applicants. The Minister's Office had been provided with a copy of 422 recommended projects before the Board's consideration: this consideration resulted in a slightly amended list of 426 recommended projects approved by the Board. Rather than submit that list, Sport Australia provided the Minister with a brief that contained 221 recommended applicants, informed by her list of 236. The Minister finally approved 224 applicants on 21 December 2019.

In the second round, the ANAO found that 70 per cent (162) of the Minister's 232 final approvals were not in Sport Australia's 204 recommended projects. I note that these recommendations were not considered by the Minister. In the third round, the ANAO found that 73 per cent (167) of the Minister's 228 final approvals were not in Sport Australia's 245 recommended projects.

I cannot reconcile such large variations in the final approval results compared to recommendations based on the published assessment criteria with the Minister's view that the published assessment criteria were the "key decision factor". I find that other factors had a material impact on the Minister's final approvals being different from Sport Australia's own recommendations.

It could be argued that the selection criteria against which applications were assessed would be the dominant deciding factor in approvals, with other factors being made transparent and published or made known with respect to further rounds of the Program. On this interpretation, questions could arise around procedural fairness, but the guidelines did not require publication of reasons for approval.

The lack of transparency in the process, with no consultation, revisions to the published Guidelines, or any indication that distributional impacts would be taken into account, provided no line-of sight to or for the members of the community applying for the grants. This was in part a result of the clear disconnect throughout the period of the Program between the assessment process undertaken by Sport Australia and the Minister's final approval process.

Those submitting grant funding applications had, in my view, a right to more fully understand the basis on which the funding decisions were being made. As the ANAO observed,¹⁰ Sport Australia "was unable to communicate the full and actual reasons for the rejection of their application, or otherwise provide those applicants with advice on the reasons for their application being unsuccessful." Future grant program guidelines should take this into account.

Two additional factors that relate to the reference to good decision making in the fairness section of the Standards are the systematic application of the additional factors and the maintenance of appropriate records. In response to my question "Did your office weight its assessment criteria ... [the other factors referred to

¹⁰ See 4.26 in the ANAO Report

~~PROTECTED CABINET~~

above] ...to ensure a systematic approach and unbiased outcomes?", the Minister replied she "...was satisfied that a systematic approach was used to ensure there was fairness in awarding grants across state, sport type and funding stream." In the absence of any records, there is no evidence to support that they were applied systematically.

With respect to record keeping, I note that the Minister acknowledges that because Sport Australia is not subject to the Commonwealth Grant Rules and Guidelines (CGRG) "...there is no requirement for ministerial decisions to be documented in the way we would normally expect of a department." And while "...working documents were authored by ministerial office staff to support decision making and to ensure fairness in grant distribution across sports, states electorates and funding streams...records not required to be kept were destroyed."

Where the Minister was the final approver and approvals departed materially from official recommendations (whether or not they were delivered to the Minister and her office), I am concerned there is no evidence of the reasons that supported the Minister's final approvals.

I acknowledge there was no formal requirement under the CGRGs, or the Sport Australia Grant Management Framework for the Minister to retain records of decisions. My observation is that this lack of contemporary evidence and reasoning has contributed to community concern over the Program outcomes.

Findings

I find there were significant shortcomings in the process undertaken by the Minister and her office that give rise to issues around the fairness and probity of that process. These need to be weighed up against the requirements of and discretion afforded to the Minister by the Guidelines. The Guidelines clearly and publicly identify the Minister as having final approval authority and the right to consider other factors. This discretion was not constrained in any way by the Guidelines. While there may be differing views about the fairness of the process, the Minister used the discretion she was afforded. Accordingly, I do not believe there is a basis for you to find that the Minister has breached the Standards in this respect.

Further, while I consider that an additional (undisclosed) process was conducted within the Minister's Office, I do not find evidence that this process was unduly influenced by reference to 'marginal' or 'targeted' electorates. The ANAO Report places very significant import on a spreadsheet prepared in November 2018 which identified 'marginal' and 'targeted' electorates, as well as an associated briefing note.¹¹ The Report goes on at 4.24 to suggest that this was the basis of the Minister's process. I do not find evidence of this. The data indicates that applications from 'marginal' or 'targeted' seats were approved by the Minister at

¹¹ ANAO Report, at 3.20.

