

From: [Tim McCormack](#)
To: s 47F(1)
Cc: [Ross BARNETT](#); [Matt STOCK](#); [Tony MCCLEMENT](#)
Subject: RE: OSI PRESENTATION- INTRODUCTION TO INTERNATIONAL HUMANITARIAN LAW
Date: Monday, 23 August 2021 6:16:15 PM

My pleasure s 47F(1) – I hope it was useful to the cohort and so sorry I couldn't be there in person – would be so much better to engage face to face. Thanks to you and the team for facilitating my involvement and particularly for flexibility in the timing – much appreciated.

Yours with my best wishes

Tim

From: s 47F(1) @aipm.gov.au>
Sent: Monday, 23 August 2021 5:06 PM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: s 47E(d) @osi.gov.au; s 47E(d) @osi.gov.au; s 47E(d) @osi.gov.au
Subject: Re: OSI PRESENTATION- INTRODUCTION TO INTERNATIONAL HUMANITARIAN LAW

Hi Tim,

Thank you again for your time and support in presenting to the second group of the OSI Introduction & Induction Training Program.

The session was very informative and i know the cohort are in a better position moving forward given your insights and knowledge.

Stay safe and again thank you,

Ross, Matt, Tony & OSI Cohort

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Monday, 23 August 2021 3:08 PM
To: s 47F(1) @aipm.gov.au>
Subject: RE: OSI PRESENTATION- INTRODUCTION TO INTERNATIONAL HUMANITARIAN LAW

Hi s 47F(1)

I'm in Teams and ready to join whenever it suits you – happy just to wait until 3:15 if you prefer

Tim

-----Original Appointment-----

From: s 47F(1) @aipm.gov.au>
Sent: Thursday, 12 August 2021 8:15 AM

To: Tim McCormack

Cc: s 22(1) [redacted] [@OSI.GOV.AU](mailto:[redacted]@OSI.GOV.AU); Kieran BUTLER; s 22(1) [redacted];
s 22(1) [redacted] [@AFP.GOV.AU](mailto:[redacted]@AFP.GOV.AU)

Subject: OSI PRESENTATION- INTRODUCTION TO INTERNATIONAL HUMANITARIAN LAW

When: Monday, 23 August 2021 3:00 PM-5:00 PM (UTC+10:00) Canberra, Melbourne, Sydney.

Where:

Thanks Tim for keeping us in your busy schedule.

The session starts at 3.15. invite a little earlier so we can make sure everything is working.

In appreciation

s 47F(1) [redacted]

Hi Tim,

I hope you are safe and well.

Thank you for your support of the Office of the Special Investigator (OSI) Training Program.

I believe my counterpart s 22(1) [redacted] from the OSI - Sydney Office has already reached out to you regarding delivery on the upcoming second program.

Please find details for Microsoft Teams below.

If you would like anything printed (Powerpoint, Handouts etc) for distribution in the room please send through.

Of course if need anything further please call s 47F(1) [redacted].

Thanks

s 47F(1)

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)



Australian Institute of Police Management

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s 22(1)

(OSI)

Subject: s 42(1) Discussion
Location: Microsoft Teams Meeting

Start: Fri 1/04/2022 2:30 PM
End: Sat 2/04/2022 3:30 PM
Show Time As: Tentative

Recurrence: (none)

Organizer: Tim McCormack

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Join with a video conferencing device

s 47E(d) [@t.plcm.vc](#)

Video Conference ID: s 47E(d)

[Alternate VTC instructions](#)

Or call in (audio only)

+61 s 47E(d) # Australia, Hobart

Phone Conference ID: s 47E(d)

[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)

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From: [Tim McCormack](#)
To: [Patrick Doyle](#); [Patrick DOYLE](#)
Subject: s 42(1) Discussion

Microsoft Teams meeting

Join on your computer or mobile app

Click here to join the meeting <[https://teams.microsoft.com/l/meetup-join/s 47E\(d\) \[REDACTED\]](https://teams.microsoft.com/l/meetup-join/s 47E(d) [REDACTED])>

Join with a video conferencing device

[s 47E\(d\)@t.plcm.vc](mailto:s 47E(d)@t.plcm.vc) <[mailto:s 47E\(d\)@t.plcm.vc](mailto:s 47E(d)@t.plcm.vc)>

Video Conference ID: s 47E(d) [REDACTED]

Alternate VTC instructions <s 47E(d) [REDACTED]>

Or call in (audio only)

s 47E(d) [REDACTED] # <tel:+61 s 47E(d) [REDACTED] #> Australia, Hobart

Phone Conference ID: s 47E(d) #

Find a local number <[https://dialin.teams.microsoft.com/s 47E\(d\) \[REDACTED\]](https://dialin.teams.microsoft.com/s 47E(d) [REDACTED])>

Learn More <<https://aka.ms/JoinTeamsMeeting>> | Meeting options <[https://teams.microsoft.com/meetingOptions/s 47E\(d\) \[REDACTED\]](https://teams.microsoft.com/meetingOptions/s 47E(d) [REDACTED])>

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s 22(1)

(OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Wednesday, 30 March 2022 2:25 PM
To: Kieran BUTLER; Chris MORAITIS; Patrick Doyle
Cc: Patrick DOYLE
Subject: RE: follow-up from last week [SEC=OFFICIAL:Sensitive]

Thanks Keiran – just forwarded the invite to you and look forward to you or one of your team joining Pat and I on Friday.

Until then,

Tim

From: Kieran BUTLER <[REDACTED]@osi.gov.au>
Sent: Wednesday, 30 March 2022 2:22 PM
To: Tim McCormack <timothy.mccormack@utas.edu.au>; Chris MORAITIS <[REDACTED]@osi.gov.au>; Patrick Doyle <[REDACTED]@vicbar.com.au>
Cc: Patrick DOYLE <[REDACTED]@osi.gov.au>
Subject: Re: follow-up from last week [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks Tim and Pat- it would be great for me or one of my team to join the call.

Sent by Email+

OFFICIAL: Sensitive

From: "Tim McCormack" <timothy.mccormack@utas.edu.au>
Date: Wednesday, 30 March 2022 at 11:00:25 am
To: "Chris MORAITIS" <[REDACTED]@osi.gov.au>, "Patrick Doyle" <[REDACTED]@vicbar.com.au>
Cc: "Patrick DOYLE" <[REDACTED]@osi.gov.au>, "Kieran BUTLER" <[REDACTED]@osi.gov.au>
Subject: RE: follow-up from last week [SEC=OFFICIAL:Sensitive]

Thanks Chris,

I'll forward the invite to you too Keiran and you can pass it on to anyone you deem appropriate.

Cheers

Tim

From: Chris MORAITIS <[REDACTED]@osi.gov.au>
Sent: Wednesday, 30 March 2022 10:57 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>; Patrick Doyle <[REDACTED]@vicbar.com.au>
Cc: Patrick DOYLE <[REDACTED]@osi.gov.au>; Kieran BUTLER <[REDACTED]@osi.gov.au>
Subject: RE: follow-up from last week [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Kieran or one of his staff may listen in – re follow up

chris

OFFICIAL: Sensitive

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Wednesday, 30 March 2022 10:50 AM
To: Patrick Doyle ^{s 47E(d)} <@vicbar.com.au>; Chris MORAITIS ^{s 47E(d)} <@osi.gov.au>
Cc: Patrick DOYLE ^{s 47E(d)} <@osi.gov.au>; Kieran BUTLER ^{s 47E(d)} <@osi.gov.au>
Subject: RE: follow-up from last wek [~~SEC=OFFICIAL:Sensitive~~]

Done Pat – invite on its way to you now. Chris or Keiran – do either of you want to join this conversation Pat and I are planning?

Warmest regards,

Tim

From: Patrick Doyle ^{s 47E(d)} <@vicbar.com.au>
Sent: Wednesday, 30 March 2022 10:45 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>; Chris MORAITIS ^{s 47E(d)} <@osi.gov.au>
Cc: Patrick DOYLE ^{s 47E(d)} <@osi.gov.au>; Kieran BUTLER ^{s 47E(d)} <@osi.gov.au>
Subject: RE: follow-up from last wek [~~SEC=OFFICIAL:Sensitive~~]

Thanks Tim. Let's use Teams and I'll access it from my OSI computer.

Regards

Pat

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Wednesday, 30 March 2022 10:44 AM
To: Patrick Doyle ^{s 47E(d)} <@vicbar.com.au>; Chris MORAITIS ^{s 47E(d)} <@osi.gov.au>
Cc: Patrick DOYLE ^{s 47E(d)} <@osi.gov.au>; Kieran BUTLER ^{s 47E(d)} <@osi.gov.au>
Subject: RE: follow-up from last wek [~~SEC=OFFICIAL:Sensitive~~]

Thanks Pat,

Let's aim for 2:30pm on Friday. Do you have a preferred mode? I can send through invites for Zoom, MS Teams or phone.

I look forward to the chat,

Tim

From: Patrick Doyle ^{s 47E(d)} <@vicbar.com.au>
Sent: Wednesday, 30 March 2022 10:27 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>; Chris MORAITIS ^{s 47E(d)} <@osi.gov.au>

Cc: Patrick DOYLE s 47E(d) [redacted] <[\[redacted\]@osi.gov.au](mailto:[redacted]@osi.gov.au)>; Kieran BUTLER s 47E(d) [redacted] <[\[redacted\]@osi.gov.au](mailto:[redacted]@osi.gov.au)>
Subject: RE: follow-up from last wek [~~SEC=OFFICIAL:Sensitive~~]

Good morning Tim

Thanks for following up. Today is difficult for me but Friday is a lot better. I could do between 12pm and 1pm or between 2.30 and 4.00pm – whatever works best for you.

