Francis and Australian Information Commissioner (Freedom of information) [2015] AATA (4 December 2015)

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| Division |  |
| File Number | 2014/4029 |
| Re |  |
|  | APPLICANT |
| And | Australian Information Commissioner |
|  | RESPONDENT |

# Decision

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| Tribunal | **Senior Member N A Manetta** |
| Date | **4 December 2015** |
| Place | **Adelaide** |

1. The decision of the Tribunal will be:
	1. To vary the declaration of the Information Commissioner dated 11 July 2014 by deleting paragraphs [2] and [3] and to substitute in lieu thereof a new paragraph [2] as follows:

“2. The Department of Defence is not required to consider any application by Ronald Francis under s 48 of the Freedom of Information Act 1982 to amend or annotate the following documents unless Ronald Francis has applied in writing to the Information Commissioner to make the application and the Information Commissioner has granted written permission for the application to be made:

1. AF Med 1 Form dated 17 March 1972;
2. AF Med 1 Form dated 14 July 1972;
3. AM 146z form”; and
	1. Otherwise to affirm the decision under review.

........................................................................

Senior Member N A Manetta

# Catchwords

FREEDOM OF INFORMATION- declaration of applicant as vexatious - whether access action abuse of process - previous applications for amendment of records and previous AAT decisions - held declaration appropriate

# Legislation

Freedom of Information Act 1982 (Cth), ss 89K & 89L

Administrative Appeals Tribunal Act 1975

# Cases

Drake v Minister for Immigration and Ethnic Affairs (1979) 2 ALD 60

Re Denhollander and Department of Defence [2002] AATA 866

Rogers v The Queen (1994) 181 CLR 251

Walton v Gardiner (1993) 177 CLR 378

Francis v. Department of Defence [2005] FCA 100

Re Francis v Department of Defence [2004] AATA 33

Re Francis v Department of Defence [2009] AATA 549

Re Francis v Department of Defence [2010] AATA 780

Re Francis v Department of Defence [2012] AATA 838

# Secondary Materials

*Australian Book of Reference 1991 – Naval Medical and Hospital Instructions.*

# REASONS FOR DECISION

**Senior Member N A Manetta**

**4 December 2015**

1. This is an application by Mr Ronald Francis under s 89N of the *Freedom of Information Act 1982* (the FOI Act) for a review of a decision of the Australian Information Commissioner (the Commissioner) dated 11 July 2014. In that decision, the Commissioner declared Mr Francis to be a vexatious applicant under s 89K(1) of the FOI Act following an application he had made to the Department of Defence (the Department) in January 2014 to have a certain medical record held by the Department amended. The Commissioner did not appear and effectively submitted to any decision the Tribunal might make; Mr Francis appeared for himself (and was assisted by a friend, Mr Denhollander); Mr Davidson appeared for the Joined Party (the Department of Defence).

# QUESTION

1. The question I have to determine is whether, hearing the matter afresh on the evidence before me,[[1]](#footnote-1) I am satisfied a declaration should be made. If I find a declaration should be made, I must decide the scope of the declaration.

# STATEMENT OF CONCLUSION

1. For the reasons I shall give, I am satisfied a declaration should be made. I am satisfied that the substance of the Commissioner’s declaration is appropriate, but it ought to refer specifically in my view to the documents governed by its terms. Otherwise, I would affirm the decision under review.

## BACKGROUND

1. The matter came before the Commissioner in the following way, which is recorded in his helpful reasons. The Department had received an application from Mr Francis by letter dated 7 January 2014.[[2]](#footnote-2) The application sought amendment to a medical record dated 14 July 1972 held by the Department. The medical record in question concerns Mr Francis’s service in the Navy, from which he was discharged in 1972.
2. The application was made under s 48 of the FOI Act. Section 48 permits a person to make application in respect of a record that contains “personal information” about him or her where that record is “incomplete, incorrect, out of date or misleading”. In these circumstances, a person may apply either to have the record amended or to have an annotation inserted. The Department requested the Commissioner to declare Mr Francis “a vexatious applicant” in relation to the application he made in January 2014. The Department contended that Mr Francis had made a number of applications in the past concerning this record as well as other medical records; and that Mr Francis was simply attempting to revisit an issue that had been dealt with by it on multiple occasions and, indeed, by this Tribunal (since Mr Francis had filed a number of applications for review following adverse departmental decisions).