~~PROTECTED CABINET~~

~~PROTECTED CABINET~~

a statistically similar ratio (32 per cent) compared with the number of applications from other electorates (36 per cent). In terms of the comparison between those recommended by Sport Australia and those approved by the Minister, 180 'marginal' and 'targeted' projects were recommended by Sport Australia, and 229 were ultimately approved by the Minister, representing a 27 per cent increase. This is smaller than the overall percentage increase of projects recommended (505) to projects funded (684) of 35 per cent.

After careful analysis I can find no basis for the suggestion that political considerations were the primary determining factor in the Minister's decision to approve the grants. This is consistent with the Minister's advice to me that she has never seen this spreadsheet and that neither she nor her staff based their assessments on it.

Whilst not the central aspect of the advice you sought, I note the Minister's criticisms of Sport Australia with respect to its assessment process and the detail provided to her and her office. The Minister's comments and those in the ANAO Report relating to the administration of the program by Sport Australia give rise to a number of questions including the detail of advice provided to the Minister, proposals to depart from the published Guidelines and the adoption of the Minister's final approvals before submitting its own recommendations in funding rounds one and two and the lack of advice with respect to publishing revised guidelines. In my view, however, the appropriate response to these perceived shortcomings was not to rely on the non-transparent consideration of other factors, and to create a divide between Sport Australia's assessment and the Minister's final approvals, but for the Minister to direct and work with Sport Australia to ensure an effective, fair and transparent process.

The ANAO Report also found that the Sport Australia Board did not play the role set out in section 8 and its influence in the ultimate decision-making process was negligible.

The Standards clearly establish (section 1.3 (iii)) that Ministers are accountable for the actions of staff in their Office. At a number of points in her letter to me of 24 January 2019, Senator McKenzie refers to actions taken by her Office. In accordance with the Standards, Senator McKenzie is accountable for those actions and I have taken this approach in forming my advice to you.

Conflicts of Interest

Section 2.2 of the Standards requires Ministers to declare and register their personal interests. Ministers must also comply with additional requirements placed upon them by you and notify you of any significant change in their private interests within 28 days. Immediately following your appointment as Prime Minister in August 2018, you wrote to all Ministers including Senator McKenzie requiring, inter alia, that they identify all organisations of which they are a member.

~~PROTECTED CABINET~~

~~PROTECTED CABINET~~

Senator McKenzie advised that she does not consider her membership of certain sporting organisations created any conflict of interests with her funding decisions under the Program.

Wangaratta Clay Target Club

It was reported in the media that Senator McKenzie was a member of the Wangaratta Clay Target Club (the Club, WCTC) at the time she approved the Round 2 Grant of \$35,890 for the Club. Senator McKenzie has confirmed to me in her letter that she became a member of the Australian Clay Target Association (ACTA) through its affiliate club the Wangaratta Clay Target Club on 29 January 2019.

- 25 January 2019 – Senator McKenzie visited the WCTC and signed a membership form
- 29 January 2019 – Australian Clay Target Association (ACTA) registered Senator McKenzie's membership through the WCTC
- 4 February 2019 – Senator McKenzie formally signed off on the funding for approved projects in Round 2 of the Program, including \$35,890 for the WCTC

In relation to the chronology of decision-making regarding the Club, Senator McKenzie noted that:

on and after 29 January 2019, there was no assessment by my office of the WCTC project. As is made clear in the ANAO Report changes made to the list of approved projects between 29 January 2019 and 4 February 2019 involved removing projects rather than adding or changing approvals. On February 4 2019, I formally signed off on the Round 2 projects. This formal sign off did not involve any further assessment by myself or my office of the WCTC project as that work had concluded in mid-January.

On this basis, Senator McKenzie asserts that there was no conflict, perceived or actual, with respect to the Club.

While I accept Senator McKenzie's evidence that the assessment of the Club's application by her Office had concluded before Senator McKenzie became a Club Member, she did not approve the grant to the Club until 4 February 2019, by which time she had become a member.¹² I consider that, at that point, there was an actual conflict of interest that Senator McKenzie should have avoided. There were measures that could have been taken at that time to avoid the conflict, such as recusing herself and referring any decision in relation to the Club's funding application to another Minister.

¹² The fact that all relevant consideration and decision-making was complete before 25 January, but the decision was not made until 4 February adds to the perceived lack of transparency throughout this process.

~~PROTECTED CABINET~~

~~PROTECTED CABINET~~

Senator McKenzie also had an obligation, established by the principles outlined in the Foreword to the Standards and at section 2.2 of the Standards, to declare her membership of the Club to the Prime Minister.