Regards

Pat

Patrick Doyle SC
 Barrister

Tel: s 47E(d) [redacted]

Mob: s 47E(d) [redacted]

Fax: s 47E(d) [redacted]

s 47E(d) [redacted] <[\[redacted\]@vicbar.com.au](mailto:[redacted]@vicbar.com.au)>

s 47E(d) [redacted]

Liability limited by a scheme approved under Professional Standards Legislation

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Wednesday, 30 March 2022 9:44 AM
To: Chris MORAITIS s 47E(d) [redacted] <[\[redacted\]@osi.gov.au](mailto:[redacted]@osi.gov.au)>
Cc: Patrick DOYLE s 47E(d) [redacted] <[\[redacted\]@osi.gov.au](mailto:[redacted]@osi.gov.au)>; Patrick Doyle s 47E(d) [redacted] <[\[redacted\]@vicbar.com.au](mailto:[redacted]@vicbar.com.au)>; Kieran BUTLER s 47E(d) [redacted] <[\[redacted\]@osi.gov.au](mailto:[redacted]@osi.gov.au)>
Subject: RE: follow-up from last wek [~~SEC=OFFICIAL:Sensitive~~]

Thanks Chris,

Pat – do you have time for a chat this week? I'm free today before 1pm and between 2:30 and 3:15pm. I'm chockers tomorrow with back to back commitments but also have some time on Friday – just between 1200 and 1:00pm and anytime after 2:30pm. I'm happy to set up a Zoom or Microsoft Teams meeting or to call you on the phone – whichever is better for you. Next week is also fine for me if you're tied up for the rest of this week.

I look forward to talking through the issues s 42(1) [redacted] and perhaps some you haven't thought of yet,

Tim

From: Chris MORAITIS s 47E(d) [redacted] <[\[redacted\]@osi.gov.au](mailto:[redacted]@osi.gov.au)>
Sent: Tuesday, 29 March 2022 5:30 PM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: Patrick DOYLE s 47E(d) [redacted] <[\[redacted\]@osi.gov.au](mailto:[redacted]@osi.gov.au)>; Patrick Doyle s 47E(d) [redacted] <[\[redacted\]@vicbar.com.au](mailto:[redacted]@vicbar.com.au)>; Kieran BUTLER s 47E(d) [redacted] <[\[redacted\]@osi.gov.au](mailto:[redacted]@osi.gov.au)>
Subject: RE: follow-up from last wek [~~SEC=OFFICIAL:Sensitive~~]

OFFICIAL: Sensitive

Tim

Great- I have copied Pat's emails to this message

Chris

OFFICIAL: Sensitive

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Tuesday, 29 March 2022 5:21 PM
To: Chris MORAITIS ^{s 47E(d)} [REDACTED] <[\[REDACTED\]@osi.gov.au](mailto:[REDACTED]@osi.gov.au)>; Mark WEINBERG ^{s 47E(d)} [REDACTED] <[\[REDACTED\]@osi.gov.au](mailto:[REDACTED]@osi.gov.au)>
Cc: Kieran BUTLER ^{s 47E(d)} [REDACTED] <[\[REDACTED\]@osi.gov.au](mailto:[REDACTED]@osi.gov.au)>
Subject: RE: follow-up from last week -~~{SEC=OFFICIAL:Sensitive}~~

Thanks Chris,

Happy to liaise with Pat on the scope of work on ^{s 42(1)} [REDACTED] and then co-ordinate with Keiran my understanding of that scope and also my estimate of time involved. Is Pat's email address in the same form and your's and Mark's?

And of course happy for you to chat with Pat on the other matter after you have confirmed my clearance level etc.

My best wishes

Tim

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s 22(1) (OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Monday, 4 April 2022 4:45 PM
To: s 22(1)
Cc: Kieran BUTLER; s 22(1); s 22(1)
Subject: RE: Request for quote for legal advice [~~SEC=OFFICIAL~~]

Dear s 22(1)

Thanks for your message – good to meet you and s 22(1) virtually on Friday and to be able to talk through the questions Pat is keen to see covered. I'll send through a follow up message tomorrow to provide an approximate quote for the legal advice.

Yours with my best wishes,

Tim

From: s 22(1) @OSI.GOV.AU>
Sent: Monday, 4 April 2022 2:41 PM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: Kieran BUTLER s 47E(d) @osi.gov.au>; s 22(1) @osi.gov.au>; s 22(1) @osi.gov.au>
Subject: Request for quote for legal advice [~~SEC=OFFICIAL~~]

OFFICIAL

Dear Professor McCormack,

It was nice to meet you last Friday and hear your thoughts on the questions posed by Pat Doyle. As mentioned, we're speaking to our OIL and OLSC colleagues in AGD to get their agreement to seek this advice from you.

In anticipation of receiving that agreement, would you please be able to provide an approximate quote for the legal advice, based on the questions discussed last Friday. If possible, we'd be grateful if you could include your daily rate, the approximate number of days you think the advice will take and an overall approximate quote. My colleague, s 22(1), will help us with the contractual arrangements that we need to undertake to comply with the Commonwealth procurement rules.

Please give me a call on s 22(1) if you would like to discuss.

Kind Regards,
s 22(1)

s 22(1)
Director
Legal & Policy Unit
Office of the Special Investigator
T: s 22(1)
M: s 22(1)
E: s 22(1) @osi.gov.au

OFFICIAL

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s 22(1) (OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Thursday, 7 April 2022 3:49 PM
To: s 22(1)
Cc: Kieran BUTLER; s 22(1); s 22(1)
Subject: RE: Request for quote for legal advice [~~SEC=OFFICIAL~~]

Very sorry not to have responded sooner s 22(1) – there's a lot happening at the moment on the War Crimes front!

On the basis of our discussion last Friday and the questions Pat outlined to me (happy to articulate them if you want/need me to but my understanding is that you plan to do that in a proposed letter or contract of engagement) I estimate that I will be able to complete the requested work in 10-12 days of work. My hourly rate is \$^{s 47G(1)(a)} excluding GST capped at a daily amount of \$^{s 47G(1)(a)} excluding GST.

Please don't hesitate to let me know if you need any additional details and I look forward to hearing back in due course.

Yours with my warmest regards,

Tim

From: s 22(1) @OSI.GOV.AU>
Sent: Monday, 4 April 2022 2:41 PM
To: s 22(1) @utas.edu.au>
Cc: Kieran BUTLER s 47E(d) @osi.gov.au>; s 22(1) @osi.gov.au>; s 22(1) @osi.gov.au>
Subject: Request for quote for legal advice [~~SEC=OFFICIAL~~]

OFFICIAL

Dear Professor McCormack,

It was nice to meet you last Friday and hear your thoughts on the questions posed by Pat Doyle. As mentioned, we're speaking to our OIL and OLSC colleagues in AGD to get their agreement to seek this advice from you.

In anticipation of receiving that agreement, would you please be able to provide an approximate quote for the legal advice, based on the questions discussed last Friday. If possible, we'd be grateful if you could include your daily rate, the approximate number of days you think the advice will take and an overall approximate quote. My colleague, s 22(1), will help us with the contractual arrangements that we need to undertake to comply with the Commonwealth procurement rules.

Please give me a call on s 22(1) if you would like to discuss.

Kind Regards,
s 22(1)

s 22(1)
Director
Legal & Policy Unit
Office of the Special Investigator
T: s 22(1)
M: s 22(1)

E: s 22(1) @osi.gov.au

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s 22(1)

From: Kieran BUTLER
Sent: Tuesday, 19 April 2022 3:40 PM
To: 'Tim McCormack' <timothy.mccormack@utas.edu.au>
Subject: RE: ~~[SEC=UNOFFICIAL]~~

UNOFFICIAL

Thanks Tim – if you are able to forward me the e-mail you send to Michael (or separately send me the same information) that would be great.

Regards
Kieran

UNOFFICIAL

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Tuesday, 19 April 2022 1:29 PM
To: Kieran BUTLER ~~s 47E(d)~~ <osigov@osi.gov.au>
Subject: Re: ~~[SEC=UNOFFICIAL]~~

Yes thanks Keiran,

Michael Bliss and I finally spoke on Friday last week - ~~s 22(1)~~
~~s 33(a)(iii), s 47G(1)(a)~~

I'll be back in Hobart tomorrow evening and will get on to sending through the information DFAT seeks.

My best wishes

Tim

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From: Kieran BUTLER [s 47E\(d\)@osi.gov.au](mailto:s47E(d)@osi.gov.au)
Sent: Tuesday, April 19, 2022 10:50:52 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Subject: [~~SEC=UNOFFICIAL~~]

UNOFFICIAL

Hi Tim,

Have our DFAT colleagues had a conversation with you yet about the advice we propose to seek?