**LEGISLATION**

1. Sections 89K and 89L are the relevant provisions in the FOI Act concerning vexatious applicant declarations. I set these out below:

“**89K Vexatious applicants—declaration**

1. The Information Commissioner may, by written instrument (a **vexatious applicant declaration**), declare a person to be a vexatious applicant.
2. The Information Commissioner may make a declaration:
	1. on the application of an agency or Minister; or
	2. on the Information Commissioner’s initiative.
3. If an agency or Minister has applied for a declaration, the agency or Minister has the onus of establishing that the Information Commissioner should make the declaration.
4. The Information Commissioner must, as soon as practicable, give written notice to the person in relation to whom the vexatious applicant declaration is made.

**89L Vexatious applicants—grounds for declaration**

1. The Information Commissioner may make a vexatious applicant declaration in relation to a person only if the Information Commissioner is satisfied of any of the following:
	1. that:
		1. the person has repeatedly engaged in access actions; and
		2. the repeated engagement involves an abuse of the process for the access action;
	2. a particular access action in which the person engages involves, or would involve, an abuse of the process for that access action;
	3. a particular access action in which the person engages would be manifestly unreasonable.
2. A person engages in an **access action** if the person does any of the following:
	1. makes a request;
	2. makes an application under section 48;
	3. makes an application for internal review;
	4. makes an IC review application.
3. The Information Commissioner must not make a declaration in relation to a person without giving the person an opportunity to make written or oral submissions.
4. In this section:

**abuse of the process for an access action** includes, but is not limited to, the following:

* 1. harassing or intimidating an individual or an employee of an agency;
	2. unreasonably interfering with the operations of an agency;
	3. seeking to use the Act for the purpose of circumventing restrictions on access to a document (or documents) imposed by a court.
1. I note s 89K permits the Commissioner to declare a person to be a vexatious applicant following an application by an agency, in this case the Department of Defence. “Engaging in an access action” is defined in s 89L(2) and includes a request under s 48 of the Act for an amendment or annotation of a personal record.
2. There are three alternative preconditions for the making of a declaration set out in s 89L(1). The onus is on the Department to establish one or more of these preconditions. First, an applicant must have repeatedly engaged in access actions and the repeated action must involve an abuse of process for that access action.[[3]](#footnote-3) Secondly, a particular access action in which the person engages must involve, or would involve, an abuse of the process for that access action.[[4]](#footnote-4) Thirdly, a particular access action in which the person engages would be manifestly unreasonable.[[5]](#footnote-5)