In this case timeliness was particularly important as Senator McKenzie was considering approving grants to sporting clubs. It is imperative that Ministerial declarations are kept up to date in real time. In my view, whenever a Minister's interests change, that change should be reflected in their declaration as soon as practicable. The Standards require that any "significant change" to Ministers' private interests be declared to the Prime Minister within 28 days (at 2.2).

After reviewing documents held by the Prime Minister's Office and the Department of the Prime Minister and Cabinet, there is no evidence that Senator McKenzie declared her membership of the Club to the Prime Minister until after the 2019 election.

Senator McKenzie asserts in her letter to me that her declaration of a membership of the ACTA in June 2019 was sufficient, since the WCTC is an affiliate member of the ACTA. In my view, whilst this may be sufficient in terms of the structure of the ACTA and WCTC, it does not address the matter of the late declaration of the membership.

Field and Game Australia

I understand Senator McKenzie joined Field and Game Australia before 2018 and did not declare this membership to the Prime Minister until 13 June 2019. Senator McKenzie advised that her membership of Field and Game Australia relates to the Bendigo Branch which did not receive funding under the Program.

However, Senator McKenzie approved grants for two branches of Field and Game Australia under the Program; the Northern Territory Field and Game Association was awarded \$500,000, and Warrnambool Field and Game was awarded \$50,000.

The Minister's approval of funding to those branches could be perceived as a conflict of interest because of her membership of Field and Game Australia.

Findings

In my view, Senator McKenzie is in apparent breach of the Standards in two respects.

Firstly, she had an obligation to declare her membership of both sporting organisations in a timely manner. She did not do so until June 2019. Her office has advised that her membership of Field and Game Australia predates your 2018 letter. This should have been declared at that time. As Minister for Sport, I consider her membership of WCTC to fall within the definition of a "significant

~~PROTECTED CABINET~~

~~PROTECTED CABINET~~

change” under Section 2.2 of the Standards that should have been reported to you within 28 days under ordinary circumstances.

Further, the Minister’s membership of WCTC created an actual conflict of interest where that organisation had applied for and receiving funding under the Program, with the Minister’s decision being made after she became a member. This conflict should have been declared to you and managed. I consider the failure to do this is also an apparent breach of the Standards.

Philip Gaetjens
Secretary
Department of the Prime Minister and Cabinet
1 February 2020

~~PROTECTED CABINET~~



Australian Government
Department of the Prime Minister and Cabinet



OFFICIAL

PM&C ref: FOI/2021/299IC

OAIC ref: MR22/00038

s. 22(1)(a)(ii)

Systemic & Significant Reviews and Regulatory Advice
Office of the Australian Information Commissioner

Cc: Leo Hardiman PSM QC, Freedom of Information Commissioner

By email: FOIDR@oaic.gov.au

Dear s. 22(1)(a)(ii)

IC Review – MR22/00038 – Rex Patrick and Department of the Prime Minister and Cabinet

I refer to your email of 7 December 2022, seeking further information in relation to the above matter, and providing a copy of submissions in reply filed by Mr Rex Patrick (the **applicant**).

Further information on document searches

You have invited the Department to provide further submissions with regard to the applicant's submissions of December 2022, the Guidelines issued by the Information Commissioner under section 93A of the *Freedom of Information Act 1982* (the FOI Act; and the Guidelines) at 3.85-3.94, and specifically:

- the subject matter of the document in question;
- the past file management system; and
- the records management system in place.

The applicant submits that reasonable searches in the circumstances should include physical searches of Cabinet records.

The Department refers to and relies on its previous submissions in relation to the reasonable searches undertaken, which have determined that the document cannot be found within departmental records.

s. 47C

s. 47C

OFFICIAL

The Department further confirms that it has taken into consideration the subject matter of the document, as well as past file management systems, and the records management systems in place when conducting reasonable searches.

As established in our previous submissions, the original nominated decision maker had knowledge of the relevant subject matter, and considered relevant departmental records, both physical and electronic, when making their decision. Departmental records, including past file management systems and record management systems that hold Cabinet documents have been searched as part of activities undertaken in response to this IC review.

In their submissions the applicant has suggested that the Department consider seeking further information from Ms Stephanie Foster, Mr Philip Gaetjens and/or Cabinet note takers.

The operation of the FOI Act, and the conduct of reasonable searches does not extend to contacting former staff of the Department. Such individuals would no longer have access to departmental records. Any information they could provide regarding the document at issue would not change the steps taken by the Department to conduct reasonable searches.