Kieran

UNOFFICIAL

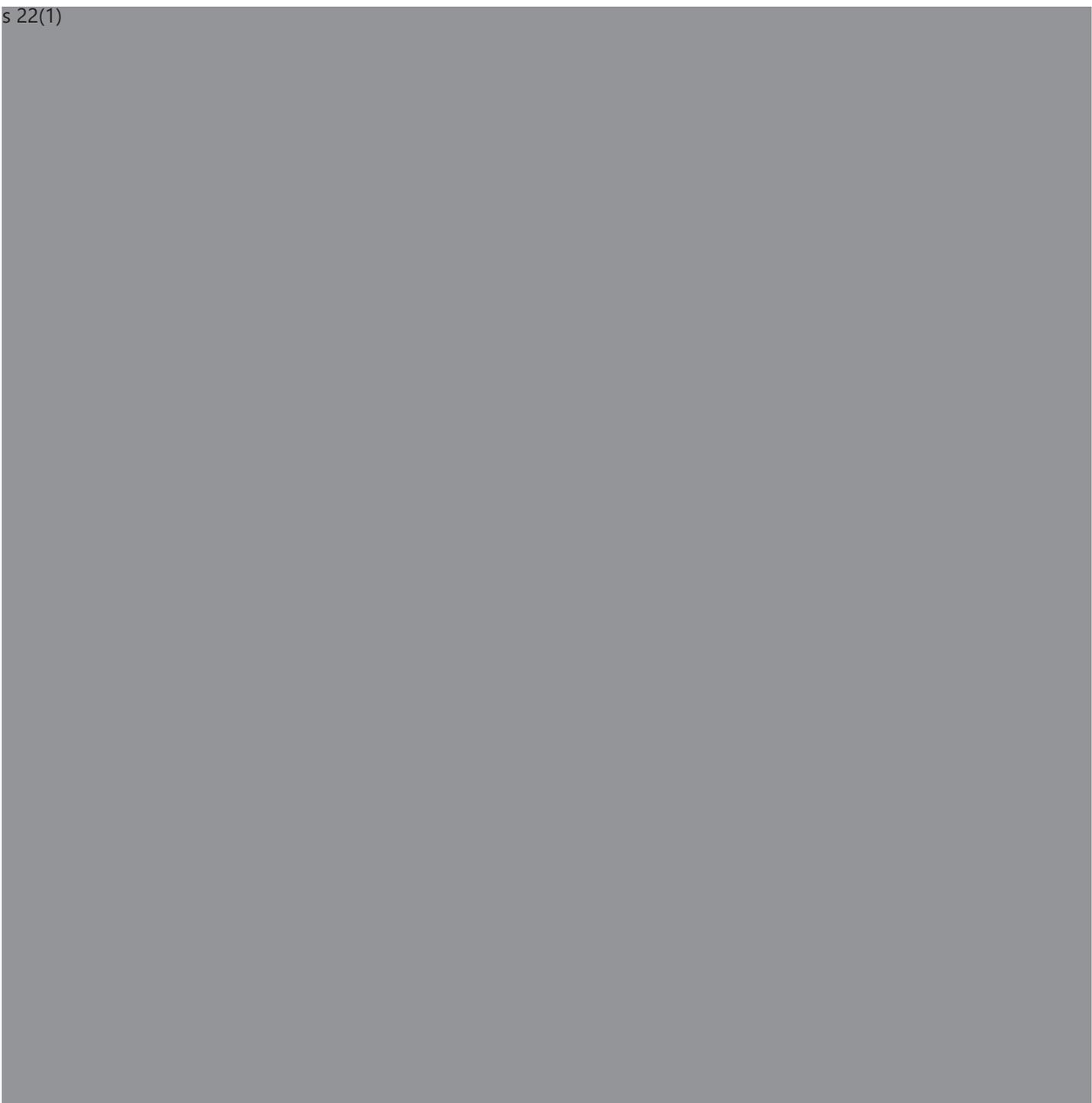
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s 22(1)



From: Tim McCormack <timothy.mccormack@utas.edu.au>

Sent: Thursday, 1 July 2021 3:24 PM

To: Chris MORAITIS ^{s 47E(d)} <[\[REDACTED\]@osi.gov.au](mailto:[REDACTED]@osi.gov.au)>

Cc: s 22(1) <[\[REDACTED\]@osi.gov.au](mailto:[REDACTED]@osi.gov.au)>

Subject: RE: ICC Special Adviser Role and Engagement with the OSI ~~[SEC=OFFICIAL]~~

Thanks for your message Chris – I am most grateful to you and to Mark.

s 33(a)(iii), s 33(b)



With my best wishes,

Tim

From: Chris MORAITIS
Sent: Thursday, 1 July 2021 2:18 PM
To: Tim McCormack
Cc: s 22(1)
Subject: RE: ICC Special Adviser Role and Engagement with the OSI ~~[SEC=OFFICIAL]~~

~~OFFICIAL~~

Dear Tim

I've now consulted with Mark. We appreciate the visibility and disclosure.

Neither Mark nor I have any concerns as to your engagement with the OSI to date and we would welcome your involvement in the future, including by presenting on international humanitarian law at the next investigator induction session planned for August.

Please keep us informed at to any real or perceived conflicts arising by virtue of your engagement with the OSI and any continued role you have with the ICC.

Kind regards

Chris

~~OFFICIAL~~

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Wednesday, 30 June 2021 5:49 PM
To: Chris MORAITIS s 47E(d) <[redacted]@osi.gov.au>
Subject: RE: ICC Special Adviser Role and Engagement with the OSI ~~[SEC=OFFICIAL]~~

So glad we did not attempt to travel to Sydney last week!

Will wait to hear back from you after you have spoken with Mark and will advise you both as soon as I hear back from The Hague.

Yours as ever,

Tim

From: Chris MORAITIS s 47E(d) <[redacted]@osi.gov.au>
Sent: Wednesday, 30 June 2021 5:01 PM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Subject: RE: ICC Special Adviser Role and Engagement with the OSI ~~[SEC=OFFICIAL]~~

~~OFFICIAL~~

Dear Tim

Thanks for this note. I will discuss with Mark and get back to you, s 33(a)(iii) [redacted]

Warm regards s 22(1)

Chris

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Wednesday, 30 June 2021 4:44 PM
To: Chris MORAITIS s 47E(d) <[s 47E\(d\)@osi.gov.au](mailto:s 47E(d)@osi.gov.au)>
Subject: ICC Special Adviser Role and Engagement with the OSI

Dear Chris,

Thank you for the opportunity to deliver training for OSI investigators in Canberra last week. I write to follow up our discussion about my ongoing role as Special Adviser on War Crimes to the Prosecutor of the International Criminal Court (ICC) in the Hague and any potential implications for support and advice to the OSI.

s 33(a)(iii)

Article 17 states the following:

1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:
 - (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
 - (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
 - (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
 - (d) The case is not of sufficient gravity to justify further action by the Court.
2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:
 - (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;
 - (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
 - (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.
3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

I was first appointed to my role at the ICC on 1 March 2010 by the Founding Prosecutor, Luis Moreno Ocampo. In 2011 s 33(a)(iii), s 33(b)

s 33(a)(iii), s 33(b)

Several years after Mrs Bensouda's appointment as ICC Prosecutor, Comoros as the flag vessel

of the *MV Mavi Mamara* (the lead ship in the self-declared humanitarian flotilla that attempted to break the Israeli naval blockade of Gaza and was interdicted by the Israeli Navy) referred the *Mavi Mamara* incident to the ICC. In s 33(a)(iii)

Although Phase 2 of the Turkel Commission was focussed on the general process for investigation of alleged IDF war crimes, Phase 1 of the Commission (in which I had no involvement) was focussed on Israel's response to the *Mavi Mamara* incident. s 33(a)(iii), s 33(b)

When I was approached by the AFP to prepare an advice for them on s 42(1) s 33(a)(iii), s 33(b)

s 33(a)(iii)

In the meantime, I would be grateful if you could raise this matter with the Special Investigator, Justice Weinberg, to ensure that he is comfortable for me to continue with the status quo s 33(a)(iii)

Yours with my warmest regards,

Tim

Professor Tim McCormack FAAL

Faculty of Law
College of Arts, Law and Education
University of Tasmania
Private Bag 89
Hobart Tasmania 7001, Australia
T: +61 3 6226 7146 | F: +61 3 6226 7623
Twitter: @_TimMcCormack
www.utas.edu.au/law/



I acknowledge the muwinina people as the traditional owners and custodians of the land on which the Law School stands and I pay my respects to their past elders. The muwinina loved and nurtured this land for millennia and sovereignty over it was never ceded. I lament the reality that dispossession of the muwinina was so violent, so comprehensive and so devastating that I am unable to pay my respects to present and emerging elders. I am, however, grateful that through profound resilience a remnant of our palawa people survived dispossession and faithfully passed on their cultural, linguistic, spiritual and legal traditions. Consequently our Aboriginal community is thriving today and I pay my deep respects to their elders past, present and emerging.



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s 22(1)

(OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Monday, 9 May 2022 11:30 AM
To: s 22(1)
Cc: Kieran BUTLER
Subject: RE: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

Thanks s 22(1)

I'll get on to this and get back to you. I'm tied up today appearing before s 22(1) but will have some relative freedom from other commitments tomorrow. I'll get back to you and Keiran with any questions.

My best wishes

Tim

From: s 22(1) @OSI.GOV.AU>
Sent: Monday, 9 May 2022 10:56 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: Kieran BUTLER s 47E(d) @osi.gov.au>
Subject: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

OFFICIAL

Dear Professor McCormack,

We recently received approval from the Office of Legal Services Coordination (OLSC) for you to perform tied international public law work.

Please find attached a draft contract for the legal services we would like to engage you to undertake. There are some sections highlighted in yellow (pages 1, 7 and 10) where I would be grateful if you could please insert relevant details (things such as your ABN and the legal name of your entity etc).

I also draw your attention to page 3 of the contract which sets out the request for advice (modified from the initial discussion with Pat, but I believe you discussed this with Kieran) and page 10 which contains a proposed conflict of interest management plan.

I would be happy to discuss any aspect of the contract if you have any queries – my number is s 22(1).

The OLSC approval is subject to the following conditions:

- The request for advice is confined to s 42(1)
- s 33(a)(iii), s 47G(1)(a) and
- That any advice prepared by Professor McCormack is to be settled in consultation with, and reflecting any comments made by, a tied provider.
 - If OIL is the tied provider consulted, then the advice/s should also be shared with DFAT Legal.