# MR FRANCIS’S SERVICE HISTORY IN BRIEF AND HIS CONCERNS

1. Before setting out the history of Mr Francis’s various applications, I would note briefly his service history, which was the subject of his oral evidence before me, and his concerns about the records.
2. Mr Francis, who was born in 1948, joined the Navy in 1965. He gave evidence that he saw active service in Vietnam, and that in 1968, he was injured and fractured his vertebrae. He gave evidence of American surgeons having diagnosed a fracture of the L4 and L5 vertebrae, but maintained that while he was in Sydney, a fracture of the L1 vertebra only was found due to the inadequacy of the X-ray procedures. His evidence was that after this incident he served on the HMAS *Melbourne*, and he drew my attention to the citation he received in 1969 for, as he put it, “help rendered” when the *Melbourne* hit an American ship and a number of crew died.
3. Unfortunately, Mr Francis’s service history also involved incarceration for assault, and he acknowledged he generally had at the time “problems with authority” as he put it. He gave evidence of reacting very badly to pressure and said he was sent off for psychiatric evaluation in 1969. He eventually finished up his duties on the *Melbourne* and was transferred to the Navy’s training establishment at Quaker Hill, in Sydney. At what must have been a very difficult time for him, his wife lost their first child in a miscarriage.
4. He gave evidence that he made application for submarine duties and underwent a “submarine medical”, which was conducted in March 1972. The medical evaluation form that resulted from that examination is one of the medical records that Mr Francis has sought in the past to have amended. I shall refer to this document as the “March 1972 medical record”. A Dr Clarke conducted the examination and wrote in question box 62 “Category Recommended” the letter “A”. Mr Francis gave evidence that this meant that he was fit to serve anywhere, and that interpretation is accepted by the Department.
5. The categories on the form concerning his emotional stability and mental capacity were marked “NE” or “not examined”. His visual fields were also marked “NE”. The only abnormalities noted were in respect of Category 50, which concerned identifying marks, scars and the like. Mr Francis gave evidence that he had been assigned to submarine duties when all of a sudden he was rejected for service and was sent to see a psychologist.
6. Mr Francis subsequently applied for a discharge on compassionate grounds in June 1972. He gave evidence that he underwent a further examination in July 1972 by Dr Clarke, and the completion of this medical record is the subject of the application by Mr Francis in January 2014. Once again, the categories of visual field, emotional stability, and mental capacity were marked “NE” or not examined. I shall refer to this record as the “July 1972 medical record”.
7. In the event, Mr Francis’s application for a discharge was successful; but he says that as a result of his medical examination in July 1972, he received what is called a “free discharge”, effectively meaning that he was discharged without any serious medical issue having been found. Mr Francis’s complains that the “free discharge” was the direct result of an improper examination. Mr Francis contends that Dr Clarke knew of, or ought to have known of or suspected, his unsatisfactory mental and emotional states. He complains that Dr Clarke ought to have filled out the July 1972 medical form to indicate that his mental and emotional states were abnormal, or in any event proceeded to an examination.
8. Mr Francis wants the July 1972 medical record altered to show what he maintains is the truth; namely, that he was unfit for Navy service as a result of abnormal mental and emotional states. He refers in this regard to a subsequent diagnosis of Posttraumatic Stress Disorder. He further maintains that if he had been “medically discharged”, he would have received compensation in respect of his illnesses from a benefit fund set up for these purposes. As I understand his argument, he maintains that at a practical level, he is not able to secure those benefits today while the record remains in its present state.
9. I note that his Honour Justice Selway, in transcript that was tendered,[[6]](#footnote-6) queried whether payment of compensation could, indeed, depend on this record because Dr Clarke did not assert that Mr Francis was well from a mental or emotional perspective, but merely that he was not examined. The record is not inconsistent with a finding that Mr Francis was suffering from a psychiatric condition at the time the record was made.
10. It has not been necessary for me to determine whether the record does, indeed, have a practical role to play in any application Mr Francis may make for compensation. Mr Francis believes that, as a practical matter, he must have the July 1972 medical form amended in order to secure compensation, and I have assumed in these proceedings that he is correct in that belief.

# PRIOR ACCESS ACTIONS FOR AMENDMENT OF THE RECORDS

1. Mr Francis accepts that on a number of occasions he has pursued actions under the FOI Act to have the two medical records I have mentioned amended. I set these out in summary form.