Further, Cabinet notebooks are expressly excluded from the operation of the FOI Act. The Department submits that it is not required to undertake searches of Cabinet notebooks to identify and then enquire with note takers in order to satisfy the requirement for reasonable searches.

s. 47C
s. 47C

The Department reiterates that searches of its records, both electronic and physical, have been conducted and the document cannot be found.

Document cannot be found or does not exist

The Department has established in its previous submissions, and reiterates that both elements of the requirement at section 24A of the FOI Act have been satisfied, being:

- (a) all reasonable steps have been taken to find the document, and
- (b) the agency is satisfied that the document *cannot be found or does not exist* (i.e. the document is not in the Department's possession).

While the Department does not dispute the existence of the requested document; reasonable searches have determined that the document is not in the possession of the Department.

The Department's decision remains the correct and preferable decision.

Parliamentary privilege

The Department notes that certain information within the applicant's December 2022 submissions may require the FOI Commissioner to draw an inference or conclusion from the content of proceedings of Parliament. The Department submits that acceptance of the evidence given to the

s. 47C

OFFICIAL

Senate Finance and Public Administration Legislation Committee in March 2020 may contravene section 16(3) of the *Parliamentary Privileges Act 1987*.

The Department draws the FOI Commissioner's attention to their decision in *Rex Patrick and Department of the Prime Minister and Cabinet (No.2) (Freedom of information)*¹ in which it was found that acceptance of evidence provided to a Senate Select Committee would require the Commissioner to draw an inference or conclusion from the content of proceedings in Parliament.

To the extent that evidence of the Senate Committee be relied on, the Department respectfully submit the FOI Commissioner should disregard this evidence.

Further information in response to the applicant's submissions

In their submissions of December 2022, the applicant references the decision of the Attorney-General's Office made under the FOI Act which applies Cabinet-related exemptions over the requested document. The applicant further makes reference to Cabinet consultation requirements in accordance with the 13th Edition of the Cabinet Handbook when handling FOI matters.

The Department refers to its previous submissions, and confirms that records in relation to FOI matters, including consultations, have been considered when undertaking reasonable searches in response to the applicant's request for access. The Department confirms that the document is not in its possession now, or at the time of the original FOI decision.

The Department reiterates that decisions under the FOI Act are undertaken independently, by nominated delegates of each relevant entity. Paragraph 3.14 of the FOI Guidelines note decision makers may obtain assistance, and take advice and recommendations into account, but they are nevertheless responsible for reaching an independent decision. The decision of the Attorney-General's office is not a decision of the Department, and it is not for the Department to comment further.

Should you require further information please contact the FOI and Privacy Section by phone on (02) 6271 5849 or by email to foi@pmc.gov.au.

Yours sincerely

Branko Ananijevski
A/g Assistant Secretary
Legal Policy Branch
Department of the Prime Minister and Cabinet
December 2022

¹ [2022] AICmr 66

Document 7

From: FOI
To: s. 22(1)(a)(ii)
Cc: s. 22(1)(a)(ii); Mckenzie, Angie
Subject: RE: Cab Div comment: Draft Information Commissioner submissions (2021/299IC) [SEC=PROTECTED, CAVEAT=SH:CABINET, ACCESS=Legal-Privilege]
Date: Monday, 21 November 2022 3:08:00 PM
Attachments: image002.png
image005.png

**PROTECTED//CABINET
Legal privilege**

Hi s. 22(1)(a)(ii)

Thank you for coming back to me.

I note for record that s. 22(1)(a)(ii) and I also discussed searches have been undertaken for records associated with C20/180 (MR20/00544) – this is an Attorney-General's Office Information Commissioner review which relates to the same document.

I understand these searches did not identify the document requested by the applicant.

The submissions are due to the Information Commissioner tomorrow, 22 November 2022. I am sending the submissions through to Autumn now for her review.

I will flag with her that you have progressed in Angie's absence.