Kind Regards,
 s 22(1)

s 22(1)

Director

Legal & Policy Unit

Office of the Special Investigator

T: s 22(1)

M: s 22(1)

E: s 22(1) [@osi.gov.au](mailto:s 22(1)@osi.gov.au)

OFFICIAL

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§ 22(1) (OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Monday, 16 May 2022 5:13 PM
To: § 22(1)
Cc: Kieran BUTLER; § 22(1)
Subject: RE: OSI - executed contract [~~SEC=OFFICIAL~~]

Follow Up Flag: Follow up
Flag Status: Completed

Thanks so much § 22(1) – I'm most grateful for such a speedy turnaround on this (in total contrast to delays at my end. § 22(1)

I appreciate the offer of facilitation of a consultation with OIL but there is no need. § 22(1)

All of that to say that it is an easy thing for me to reach out to them and to ensure I meet the tied-3rd party consultation requirements.

Warmest regards to you all and I will certainly let you know if there is any clarification I need.

Tim

From: § 22(1) @OSI.GOV.AU>
Sent: Monday, 16 May 2022 5:02 PM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: Kieran BUTLER § 47E(d) @osi.gov.au>; § 22(1) @osi.gov.au>
Subject: RE: OSI - executed contract [~~SEC=OFFICIAL~~]

OFFICIAL

Dear Professor McCormack,

Thank you very much for completing and signing the contract. Please find attached the contract also signed by Kieran.

Please let us know if you have any questions or require any further information in preparing your advice. We would be happy to facilitate consultation with OIL if that would be of assistance.

Kind Regards,
 § 22(1)

OFFICIAL

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Monday, 16 May 2022 4:37 PM
To: § 22(1) @OSI.GOV.AU>

Cc: Kieran BUTLER § 47E(d) [@osi.gov.au](mailto:§ 47E(d)@osi.gov.au)>
 Subject: RE: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

Hi § 22(1) and Keiran,

I apologise for the delay in responding but please see attached draft contract with the relevant fields completed, signed and witnessed. I understand the scope of work, the management plan for conflict of interest and also the requirement of consultation with a tied provider.

I will wait to receive a final copy of the contract signed by you Keiran and I'm looking forward to getting stuck in to the work.

Yours with my best wishes,

Tim

From: § 22(1) [@OSI.GOV.AU](mailto:§ 22(1)@OSI.GOV.AU)>
Sent: Monday, 9 May 2022 10:56 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: Kieran BUTLER § 47E(d) [@osi.gov.au](mailto:§ 47E(d)@osi.gov.au)>
Subject: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

OFFICIAL

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I also draw your attention to page 3 of the contract which sets out the request for advice (modified from the initial discussion with Pat, but I believe you discussed this with Kieran) and page 10 which contains a proposed conflict of interest management plan.

I would be happy to discuss any aspect of the contract if you have any queries – my number is § 22(1)

The OLSC approval is subject to the following conditions:

- The request for advice is confined to § 42(1)
- § 33(a)(iii), s 47G(1)(a)
- That any advice prepared by Professor McCormack is to be settled in consultation with, and reflecting any comments made by, a tied provider.
 - If OIL is the tied provider consulted, then the advice/s should also be shared with DFAT Legal.

Kind Regards,
§ 22(1)

§ 22(1)

Director

Legal & Policy Unit

Office of the Special Investigator

T: § 22(1)

M: s 22(1)
E: s 22(1) [@osi.gov.au](mailto:s 22(1)@osi.gov.au)

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Commonwealth Contract – Services



Australian Government

Commonwealth Contract – Services

Reference ID: Professor McCormack - OSI contract

Customer

Customer Name: Office of the Special Investigator
Customer ABN: 87 767 208 148
Address: GPO Box 812
Canberra ACT 2601

Supplier

Full Name of the Legal Entity: TBC
Supplier ABN: TBC
Address: TBC

Commonwealth Contract – Services

Statement of Work

C.A.1 Key Events and Dates

This Contract commences on the Contract Start Date or the date this Contract is executed, whichever is the latter, and continues for the Contract Term unless:

- a) it is terminated earlier; or
- b) the Customer exercises the Contract Extension Option, in which case this Contract will continue until the end of the extended time (unless it is terminated earlier).

Event	Details
Contract Start Date:	Friday, 13 May 2022
Contract Term:	This Contract will terminate on Friday, 30 June 2023.
Contract Extension Option:	This Contract includes the following extension option(s): This contract may be extended by written agreement by both parties.

Commented [A1]: May need to adjust

Commonwealth Contract – Services

C.A.2 The Requirement

In the first instance, Professor McCormack will provide advice on the following questions:

s 42(1)



The advice must be settled in consultation with, and reflect any comments made by, a tied third provider. Under Appendix A to the *Legal Services Directions 2017*, the Office of International Law in the Attorney-General's Department, the Australian Government Solicitor and the Department of Foreign Affairs and Trade (excluding matters involving domestic litigation involving a significant public international law issue) are tied providers for public international law work.

Follow up, or further questions, may be required in the future.

C.A.2(a) Standards

The Supplier must ensure that any goods and services provided under this Contract comply with all applicable Australian standards (or in its absence an international standard) including any requirements or standards specified in this Statement of Work. If requested by the Customer, the Supplier must enable the Customer, or an independent assessor, to conduct periodic audits to confirm compliance with all applicable Australian or international standards, including, but not limited to, those specified in this Statement of Work.

Web Content Accessibility

Reference ID: Professor McCormack - OSI contract

Page 3 of 17

Commonwealth Contract – Services

As applicable, the Supplier must ensure that any website, associated material and/or online publications (where applicable) complies with the Web Content Accessibility Guidelines available at: <https://www.w3.org/WAI/intro/wcag>.

C.A.2(d) Delivery and Acceptance

Where the Customer rejects any deliverables the Customer will specify a timeframe in which the Supplier is required to rectify deficiencies, at the Supplier's cost, so that the deliverables meet the requirements of this Contract. The Supplier must comply with any such requirement. Rectified deliverables are subject to acceptance.

The Supplier will refund all payments related to the rejected deliverables unless the relevant deliverables are rectified and accepted by the Customer.

If the Supplier is unable to meet the Customer's timeframe, the Customer may terminate this Contract.

Milestone Description	Contact for Delivery	Delivery Location/Email	Due Date
Advice on the questions asked provided	Kieran Butler	s 47E(d) @osi.gov.au	30/06/2022

C.A.2(e) Meetings

The Supplier is to attend meetings as required.

C.A.2(f) Facilities and Assistance Offered by the Customer

The Customer will not make any facilities or assistance available to the Supplier.

C.A.2(g) Customer Material

The Customer will not provide any material.

C.A.2(h) Conflicts of Interest

The Supplier has declared that it has or may have real or perceived or potential conflicts of interest (COI) relevant to the performance of its obligations under this Contract. During the Contract Term the Supplier agrees to implement any COI management strategies specified in **Annex 1 - Conflicts of Interest Management Plan** and keep the Customer informed of all relevant details relating to COI specified below:

Role as Special Adviser on War Crimes to the Prosecutor of the International Criminal Court (ICC) and other roles, including with the Office of the Special Investigator (OSI).

In addition to the Supplier's obligations under Contract Annex 1 – Conflicts of Interest Management Plan, the Supplier also agrees to comply with any additional requirements notified by the Customer from time to time in relation to the management of this conflict.

C.A.2(i) Public Interest Disclosure

Public officials (including service providers under a Commonwealth contract) who suspect wrongdoing within the Commonwealth public sector can raise their concerns under the *Public Interest Disclosure Act 2013* (PID Act). Prior to making a disclosure, refer to information available at: <http://www.ombudsman.gov.au/about/making-a-disclosure/information-for-disclosers>.

All Public Interest Disclosure matters (relating to this procurement) should be referred to:

Name/Position:	s 22(1)
Email Address:	Please use contact form available at: Contact Us (osi.gov.au)
Telephone:	s 22(1)

Reference ID: Professor McCormack - OSI contract

Page 4 of 17

Commonwealth Contract – Services

C.A.2(j) Complaints Handling

Any complaints relating to this procurement should be referred to:

Name/Position:	s 22(1) , Chief Financial Officer
Email Address:	Please use contact form available at: Contact Us (osi.gov.au)
Telephone:	s 22(1)

Commonwealth Contract – Services

C.A.3 Contract Price

The maximum Contract Price inclusive of GST and all taxes and charges will not exceed \$ 47G(1)(a) as set out below.

Fee Rates

Position Role/Level	Days	Daily Fee (GST Inclusive)	Total Fee (GST Inclusive)
Professor McCormack	12	\$ 47G(1)(a)	\$ 47G(1)(a)

Total Fees \$ 47G(1)(a) GST Inclusive

Adjustment to Fixed Pricing for Contract Variation/Extension

Pricing will be adjusted by written agreement of both parties.

C.A.3(a) Payment Schedule

If the Supplier incurs any reimbursable expenses, the Customer will reimburse the Supplier at cost (exclusive of GST) on submission of a claim for reimbursement supported by a copy of the paid Tax Invoice.

Commonwealth Contract – Services

C.A.4 Contract Managers and Addresses for Notices

Contract Managers are responsible for issuing or accepting any written Notices under this Contract and are the contact points for general liaison.

C.A.4(a) Customer's Contract Manager:

The person occupying the position of: Director, Legal and Policy Team
 Currently: § 22(1)
 Telephone: § 22(1)
 Mobile: § 22(1)
 Email Address: § 22(1) @osi.gov.au
 Postal Address: GPO Box 812
 Canberra ACT 2601

C.A.4(b) Customer's Address for Invoices:

Addressee Name/Position Title: § 22(1), Director
 Telephone: § 22(1)
 Email Address: § 22(1) @osi.gov.au
 Postal Address: GPO Box 812
 Canberra ACT 2601

The Customer's preferred method of invoicing is by email.