## Senior Member Purcell’s 2004 AAT decision

1. In 2004[[7]](#footnote-7), the Tribunal delivered a decision in respect of an application by Mr Francis to have the July 1972 medical record amended. The Department had refused to amend the record.
2. Senior Member Purcell noted that Mr Francis had argued before her that the record was incorrect and incomplete and needed to be corrected so that he would not be disadvantaged in respect of his entitlements. This mirrors the contention Mr Francis made before me as justification for his most recent application to the Department. The Senior Member noted Mr Francis’s submission that it was known at that time that he was suffering from back problems and that he was subsequently diagnosed with Posttraumatic Stress Disorder. Mr Francis submitted on that occasion that the record should be amended to read “medically unfit for Naval Service”.
3. Senior Member Purcell adopted Deputy President Forgie’s reasoning in *Denhollander and Department of Defence* [2002] AATA 866. She found agreed that the July 1972 medical report contained the expression of an opinion only.
4. Section 55(6) of the FOI Act, which was applicable at the time, provided that a document expressing an opinion could only be amended by the Tribunal if the opinion was based on a mistake of fact, or the author of the opinion was biased, unqualified to form the opinion or had acted improperly in conducting factual enquiries that led to the formation of the opinion. This was a clear limitation on the Tribunal’s jurisdiction to order an amendment of the opinion.
5. Senior Member Purcell concluded (at paragraph [35]) that the opinion with respect to Mr Francis’s medical condition was not based on any error of fact. She also held that Dr Clarke’s decision not to conduct a full mental-state examination evidenced no mistake of procedure on Dr Clarke’s part. It was opinion to him, in her view, to hold this opinion. Dr Clarke’s opinion that Mr Francis should be classified category “A” (fit to serve anywhere) did not evidence any mistake of fact either.
6. Senior Member Purcell noted that Mr Francis had not asserted that Dr Clarke was biased, nor did he lead evidence on this topic, nor was an assertion made of impropriety nor evidence led in that regard. She concluded that s 55(6) precluded her from amending the July 1972 medical record. Accordingly, she affirmed the decision under review.
7. An appeal to the Federal Court against that decision, which was heard by his Honour Justice Selway, was dismissed.[[8]](#footnote-8)

## Senior Member Dunne’s 2009 AAT decision

1. In 2009[[9]](#footnote-9), Senior Member Dunne considered a further application by Mr Francis concerning the July 1972 medical record, the March 1972 medical record, and a so-called “AM 146z” medical form which he was required to fill out at the time of his discharge[[10]](#footnote-10). Mr Francis had sought amendment of the July 1972 medical record because it was, he said, “misleading”. The Department of Defence had evidently refused to make any amendment. Senior Member Dunne adopted Senior Member Purcell’s reasoning and approach in relation to the completion of the July 1972 medical report. In Senior Member Dunne’s view, no amendment was required.
2. An annotation was made to the form in respect of Box 60 but the decision not to amend it was affirmed. I need not set out the terms of the annotation: it is sufficient for present purposes to note its existence. An annotation was also ordered in respect of the AM 146z form.
3. No appeal to the Federal Court was brought from this decision.

## Deputy President Jarvis’s 2010 AAT decision

1. Mr Francis made a further application to amend the July 1972 medical record, the March 1972 medical record, and the AM 146z form. He brought an application to the Tribunal in respect of the Department’s refusal. In the course of this application[[11]](#footnote-11), Deputy President Jarvis was asked to dismiss Mr Francis’s application as vexatious or frivolous under s 42B of the *Administrative Appeals Tribunal Act 1975* (AAT Act). He gave reasons for rejecting that application. It is clear that he put forward a series of annotations in an attempt to resolve the substance of the matter in dispute. I note that the annotations were agreed to by Mr Francis.
2. No amendment was ordered, however, and no appeal to the Federal Court was made.