Thanks again,
s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii) @pmc.gov.au>
Sent: Monday, 21 November 2022 2:02 PM
To: s. 22(1)(a)(ii) @pmc.gov.au>
Cc: s. 22(1)(a)(ii) @pmc.gov.au>; FOI - Cabinet Division
s. 22(1)(a)(ii) @pmc.gov.au>; s. 22(1)(a)(ii) @pmc.gov.au>; Mckenzie, Angie
<Angie.Mckenzie@pmc.gov.au>
Subject: Cab Div comment: Draft Information Commissioner submissions (2021/299IC)
[SEC=PROTECTED, CAVEAT=SH:CABINET, ACCESS=Legal-Privilege]

**PROTECTED//CABINET
Legal privilege**

Hi s. 22(1)(a)(ii)

You have consulted us on the below sections of your proposed Oaic submissions for FOI/2021/299 (attached):

S. 47C

s. 47C

Following your instructions, Cabinet Division undertook the following search of BackNet as requested:

FOI Reference	Search date range	1 st Search Criteria	2 nd Search Criteria
FOI/2021/2991C	1 January 2020 – 11 November 2021	Key Words "Attorney-General"	Key Words Sport OR "McKenzie"

This resulted in 100 search results (see **attached**). Upon review, none of the attached responsive searches appear to contain the letter. We note that if the term 'letter' is added as a required search term, the result drops down to 40 items, all of which have the relevant key words significantly spaced out from each other (see **attached**).

We can, however, confirm that the letter was **s. 34(2)**
s. 34(2) Our digital record for this item does not contain a copy of the letter, which we have confirmed by a manual review of our digital holdings. Noting that the **s. 34(2)** was administered by Government Division and so Cabinet Division does not hold physical copies of their items, we further note your confirmation over the phone that the physical record has been inspected and a copy of the letter was not found.

Given the above, we have no further comments on the submission. Noting that Angie is away today, I have cleared this response as I understand we were scheduled to lodge these submissions with the OAIC. Should that no longer be the case and you receive an extension of time, we will seek Angie's views tomorrow but I wanted to provide you with these results in the meantime.

As always, happy to discuss.

Kind regards

s. 22(1)(a)(ii)

s. 22(1)(a)(ii) | Director

Legal Information Integrity | Cabinet Division
Department of the Prime Minister and Cabinet

p. s. 22(1)(a)(ii) | m. s. 22(1)(a)(ii)

Ngunnawal Country, One National Circuit Barton ACT 2600 PO Box 6500 CANBERRA ACT 2600
e. s. 22(1)(a)(ii)@pmc.gov.au w: www.pmc.gov.au

From: FOI - Cabinet Division <s. 22(1)(a)(ii)@pmc.gov.au>

Sent: Thursday, 17 November 2022 12:35 PM

To: s. 22(1)(a)(ii)@pmc.gov.au

Cc: FOI - Cabinet Division s. 22(1)(a)(ii)@pmc.gov.au; s. 22(1)(a)(ii)@pmc.gov.au

Subject: RE: FOR COMMENT: Draft Information Commissioner submissions (2021/299IC)
[SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

**OFFICIAL: Sensitive
Legal privilege**

Hi s. 22(1)(a)(ii)

Thank you for consulting with us – a quick search of our records does not reveal any emails relating to **FOI/2021/299** so it would appear we were not consulted on this request, and therefore searches of Cabinet records were not conducted.

If your records suggest otherwise, grateful if you can provide further details such as a possible subject line or the date of request/response so that we can identify any relevant items.

As always, happy to discuss.

Kind Regards,

s. 22(1)(a)(ii)

s. 22(1)(a)(ii) | Adviser

Legal Information Integrity

Cabinet Division | Department of the Prime Minister and Cabinet

p. s. 22(1)(a)(ii) | e. s. 22(1)(a)(ii)@pmc.gov.au | www.pmc.gov.au

One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

From: s. 22(1)(a)(ii)@pmc.gov.au

Sent: Wednesday, 16 November 2022 4:56 PM

To: s. 22(1)(a)(ii) [redacted] pmc.gov.au; FOI - Cabinet Division
<s. 22(1)(a)(ii) [redacted] [@pmc.gov.au](mailto:pmc.gov.au)>
Cc: s. 22(1)(a)(ii) [redacted] [@pmc.gov.au](mailto:pmc.gov.au)>
Subject: FOR COMMENT: Draft Information Commissioner submissions (2021/299IC)
[SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

**OFFICIAL: Sensitive
Legal privilege**

Hi s. 22(1)(a)(ii) [redacted]

Hope that you are both going well.

Please find **attached** draft submissions proposed to be provided to the Office of the Australian Information Commissioner.

You will see that the submissions briefly refer to searches of Cabinet records (page 3)

Grateful for your review and confirmation you are comfortable with this inclusion. I note that the submissions are proposed to be made 'open' (i.e. the Oaic is likely to provide them to the applicant, former Senator Patrick).

To support your review, I have included the notice of IC review, and the applicants submissions.