C.A.4(c) Supplier's Contract Manager:

Name:
 Position Title:
 Telephone:
 Mobile:
 Email Address:
 Postal Address: TBC

C.A.4(d) Supplier's Address for Notices

Name:
 Position Title:
 Email Address:
 Postal Address: TBC

Commonwealth Contract – Services

C.A.5 Specified Personnel

Position/Role	Name	Current Security Clearance Level	Percentage of Total Project Time
Special Advisor	Professor McCormack	n/a	100%

C.A.6 Subcontractors

None Specified

Commonwealth Contract – Services

Additional Contract Terms

An executed contract will incorporate the Commonwealth Contract Terms and also the following Additional Contract Terms:

C.B.1 Intellectual Property

The Supplier owns the Intellectual Property Rights in the Material created under this Contract.

The Supplier grants to the Customer:

- a) a non-exclusive, irrevocable, royalty-free, perpetual, world-wide licence to exercise the Intellectual Property Rights in the Material provided under this Contract for any purpose; and
- b) a right to sub-licence the rights in (a) above to third parties, including to the public under an open access or Creative Commons 'BY' licence.

The licence excludes the right of commercial exploitation by the Customer.

The Supplier warrants that it is entitled to grant this licence to the Customer; and that the provision of the Goods and/or Services and any Material by the Supplier under this Contract, and its use by the Customer, in accordance with this Contract, will not infringe any third party's Intellectual Property Rights and Moral Rights.

Intellectual Property Rights in Goods provided under this Contract or pre-existing Intellectual Property of the Supplier, set out below (if any), will not change as a result of this Contract.

Pre-Existing Intellectual Property of the Supplier

Not Applicable

C.B.2 Confidential Information of the Supplier

Not Applicable

C.B.3 Interest on Late Payments

Where the Customer and the Supplier both have the capability to deliver and receive e-Invoices through the Pan-European Public Procurement On-Line (PEPPOL) framework and have agreed to use electronic invoicing (e-Invoicing), the Customer will pay the amount of a Correctly Rendered Invoice to the Supplier within five (5) calendar days after receiving it, or if this day is not a business day, on the next business day.

In all other circumstances, the Customer will pay the amount of a Correctly Rendered Invoice to the Supplier within twenty (20) calendar days after receiving it, or if this day is not a business day, on the next business day.

If the total initial value of the Contract (excluding any options, extensions, renewals or other mechanisms that may be executed over the life of the contract) is less than A\$1 million (GST inclusive) and the Customer fails to make a payment to the Supplier by the business day it is due, the Customer will pay the unpaid amount plus interest on the unpaid amount, provided the amount of interest payable under this clause exceeds A\$100.

Interest payable under this clause will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that the Customer effects payment, calculated using the General Interest Charge Rate available on the Australian Taxation Office website as it applies on the day the amount was due and payable expressed as a daily rate.

Commonwealth Contract – Services

Contract Annex 1 – Conflicts of Interest Management Plan

In relation to Professor McCormack's ongoing role as Special Adviser on War Crimes to the Prosecutor of the International Criminal Court (ICC) – § 33(a)(iii), s 47G(1)(a)

Where the advice is settled in consultation with the Office of International Law in the Attorney-General's Department, the Office of the Special Investigator will share the advice with the International Law Branch in the Department of Foreign Affairs and Trade.

Commonwealth Contract – Services

Commonwealth Contract Terms

C.C.1 Background:

The Customer requires the provision of certain Goods and/or Services. The Supplier has fully informed itself on all aspects of the Customer's requirements and has responded representing that it is able to meet the Statement of Requirement.

Some terms used in these *Commonwealth Contract Terms* have been given a special meaning. Their meanings are set out either in the *Commonwealth Contracting Suite Glossary* or in the relevant *Commonwealth Contract*.

C.C.2 Relationship of the Parties:

Neither party is the employee, agent, officer or partner of the other party nor, by virtue of this Contract, authorised to bind or represent the other party.

The Supplier must ensure that its officers, employees, agents or Subcontractors do not represent themselves as being an officer, employee, partner or agent of the Customer.

In all dealings related to the Contract, the parties agree to:

- (a) communicate openly with each other and cooperate in achieving the contractual objectives; and
- (b) act honestly and ethically; and
- (c) comply with reasonable commercial standards of fair conduct; and
- (d) consult, cooperate and coordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health and safety of workers and workplaces; and
- (e) comply with all reasonable directions and procedures relating to work health and safety, record keeping and security in operation at each other's premises or facilities whether specifically informed or as might reasonably be inferred from the circumstances.

C.C.3 Conflict of Interest:

The Supplier has either declared any real or perceived conflicts of interest that might arise, or states that no conflicts of interest exist, or are anticipated, relevant to the performance of its obligations under the Contract.

If any conflict or potential conflict arises during the Contract Term, the Supplier will immediately notify the Customer and comply with any reasonable Notice given to the Supplier by the Customer in relation to the conflict. As soon as practicable, any verbal advice must be followed by written confirmation.

C.C.4 Precedence of Documents:

The Contract is comprised of:

- (a) *Additional Contract Terms* (if any);
- (b) *Statement of Work*;
- (c) *Commonwealth Contract Terms*;
- (d) *Commonwealth Contracting Suite Glossary*; and
- (e) *Contract Annex 1 – Supplementary information* (if any),

unless otherwise agreed in writing between the parties.

If there is ambiguity or inconsistency between documents comprising the Contract, the document appearing higher in the list will have precedence.

The Contract may be signed and dated by the parties on separate, but identical, copies. All signed copies constitute one (1) Contract.

C.C.5 Governing Law:

The laws of the Australian Capital Territory apply to the Contract.

C.C.6 Entire Agreement:

The Contract represents the Parties' entire agreement in relation to the subject matter, at the time this Contract was entered.

Anything that occurred before the making of this Contract shall be disregarded (unless incorporated into the Contract in writing). However, the Supplier represents that the claims made in its Response to the ATM were correct when made and remain correct.

The Parties agree that no agreement or understanding varying or extending the Contract will be legally binding upon either Party unless in writing and agreed by both Parties.

If either Party does not exercise (or delays in exercising) any of its contractual rights, that failure or delay will not prejudice those rights.

C.C.7 Survival:

All Additional Contract Terms (if any), plus Clauses C.C.14 [*Liability of the Supplier*], C.C.17 [*Supplier Payments*], C.C.20 [*Transition Out*], C.C.22 [*Compliance with Commonwealth Laws and Policies*], C.C.22(A) [*Access to Supplier's Premises and Records*], C.C.22(F) [*Fraud*] survive termination or expiry of the Contract.

C.C.8 Notices:

A Notice is deemed to be effected:

- (a) if delivered by hand - upon delivery to the relevant address;
- (b) if sent by registered post - upon delivery to the relevant address; or
- (c) if transmitted electronically - upon actual delivery as evidenced by an acknowledgement of receipt from the recipient's system by any means (including by means of delivery receipt).

A Notice received after 5.00 pm, or on a day that is not a working day in the place of receipt, is deemed to be effected on the next working day in that place.

C.C.9 Assignment:

The Supplier may not assign any rights under the Contract without the Customer's written consent. To seek consent, the Supplier must provide the Customer with a Notice, which includes full details of the proposed assignee and the rights the Supplier proposes to assign.

To decline consent, the Customer must provide a Notice to the Supplier, setting out its reasons, within twenty-eight (28) calendar days of receiving the Notice seeking consent. Otherwise, the Customer is taken to have consented.

C.C.10 Subcontracting:

Subcontracting any part of, or the entire Supplier's obligations under the Contract, will not relieve the Supplier from any of its obligations under the Contract.

The Supplier must ensure that Subcontractors specified in Item C.A.6 [*Subcontractors*] (if any) perform that part of the Services Specified in that item. Unless otherwise agreed by the Customer (in writing) the Supplier must not subcontract any part of its obligations under the Contract other than to Subcontractors named in Item C.A.6. The Supplier must ensure that specified Subcontractors (if any) are not replaced without the prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.

At the Customer's request, the Supplier, at no additional cost to the Customer, must promptly remove from involvement in the Contract any Subcontractor that the Customer reasonably considers should be removed.

Commonwealth Contract – Services

Commonwealth Contract Terms

The Supplier must make available to the Customer the details of all Subcontractors engaged to provide the Goods and/or Services under the Contract. The Supplier acknowledges that the Customer may be required to publicly disclose such information.

The Supplier must ensure that any subcontract entered into by the Supplier, for the purpose of fulfilling the Supplier's obligations under the Contract, imposes on the Subcontractor the same obligations that the Supplier has under the Contract (including this requirement in relation to subcontracts).

C.C.11 Delivery and Acceptance:

The Supplier must provide the Goods and/or Services as specified in the *Statement of Work* and meet any requirements and standard specified in the *Statement of Work*.

The Supplier must promptly notify the Customer if the Supplier becomes aware that it will be unable to provide all or part of the Goods and/or Services specified in the *Statement of Work* and advise the Customer when it will be able to do so.

Any Goods must be delivered free from any security interest. Unless otherwise stated in the Contract, Goods must be new and unused. Any Services must be provided to the higher of the standard that would be expected of an experienced, professional supplier of similar services and any standard specified in the *Statement of Work*.

The Customer may reject the Goods and/or Services within fourteen (14) calendar days after delivery or such longer period specified in the Contract at Item C.A.2(d) [*Delivery and Acceptance*], if the Goods and/or Services do not comply with the requirements of the Contract ("Acceptance Period").