## Deputy President Jarvis’s 2012 AAT decision

1. Deputy President Jarvis considered a further application[[12]](#footnote-12) made in 2011 to have the March 1972 medical record and the July 1972 medical record amended. Mr Francis argued in respect of the July 1972 medical record that it was incomplete, incorrect, misleading and out of date in respect of his mental and emotional states. Deputy President Jarvis rejected this application. He considered detailed submissions by Mr Francis and concluded Dr Clarke did not examine Mr Francis and that the record was not incorrectly filled out by him because he did not mark the relevant boxes “abnormal”.
2. Deputy President Jarvis did amend the March 1972 medical record by altering Box 62. He found that Dr Clarke ought to have had regard to Mr Francis’s physical illnesses and psychiatric conditions before finding that he was fit for submarine service. He found the form was misleading or incomplete in this respect and ordered an amendment that reflected that Mr Francis was not fit for submarine service.
3. Deputy President Jarvis explicitly considered (at paragraph [41]) whether the July 1972 medical record ought to be amended given his conclusion in respect of the March 1972 medical record. He concluded that it did not warrant amendment. His conclusion was as

follows:

“…*Unlike the position in relation to the medical examination on 17 March 1972, I am not satisfied that Dr Clarke acted in breach of the Guidelines in ABR 1991[[13]](#footnote-13) or otherwise acted improperly in conducting the necessary factual inquiries that led to the formation of his opinion. I note further than the [July 1972 medical record] form itself recognised that some functions would not be examined, and there was no obligation, in connection with a free medical examination, to conduct an examination of emotional stability or mental capacity.*”

1. Deputy President Jarvis’s decision was not appealed.

# “ABUSE OF THE PROCESS FOR AN ACCESS ACTION”

1. As I have noted, the Commissioner found that Mr Francis’s latest attempt to have the July 1972 medical record amended constituted under s 89L(1)(b) an abuse of the process for an access action under section 48. I agree with that conclusion.
2. An “abuse of the process for an access action” is not defined in the FOI Act except in limited ways set out in s 89L(4). It is clear from s 89L(4) that this definition is not intended to confine the concept.
3. An “abuse of process” is a familiar concept in the context of legal proceedings. The concept continues to develop as a common law principle: the categories of abuse of process are not closed. Relevantly, the concept has been held to embrace proceedings that are brought for the purpose of relitigating issues already decided where the proceedings are not apt for that purpose, and even though the doctrine of issue estoppel does not apply: for example *Rogers v The Queen*[[14]](#footnote-14)*.* For example, his Honour Chief Justice Mason in *Rogers v The Queen* quotes[[15]](#footnote-15) a passage from a joint judgment he delivered in *Walton v Gardiner[[16]](#footnote-16)* as follows:

*“[P]roceedings before a court should be stayed as an abuse of process if, notwithstanding that the circumstances do not give rise to an estoppel, their continuance would be unjustifiably vexatious and oppressive for the reason that it is sought to litigate anew a case which had already been disposed of by earlier proceedings”.*