Please could you provide your views by 4pm tomorrow, Thursday 17th November. If you require additional time, please let me know.

Thank you,

s. 22(1)(a)(ii) [redacted]

s. 22(1)(a)(ii) [redacted] | Adviser*

FOI Section | Legal Policy Branch

Department of the Prime Minister and Cabinet

Ngunnawal Country | One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600

p. s. 22(1)(a)(ii) [redacted] | e. s. 22(1)(a)(ii) [redacted] [@pmc.gov.au](mailto:pmc.gov.au)



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

**Please note I do not work Fridays*

Document 8

From: s. 22(1)(a)(ii)
To: s. 22(1)(a)(ii)
Subject: File note - search for records associated with s. 34(2) [SEC=PROTECTED, CAVEAT=SH:CABINET]
Date: Monday, 19 December 2022 3:48:57 PM

PROTECTED//CABINET

Dear s. 22(1)(a)(ii)

By way of file note, at around 2:30pm on 19 December 2022, I went to PM&C's storage facility, accompanied by PM&C security guards.

I found a box which contained a file labelled s. 34(2). The file had one minute inside, and no other documents were included in that file.

Thanks

s. 22(1)(a)(ii)

s. 22(1)(a)(ii) | Director

Legal Information Integrity | Cabinet Division
Department of the Prime Minister and Cabinet

p. s. 22(1)(a)(ii) | m. s. 22(1)(a)(ii)

Ngunnawal Country, One National Circuit Barton ACT 2600 PO Box 6500 CANBERRA ACT 2600

e. s. 22(1)(a)(ii)@pmc.gov.au w: www.pmc.gov.au

From: s. 22(1)(a)(ii)
To: s. 22(1)(a)(ii)
Cc: s. 22(1)(a)(ii)
Subject: RE: FOI/2021/299IC - Searches [SEC=PROTECTED, CAVEAT=SH:CABINET]
Date: Monday, 21 November 2022 11:24:13 AM
Attachments: [SIGNED 20201009 Submission IC review MR20-00544 LM 20201016.pdf](#)
[RF Seeking advice - Notice of IC review and request for documents SECOFFICIAL Sensitive.msg](#)

PROTECTED//CABINET
PROTECTED//CABINET

Hi s. 22(1)(a)(ii)

Thanks for chatting with me.

I provide the below references/documents which will support more targeted searches of your records.

I understand that you may have already completed these searches previously, but we would be grateful for confirmation.

s. 34(2)

Related matter: IC review of the Attorney-General Office's FOI request

MR20/00544 – OAIC reference

C20/180 – PMC consult reference

The attached submissions are the only document held on our file for the consultation between AGS (on behalf of AGO) and PMC.

Background

These searches are related to an IC review of Mr Patricks request of 11 November 2021, seeking access to a letter from the then Attorney-General, Mr Porter, to the then Prime Minister, Mr Morrison regarding the ANAO report on funding under the Community Sport Infrastructure Program.

In December 2021, the Department issued a 'nil docs' decision to the applicant. They have sought Information Commissioner review of the no documents decision, and to support our response the Department is undertaking extensive further enquiries

Thank you,

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii) @pmc.gov.au>
Sent: Friday, 18 November 2022 7:04 PM
To: Mckenzie, Angie <Angie.Mckenzie@pmc.gov.au>; s. 22(1)(a)(ii)
s. 22(1)(a)(ii)@pmc.gov.au>; s. 22(1)(a)(ii) @pmc.gov.au>
Cc: s. 22(1)(a)(ii) @pmc.gov.au>; FOI <FOI@pmc.gov.au>
Subject: FOI/2021/299IC - Searches [SEC=OFFICIAL]

OFFICIAL

Hi Angie

Thanks for your time on the phone and agreeing to undertake additional searches for FOI/2021/2991C.

As promised, see below search strings we used to undertake searches across the Department. We would appreciate if Cabinet Division could undertake additional searches consistent with the below. We acknowledge Cabinet Division is under some pressure right now so if there is anything that we can do to assist, please let me know.

Submissions are due to the Information Commissioner on Monday, 21 November 2022. We can work with the OAI to seek a short extension to provide you time to undertake the searches.

FOI Reference	Search date range	1st Search Criteria	2nd Search Criteria
FOI/2021/2991C	1 January 2020 – 11 November 2021	Key Words "Attorney-General"	Key Words Sport OR "McKenzie"

Happy to discuss.

Thanks

s. 22(1)(a)(ii)