If during the Acceptance Period circumstances outside the Customer's reasonable control cause a delay in the Customer's evaluation of the compliance of the Goods and/or Services with the Contract, the Customer may give the Supplier a Notice before the end of the original Acceptance Period, setting out the reason for the delay and the revised Acceptance Period date (which must be reasonable having regard to the circumstances causing the delay).

If the Customer does not notify the Supplier of rejection within the Acceptance Period (as extended if applicable), the Customer will be taken to have accepted the Goods and/or Services, though the Customer may accept the Goods and/or Services sooner. Title to Goods transfers to the Customer only on acceptance.

If the Customer rejects the Goods and/or Services, the Customer must issue a Notice clearly stating the reason for rejection and the remedy the Customer requires. No payment will be due for rejected Goods and/or Services until their acceptance.

C.C.12 Licences Approvals and Warranties:

At no cost to the Customer, the Supplier must obtain and maintain all Intellectual Property Rights, licences or other approvals required for the lawful provision of the Goods and/or Services and arrange any necessary customs entry for any Goods.

The Supplier must provide the Customer with all relevant third Party warranties in respect of Goods. If the Supplier is a manufacturer, the Supplier must provide the Customer with all standard manufacturer's warranties in respect of the Goods it has manufactured and supplied.

To the extent permitted by laws and for the benefit of the Customer, the Supplier consents, and must use its best endeavours to ensure that each author of Material consents in writing, to the use by the Customer of the Material, even if the use may otherwise be an infringement of their Intellectual Property Rights and/or Moral Rights.

C.C.13 Specified Personnel:

The Supplier must ensure that the Specified Personnel set out in Item C.A.5 [*Specified Personnel*] (if any) perform the part of the Services specified in that item. The Supplier must ensure that Specified Personnel (if any) are not replaced without the prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.

At the Customer's reasonable request, the Supplier, at no additional cost to the Customer, must as soon as reasonably practicable replace any Specified Personnel that the Customer reasonably considers:

- (a) is not performing the Supplier's obligations under the Contract to the standard or within the timeframe reasonably required by the Customer;
 - (b) is not a fit and proper person; or
 - (c) is not suitably qualified to perform the Services.
- Any Specified Personnel must be replaced with personnel that are acceptable to the Customer.

C.C.14 Liability of the Supplier:

The Supplier will indemnify the Customer and its officials against any claim, loss or damage arising in connection with any negligent or wilful breach of the Supplier's obligations or representations under the Contract.

The Supplier's obligation to indemnify the Customer and its officials will reduce proportionally to the extent that any act or omission, on the part of the Customer or its officials contributed to the claim, loss or damage.

The Supplier's liability under this clause shall not exceed the maximum applicable amount that applies to the claim loss or damage under a scheme operating under Schedule 4 of the *Civil Law (Wrongs) Act 2002* (ACT), or any corresponding State, Territory or Commonwealth legislation, that limits the civil liability of members of particular professions arising from the performance of their professional services, where the Supplier is a member of that scheme, and where that scheme applies to the Goods and/or Services delivered under the Contract.

The Supplier will maintain adequate insurances for the Contract and provide the Customer with proof when reasonably requested.

C.C.15 Termination or Reduction for Convenience:

In addition to any other rights either party has under the Contract,

- (a) the Customer acting in good faith, may at any time, or
- (b) the Supplier, acting in good faith, may notify that it wishes to, terminate the Contract or reduce the scope or quantity of the Goods and/or Services by providing a Notice to the other Party.

If the Supplier issues a Notice under this clause, the Supplier must comply with any reasonable directions given by the Customer. The Contract will terminate, or the scope will be reduced in accordance with the Notice, when the Supplier has complied with all of those directions.

If the Customer issues a Notice under this clause, the Supplier must stop or reduce work in accordance with the Notice and comply with any reasonable directions given by the Customer.

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In either case, the Supplier must mitigate all loss and expenses in connection with the termination or reduction in scope (including the costs of its compliance with any directions). The Customer will pay the Supplier for Goods and/or Services accepted in accordance with clause C.C.11 [Delivery and Acceptance] and item C.A.2(d) [Delivery and Acceptance] before the effective date of termination or reduction.

If the Customer issues a Notice under this clause, the Customer will also pay the Supplier for any reasonable costs the Supplier incurs that are directly attributable to the termination or reduction, provided the Supplier substantiates these costs to the satisfaction of the Customer.

Under no circumstances will the total of all payments to the Supplier exceed the Contract Price. The Supplier will not be entitled to loss of anticipated profit for any part of the Contract not performed.

C.C.16 Termination for Cause:

The Customer may issue a Notice to immediately terminate or reduce the scope of the Contract if:

- (a) the Supplier does not deliver the Goods and/or Services as specified in the Contract, or notifies the Customer that the Supplier will be unable to deliver the Goods and/or Services as specified in the Contract;
- (b) the Customer rejects the Goods and/or Services in accordance with clause C.C.11 [Delivery and Acceptance] and the Goods and/or Services are not remedied as required by the Notice of rejection;
- (c) the Supplier breaches a material term of the Contract and the breach is not capable of remedy;
- (d) the Supplier does not remediate a material breach of the Contract which is capable of remediation within the period specified by the Customer in a Notice of default issued to the Supplier; or
- (e) subject to the Customer complying with any requirements in the *Corporations Act 2001* (Cth), the Supplier:
 - (i) is unable to pay all its debts when they become due;
 - (ii) if incorporated – has a liquidator, receiver, administrator or other controller appointed or an equivalent appointment is made under legislation other than the *Corporations Act 2001* (Cth); or
 - (iii) if an individual – becomes bankrupt or enters into an arrangement under *Part IX* or *Part X* of the *Bankruptcy Act 1966* (Cth).

Termination of the Contract under this clause does not change the Customer's obligation to pay any Correctly Rendered Invoice.

C.C.17 Supplier Payments:

If the Supplier is required to submit an invoice to trigger payment, the invoice must be a Correctly Rendered Invoice.

The Supplier must promptly provide to the Customer such supporting documentation and other evidence reasonably required by the Customer to substantiate performance of the Contract by the Supplier.

Payment of any invoice is payment on account only, and does not substantiate performance of the Contract.

If the Supplier owes any amount to the Customer in connection with the Contract, the Customer may offset that amount, or part of it, against its obligation to pay any Correctly Rendered Invoice.

C.C.18 Dispute Resolution:

For any dispute arising under the Contract both the Supplier and the Customer agree to comply with (a) to (d) of this clause sequentially:

- (a) both Contract Managers will try to settle the dispute by direct negotiation;
- (b) if unresolved, the Contract Manager claiming that there is a dispute will give the other Contract Manager a Notice setting out details of the dispute and proposing a solution;
- (c) if the proposed solution is not accepted by the other Contract Manager within five (5) business days, each Contract Manager will nominate a more senior representative, who has not had prior direct involvement in the dispute. These representatives will try to settle the dispute by direct negotiation;
- (d) failing settlement within a further ten (10) business days, the Customer will, without delay, refer the dispute to an appropriately qualified mediator selected by the Customer or, at the Customer's discretion, to the chairperson of an accredited mediation organisation to appoint a mediator, for mediation to commence within fifteen (15) business days of the request.

Representatives for the Supplier and the Customer must attend the mediation. The nominated representatives must have the authority to bind the relevant party and act in good faith to genuinely attempt to resolve the dispute.

The Customer and the Supplier will each bear their own costs for dispute resolution. The Customer will bear the costs of a mediator.

If the dispute is not resolved within thirty (30) business days after mediation commences, either the Supplier or the Customer may commence legal proceedings.

Despite the existence of a dispute, the Supplier will (unless requested in writing by the Customer not to do so) continue their performance under the Contract.

This procedure for dispute resolution does not apply to action relating to clause C.C.16 [Termination for Cause] or to legal proceedings for urgent interlocutory relief.

C.C.19 Transition In:

The Supplier must perform all tasks reasonably required to facilitate the smooth transition of the provision of the Goods and/or Services from any outgoing supplier to the Supplier.

C.C.20 Transition Out:

If the Contract expires or is terminated under clause C.C.16 [Termination for Cause] the Supplier must comply with any reasonable directions given by the Customer in order to facilitate the smooth transition of the provision of the Goods and/or Services to the Customer or to another supplier nominated by the Customer.

C.C.21 Compliance with Laws:

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in any jurisdiction in which any part of the Contract is performed.

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C.C.22 Compliance with Commonwealth Laws and Policies:

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with all Commonwealth laws and policies relevant to the Goods and/or Services and must provide such reports and other information regarding compliance as reasonably requested by the Customer or as otherwise required by a relevant law or policy.

If the Supplier becomes aware of any actual or suspected breach of the requirements set out in clauses A to G below, it must:

- (a) immediately report it to the Customer and provide a written report on the matter within five (5) business days; and
- (b) comply with any reasonable directions by the Customer in relation to any investigation or further reporting of the actual or suspected breach.

A. Access to Supplier's Premises and Records:

The Supplier must maintain proper business and accounting records relating to the supply of the Goods and/or Services and performance of the Contract.

The Supplier agrees to provide to the Customer, or its nominee, access to the Supplier's, or its Subcontractor's premises, personnel, documents and other records, and all assistance reasonably requested, for any purpose associated with the Contract or any review of the Supplier's or the Customer's performance under the Contract, including (but not limited to) in connection with a request made under the *Freedom of Information Act 1982* (Cth) or audit or review by the Australian National Audit Office. Unless the access is required for the purpose of a criminal investigation into the Supplier, its employees or subcontractors, the Customer will reimburse the Supplier's substantiated reasonable cost for complying with the Customer's request.