1. The expression “abuse of the process for an access action” is not an accidental choice in my opinion. Parliament has left the concept largely undefined in the FOI Act, but analogies may properly be drawn with common law precedents provided due allowance is made for the fact that Government agencies are not courts or tribunals, but administrative bodies.
2. Mr Francis’s latest application to have the July 1972 medical record amended satisfies s 89L(1)(b) of the FOI Act in my opinion. I do not accept that Mr Francis intends to intimidate or harass the Department. I also accept he genuinely believes that the record ought to be amended to reflect his incapacity for service in the Navy at that time. Mr Francis’s latest application must be considered, however, in the light of two relevant factors: first, his four earlier applications and, secondly, the earlier Tribunal decisions and the decision of the Federal Court.
3. In my opinion, in the absence of new factual material, an agency is entitled to treat an application for amendment of a record that it has considered and rejected on four prior occasions as an abuse of the process for the statutory access action under s 48 of the FOI Act. This follows *a fortiori*,in my opinion, where statutory rights of review have been pursued as is the case here. I would also conclude that the application “would be manifestly unreasonable” in this circumstance (cf s 89L(1)(c)).
4. Having received multiple rejections, an applicant who persists must, at some point, become “vexatious”. I do not say that point is necessarily reached as early as the second application, but I am satisfied that it was reached here on Mr Francis’s fifth application if not earlier. The statutory scheme under the FOI Act includes rights of review that are available to be pursued and, in the normal course, should be pursued if an applicant is dissatisfied with a departmental response. The scheme envisages an application, a departmental response, and the exercise of review rights; but it does not authorise multiple applications on the same facts.
5. It might he argued that an applicant could properly elect to reapply to an agency, which is an administrative body, rather than invoke the statutory review process because an agency may be persuaded to change its mind. Even on that assumption, however, a point must come where an applicant’s persistence, in the absence of new information, becomes “vexatious” and “oppressive” because all that is sought is a different outcome from the same statutory process on the same facts. Mr Francis has now applied five times to the Department and, in addition, has appealed adverse prior departmental decisions to the Tribunal on four occasions, with one appeal to the Federal Court.
6. An important part of the scheme under the FOI Act is the statutory review mechanism, which has included at all relevant times a right to apply to this Tribunal. This has particular significance in the context of Mr Francis’s latest application. Decisions on questions of law and findings of fact made by either the Tribunal or the Federal Court will bind the Department in the exercise of its statutory functions in the absence of new factual material justifying a different conclusion. In short, it is not intended that the Department should ignore decisions of the Tribunal or the Federal Court or to decide an application in a contrary way in the absence of new factual material warranting a departure.
7. In the course of deciding the applications to which I have earlier referred, the Tribunal has made various findings in the light of the evidence Mr Francis has chosen to adduce. In respect of the July 1972 medical form, it has found, for example, that Dr Clarke’s opinion was not based on an error of fact, that Dr Clarke was not biased or unqualified to form the opinion he formed, and that he did not act improperly in conducting the factual inquiries that led to the formation of his opinion.
8. Under s 49(b)(iv) of the FOI Act, Mr Francis was required to set out in his letter of 7 January 2014 his reasons for claiming Dr Clarke’s opinion was “incomplete, incorrect, out of date or misleading” for the purposes of s 48(a). Mr Francis’s letter emphasises his contention that Dr Clarke acted “improperly” in not assessing his mental capacity or emotional stability. He directly challenges the distinction Deputy President Jarvis drew and to which I have referred at paragraph [34] above and argues that Deputy Jarvis’s conclusion in respect of the March 1972 medical record should have carried over to the July 1972 medical record.
9. In my opinion, Mr Francis’s latest application requires the Department to ignore findings of fact the Tribunal has made in various applications, and it directly challenges a distinction Deputy President Jarvis found was appropriate to draw. Mr Francis’s application to the Department attempts, therefore, to circumvent earlier decisions that are contrary to his contentions. The Department would act inappropriately, in my opinion, if it acceded to Mr Francis’s application given these earlier findings.
10. Accordingly, I conclude that Mr Francis’s application is an abuse of the process for a section 48 access action.
11. It is hard to imagine how any new relevant information could come to light at this very late stage so as to warrant a further consideration of an amendment to the July 1972 medical record. Assuming such information did come to light, however, it would not be improper for Mr Francis to put forward an application that sought an amendment based on that new information.