The Supplier must not transfer, or permit the transfer of, custody or ownership, or allow the destruction, of any Commonwealth record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Customer. All Commonwealth records, including any held by Subcontractors, must be returned to the Customer at the conclusion of the Contract.

B. Privacy Act 1988 (Cth) Requirements:

In providing the Goods and/or Services, the Supplier agrees to comply, and to ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* (Cth) and not to do anything, which if done by the Customer would breach an Australian Privacy Principle as defined in that Act.

C. Confidential Information:

Other than information available in the public domain, the Supplier agrees not to disclose to any person, other than the Customer, any confidential information relating to the Contract or the Goods and/or Services, without prior written approval from the Customer. This obligation will not be breached where the Supplier is required by law or a stock exchange to disclose the relevant information or where the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation).

The Customer may at any time require the Supplier to arrange for its employees, agents or subcontractors to give a written undertaking relating to nondisclosure of the Customer's confidential information in a form acceptable to the Customer.

The Customer will keep any information in connection with the Contract confidential to the extent it has agreed in writing to keep such specified information confidential. The Customer will not be in breach of any confidentiality agreement if the Customer is required to disclose the information by law, a Minister or a House or Committee of Parliament.

D. Security and Safety:

When accessing any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Customer or of which the Supplier is, or should reasonably be aware. The Supplier must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements.

The Supplier must ensure that all information, material and property provided by the Customer for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and is returned as directed by the Customer.

The Supplier acknowledges that unauthorised disclosure of security-classified information is an offence. Legislation (including, but not limited to, the *Criminal Code Act 1995* (Cth)) contains provisions relating to the protection of certain information and sets out the penalties for the unauthorised disclosure of that information.

E. Criminal Code:

The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* (Cth). The Supplier must ensure that any subcontractor engaged in connection with the Contract is aware of the information contained in this clause.

F. Fraud:

For the purposes of this clause, Fraud means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means.

The Supplier must take all reasonable steps to prevent and detect Fraud in relation to the performance of this Contract. The Supplier acknowledges the occurrence of Fraud will constitute a breach of this Contract.

If an investigation finds that the Supplier or its employees have committed Fraud, or the Supplier has failed to take reasonable steps to prevent Fraud by an employee or subcontractor, the Supplier must reimburse or compensate the Customer in full.

G. Taxation:

The Supplier agrees to comply, and to require its subcontractors to comply, with all applicable laws relating to taxation.



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Commonwealth Contract – Services

Commonwealth Contracting Suite (CCS) Glossary

In the Commonwealth Contracting Suite:

A reference to:

- a) a clause in the form A.A.[x] – is a reference to a clause of the **Approach to Market**
- b) a clause in the form A.B.[x] – is a reference to a clause of the **Commonwealth ATM Terms**;
- c) an item in the form C.A.[x] – is a reference to an item in the **Statement of Work**;
- d) a clause in the form C.B.[x] – is a reference to a clause in the **Additional Contract Terms**;
- e) a clause in the form C.C.[x] – is a reference to a clause of the **Commonwealth Contract Terms** or the **Commonwealth Purchase Order Terms**, as the case may be.

“**Additional Contract Terms**” means the terms and conditions set out in the section of the Contract with the heading ‘Additional Contract Terms’.

“**Approach to Market or ATM**” means the notice inviting potential suppliers to participate in the procurement.

“**Closing Time**” means the closing time specified in clause A.A.1 [*Key Events and Dates*].

“**Contract**” means the documentation specified in clause C.C.4 [*Precedence of Documents*].

“**Contract Extension Option**” means an option of a Customer to extend the term of a Contract for one or more additional time periods.

“**Contract Manager**” means the contract manager for the Customer and/or Supplier (as relevant) specified in the Contract.

“**Contract Price**” means the total contract price specified in the Contract, including any GST component payable, but does not include any simple interest payable on late payments.

“**Correctly Rendered Invoice**” means an invoice that:

- a) is correctly addressed and calculated in accordance with the Contract;
- b) relates only to Goods and/or Services that have been accepted by the Customer in accordance with the Contract;
- c) includes any purchase order number, and the name and phone number of the Customer’s Contract Manager;
- d) is for an amount which, together with all previously Correctly Rendered Invoices, does not exceed the Contract Price; and
- e) is a valid tax invoice in accordance with the GST Act.

“**Customer**” means a party specified in a Contract as a Customer.

“**Delivery and Acceptance**” means the process by which Goods and/or Services are delivered to a Customer and accepted by the Customer as meeting the terms specified in the Contract.

“**General Interest Charge Rate**” means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day.

“**Goods and/or Services**” means:

- a) the Goods, Services, or Goods and Services and any Material specified in the Contract; and
- b) all such incidental Goods and Services that are reasonably required to achieve the purposes of the Customer as specified in the Contract.

“**GST Act**” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“**GST**” means a Commonwealth goods and services tax imposed by the GST Act.

“**Intellectual Property Rights**” means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are registered or capable of being registered.

Commonwealth Contract – Services

Commonwealth Contracting Suite (CCS) Glossary

“Material” means any material brought into existence as a part of, or for the purpose of producing the Goods and/or Services, and includes but is not limited to documents, equipment, information or data stored by any means.

“Moral Rights” means the rights in *Part IX of the Copyright Act 1968 (Cth)*, including the right of attribution, the right against false attribution and the right of integrity.

“Notice” means an official notice or communication under the Contract in writing, from one Contract Manager and delivered to the other Contract Manager, at the postal address, or email address, or facsimile number set out in the Contract or as notified from time to time.

“Requirement” means the description of the Goods and Services described in:

- a) for the purposes of the Commonwealth ATM Terms the section of the Approach to Market with the heading ‘Requirement’;
- b) for the purposes of the Commonwealth Contract Terms the section of the Statement of Work with the heading ‘Requirement’;
- c) for the purposes of the Commonwealth Purchase Order Terms the document setting out the Goods and/or Services.

“Specified Personnel” means the personnel specified in the Contract or such other personnel who are accepted by the Customer in accordance with clause C.C.13 [*Specified Personnel*].

“Statement of Requirement” means the section of the Approach to Market with the heading ‘Statement of Requirement’.

“Statement of Work” means the section of the Contract, as the case may be, with the heading ‘Statement of Work’.

“Supplier” means a party specified in a Contract as a Supplier.

Commonwealth Contract – Services

Contract Signing Page

The Parties agree that by signing this Commonwealth Contract – Services, they enter into a Contract comprising:

- a) Additional Contract Terms (if any);
- b) Statement of Work;
- c) Commonwealth Contract Terms;
- d) Commonwealth Contracting Suite Glossary;
- e) Contract Annex 1 – Conflict of Interest Management Plan; and
- f) Contract Annex 2 – Supplementary Information (if any).

EXECUTED as an Agreement

Signed for and on behalf of the **Commonwealth of Australia** as represented by Office of the Special Investigator

ABN 87 767 208 148 by its duly authorised delegate in the presence of

Signature of witness

Signature of delegate

Name of witness (*print*)

Kieran Butler

Assistant Director-General

Date:

Executed by TBC ABN TBC in the presence of:

Signature of witness

Signature of supplier

Name of witness (*print*)

Professor Tim McCormack

Date:

Commonwealth Contract – Services



Australian Government

Commonwealth Contract – Services

Reference ID: Professor McCormack - OSI contract

Customer

Customer Name: Office of the Special Investigator
Customer ABN: 87 767 208 148
Address: GPO Box 812
Canberra ACT 2601

Supplier

Full Name of the Legal Entity: s 47F(1) [Redacted]
Supplier ABN: s 47F(1) [Redacted]
Address: s 47F(1) [Redacted]

Commonwealth Contract – Services

Statement of Work

C.A.1 Key Events and Dates

This Contract commences on the Contract Start Date or the date this Contract is executed, whichever is the latter, and continues for the Contract Term unless:

- a) it is terminated earlier; or
- b) the Customer exercises the Contract Extension Option, in which case this Contract will continue until the end of the extended time (unless it is terminated earlier).

Event	Details
Contract Start Date:	Monday 16 May 2022
Contract Term:	This Contract will terminate on Friday, 30 June 2023.
Contract Extension Option:	This Contract includes the following extension option(s): This contract may be extended by written agreement by both parties.

C.A.2 The Requirement

In the first instance, Professor McCormack will provide advice on the following questions:

s 42(1)



The advice must be settled in consultation with, and reflect any comments made by, a tied third provider. Under Appendix A to the *Legal Services Directions 2017*, the Office of International Law in the Attorney-General's Department, the Australian Government Solicitor and the Department of Foreign Affairs and Trade (excluding matters involving domestic litigation involving a significant public international law issue) are tied providers for public international law work.

Follow up, or further questions, may be required in the future.

C.A.2(a) Standards

The Supplier must ensure that any goods and services provided under this Contract comply with all applicable Australian standards (or in its absence an international standard) including any requirements or standards specified in this Statement of Work. If requested by the Customer, the Supplier must enable the Customer, or an independent assessor, to conduct periodic audits to confirm compliance with all applicable Australian or international standards, including, but not limited to, those specified in this Statement of Work.

Web Content Accessibility

Commonwealth Contract – Services

As applicable, the Supplier must ensure that any website, associated material and/or online publications (where applicable) complies with the Web Content Accessibility Guidelines available at: <https://www.w3.org/WAI/intro/wcag>.

C.A.2(d) Delivery and Acceptance

Where the Customer rejects any deliverables the Customer will specify a timeframe in which the Supplier is required to rectify deficiencies, at the Supplier's cost, so that the deliverables meet the requirements of this Contract. The Supplier must comply with any such requirement. Rectified deliverables are subject to acceptance.