## THE DECLARATION THAT SHOULD BE MADE

1. The effect of the Commissioner’s declaration, in paragraph [3], is to require Mr Francis to seek the Commissioner’s permission before applying to have amended or annotated a document that has been the subject of the applications he has made to the Tribunal. As far as I can see, the documents in question are the July 1972 medical form, the March 1972 medical form, and the AM 146z form completed at the time of discharge.
2. I note that the declaration applies not only to applications for amendments, but also to applications for annotations. I think a declaration in these terms is appropriate. The medical records have been annotated extensively as a result of past applications in this Tribunal, and I do not consider further annotations would be appropriate in the absence of some new factual information.
3. Furthermore, it is appropriate in my opinion that the declaration specifies the need for the Commissioner’s prior permission. This aspect of the declaration properly anticipates that it may be appropriate to permit Mr Francis to pursue an application for amendment (should new relevant factual information come to light). This is a reasonable condition in the circumstances of this case, and it is one that is explicitly envisaged by s 89M(2)(a) of the FOI Act.
4. I fully accept that the jurisdiction to declare a person a vexatious applicant is one that should not be lightly invoked. Nevertheless, it is important to recognise that it has a legitimate role to play in the scheme of the FOI Act: it may be said to be a necessary protection in a regime that permits the amendment of documents upon application. I am satisfied, exercising all due caution, that Mr Francis’s latest application is an abuse of the process for the statutory access action (for the purposes of s 89L(1)(b)) and that the substance of the Commissioner’s declaration is appropriate in the circumstances of this case.
5. In this regard, I would note expressly that there was nothing in what Mr Francis put to me at the hearing or in his written submissions that persuaded me that he has any insight into the unreasonableness of his multiple applications to the Department and to this Tribunal. That is a relevant matter.
6. The Commissioner’s declaration refers generally to documents that have been the subject of proceedings in this Tribunal. I would prefer, however, to nominate the three documents in question. The documents are related in subject matter and all concern Mr Francis’s medical state in the final part of his Navy career. I shall order a variation to the declaration to reflect this preference, but otherwise affirm the decision under review.

# DECISION

1. The decision of the Tribunal will be:
	1. To vary the declaration of the Information Commissioner dated 11 July 2014 by deleting paragraphs [2] and [3] and to substitute in lieu thereof a new paragraph [2] as follows:

“2. The Department of Defence is not required to consider any application by Ronald Francis under s 48 of the Freedom of Information Act 1982 to amend or annotate the following documents unless Ronald Francis has applied in writing to the Information Commissioner to make the application and the Information Commissioner has granted written permission for the application to be made:

1. AF Med 1 Form dated 17 March 1972;
2. AF Med 1 Form dated 14 July 1972;
3. AM 146z form”; and
	1. Otherwise to affirm the decision under review.

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| I certify that the preceding 56 (fifty-six) paragraphs are a true copy of the reasons for the decision herein of Senior Member N A Manetta |

........................[Sgd]................................................

Dated

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| Date(s) of hearing | **14 & 15 May 2015** |
| Date final submissions received | **26 June 2015** |
| Applicant | **In person** |
| Advocate for the Other Party | **Mr J Davidson** |
| Solicitors for the Other Party | **Australian Government Solicitor** |

1. *Drake v Minister for Immigration and Ethnic Affairs* (1979) 2 ALD 60. [↑](#footnote-ref-1)
2. Exhibit OP1, T3g, p 118. [↑](#footnote-ref-2)
3. Section 89L(1)(a). [↑](#footnote-ref-3)
4. Section 89L(1)(b). [↑](#footnote-ref-4)
5. Section 89L(1)(c). [↑](#footnote-ref-5)
6. Exhibit A4. [↑](#footnote-ref-6)
7. *Re Francis and Department of Defence* [2004] AATA 33. [↑](#footnote-ref-7)
8. *Francis v Department of Defence* [2005] FCA 100. [↑](#footnote-ref-8)
9. *Re Francis and Department of Defence* [2009] AATA 549. [↑](#footnote-ref-9)
10. I understand Mr Francis disputes he filled it out. [↑](#footnote-ref-10)
11. *Re Francis and Department of Defence* [2010] AATA 780. [↑](#footnote-ref-11)
12. *Re Francis and Department of Defence* [2012] AATA 838. [↑](#footnote-ref-12)
13. “Australian Book of Reference 1991- Naval Medical and Hospital Instructions” [↑](#footnote-ref-13)
14. (1994) 181 CLR 251 [↑](#footnote-ref-14)
15. At p 256. [↑](#footnote-ref-15)
16. (1993) 177 CLR 378 at 393. [↑](#footnote-ref-16)