The Supplier will refund all payments related to the rejected deliverables unless the relevant deliverables are rectified and accepted by the Customer.

If the Supplier is unable to meet the Customer's timeframe, the Customer may terminate this Contract.

Milestone Description	Contact for Delivery	Delivery Location/Email	Due Date
Advice on the questions asked provided	Kieran Butler	s 47E(d) @osi.gov.au	30/06/2022

C.A.2(e) Meetings

The Supplier is to attend meetings as required.

C.A.2(f) Facilities and Assistance Offered by the Customer

The Customer will not make any facilities or assistance available to the Supplier.

C.A.2(g) Customer Material

The Customer will not provide any material.

C.A.2(h) Conflicts of Interest

The Supplier has declared that it has or may have real or perceived or potential conflicts of interest (COI) relevant to the performance of its obligations under this Contract. During the Contract Term the Supplier agrees to implement any COI management strategies specified in **Annex 1 - Conflicts of Interest Management Plan** and keep the Customer informed of all relevant details relating to COI specified below:

Role as Special Adviser on War Crimes to the Prosecutor of the International Criminal Court (ICC) and other roles, including with the Office of the Special Investigator (OSI).

In addition to the Supplier's obligations under Contract Annex 1 – Conflicts of Interest Management Plan, the Supplier also agrees to comply with any additional requirements notified by the Customer from time to time in relation to the management of this conflict.

C.A.2(i) Public Interest Disclosure

Public officials (including service providers under a Commonwealth contract) who suspect wrongdoing within the Commonwealth public sector can raise their concerns under the *Public Interest Disclosure Act 2013* (PID Act). Prior to making a disclosure, refer to information available at: <http://www.ombudsman.gov.au/about/making-a-disclosure/information-for-disclosers>.

All Public Interest Disclosure matters (relating to this procurement) should be referred to:

Name/Position:	s 22(1)
Email Address:	Please use contact form available at: Contact Us (osi.gov.au)
Telephone:	s 22(1)

C.A.2(j) Complaints Handling

Any complaints relating to this procurement should be referred to:

Name/Position:	§ 22(1) [REDACTED], Chief Financial Officer
Email Address:	Please use contact form available at: Contact Us (osi.gov.au)
Telephone:	§ 22(1) [REDACTED]

Commonwealth Contract – Services

C.A.3 Contract Price

The maximum Contract Price inclusive of GST and all taxes and charges will not exceed \$s 47G(1)(a) as set out below.

Fee Rates

Position Role/Level	Days	Daily Fee (GST Inclusive)	Total Fee (GST Inclusive)
Professor McCormack	12	\$s 47G(1)(a)	\$s 47G(1)(a)

Total Fees \$s 47G(1)(a) GST Inclusive

Adjustment to Fixed Pricing for Contract Variation/Extension

Pricing will be adjusted by written agreement of both parties.

C.A.3(a) Payment Schedule

If the Supplier incurs any reimbursable expenses, the Customer will reimburse the Supplier at cost (exclusive of GST) on submission of a claim for reimbursement supported by a copy of the paid Tax Invoice.

C.A.4 Contract Managers and Addresses for Notices

Contract Managers are responsible for issuing or accepting any written Notices under this Contract and are the contact points for general liaison.

C.A.4(a) Customer's Contract Manager:

The person occupying the position of: Director, Legal and Policy Team
Currently: § 22(1)
Telephone: § 22(1)
Mobile: § 22(1)
Email Address: § 22(1)@osi.gov.au
Postal Address: GPO Box 812
Canberra ACT 2601

C.A.4(b) Customer's Address for Invoices:

Addressee Name/Position Title: § 22(1), Director
Telephone: § 22(1)
Email Address: § 22(1)@osi.gov.au
Postal Address: GPO Box 812
Canberra ACT 2601

The Customer's preferred method of invoicing is by email.

C.A.4(c) Supplier's Contract Manager:

Commonwealth Contract – Services

Name: Professor Tim McCormack
Position Title: Director
Telephone: N/A
Mobile: s 47F(1)
Email Address: timothy.mccormack@utas.edu.au
Postal Address: s 47F(1)
[REDACTED]

C.A.4(d) Supplier's Address for Notices

Name: Professor Tim McCormack
Position Title: Director
Email Address: timothy.mccormack@utas.edu.au
Postal Address: s 47F(1)
[REDACTED]

C.A.5 Specified Personnel

Position/Role	Name	Current Security Clearance Level	Percentage of Total Project Time
Special Advisor	Professor McCormack	n/a	100%

C.A.6 Subcontractors

None Specified

Commonwealth Contract – Services

Additional Contract Terms

An executed contract will incorporate the Commonwealth Contract Terms and also the following Additional Contract Terms:

C.B.1 Intellectual Property

The Supplier owns the Intellectual Property Rights in the Material created under this Contract.

The Supplier grants to the Customer:

- a) a non-exclusive, irrevocable, royalty-free, perpetual, world-wide licence to exercise the Intellectual Property Rights in the Material provided under this Contract for any purpose; and
- b) a right to sub-licence the rights in (a) above to third parties, including to the public under an open access or Creative Commons 'BY' licence.

The licence excludes the right of commercial exploitation by the Customer.

The Supplier warrants that it is entitled to grant this licence to the Customer; and that the provision of the Goods and/or Services and any Material by the Supplier under this Contract, and its use by the Customer, in accordance with this Contract, will not infringe any third party's Intellectual Property Rights and Moral Rights.

Intellectual Property Rights in Goods provided under this Contract or pre-existing Intellectual Property of the Supplier, set out below (if any), will not change as a result of this Contract.

Pre-Existing Intellectual Property of the Supplier

Not Applicable

C.B.2 Confidential Information of the Supplier

Not Applicable

C.B.3 Interest on Late Payments

Where the Customer and the Supplier both have the capability to deliver and receive e-Invoices through the Pan-European Public Procurement On-Line (PEPPOL) framework and have agreed to use electronic invoicing (e-Invoicing), the Customer will pay the amount of a Correctly Rendered Invoice to the Supplier within five (5) calendar days after receiving it, or if this day is not a business day, on the next business day.

In all other circumstances, the Customer will pay the amount of a Correctly Rendered Invoice to the Supplier within twenty (20) calendar days after receiving it, or if this day is not a business day, on the next business day.

If the total initial value of the Contract (excluding any options, extensions, renewals or other mechanisms that may be executed over the life of the contract) is less than A\$1 million (GST inclusive) and the Customer fails to make a payment to the Supplier by the business day it is due, the Customer will pay the unpaid amount plus interest on the unpaid amount, provided the amount of interest payable under this clause exceeds A\$100.

Interest payable under this clause will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that the Customer effects payment, calculated using the General Interest Charge Rate available on the Australian Taxation Office website as it applies on the day the amount was due and payable expressed as a daily rate.

Contract Annex 1 – Conflicts of Interest Management Plan

In relation to Professor McCormack's ongoing role as Special Adviser on War Crimes to the Prosecutor of the International Criminal Court (ICC) – § 33(a)(iii), s 47G(1)(a)

Where the advice is settled in consultation with the Office of International Law in the Attorney-General's Department, the Office of the Special Investigator will share the advice with the International Law Branch in the Department of Foreign Affairs and Trade.

Commonwealth Contract – Services

Commonwealth Contract Terms

C.C.1 Background:

The Customer requires the provision of certain Goods and/or Services. The Supplier has fully informed itself on all aspects of the Customer's requirements and has responded representing that it is able to meet the Statement of Requirement.

Some terms used in these *Commonwealth Contract Terms* have been given a special meaning. Their meanings are set out either in the *Commonwealth Contracting Suite Glossary* or in the relevant *Commonwealth Contract*.

C.C.2 Relationship of the Parties:

Neither party is the employee, agent, officer or partner of the other party nor, by virtue of this Contract, authorised to bind or represent the other party.

The Supplier must ensure that its officers, employees, agents or Subcontractors do not represent themselves as being an officer, employee, partner or agent of the Customer.

In all dealings related to the Contract, the parties agree to:

- (a) communicate openly with each other and cooperate in achieving the contractual objectives; and
- (b) act honestly and ethically; and
- (c) comply with reasonable commercial standards of fair conduct; and
- (d) consult, cooperate and coordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health and safety of workers and workplaces; and
- (e) comply with all reasonable directions and procedures relating to work health and safety, record keeping and security in operation at each other's premises or facilities whether specifically informed or as might reasonably be inferred from the circumstances.

C.C.3 Conflict of Interest:

The Supplier has either declared any real or perceived conflicts of interest that might arise; or states that no conflicts of interest exist, or are anticipated, relevant to the performance of its obligations under the Contract.

If any conflict or potential conflict arises during the Contract Term, the Supplier will immediately notify the Customer and comply with any reasonable Notice given to the Supplier by the Customer in relation to the conflict. As soon as practicable, any verbal advice must be followed by written confirmation.

C.C.4 Precedence of Documents:

The Contract is comprised of:

- (a) *Additional Contract Terms* (if any);
- (b) *Statement of Work*;
- (c) *Commonwealth Contract Terms*;
- (d) *Commonwealth Contracting Suite Glossary*; and
- (e) *Contract Annex 1 – Supplementary information* (if any),

unless otherwise agreed in writing between the parties.

If there is ambiguity or inconsistency between documents comprising the Contract, the document appearing higher in the list will have precedence.

The Contract may be signed and dated by the parties on separate, but identical, copies. All signed copies constitute one (1) Contract.

C.C.5 Governing Law:

The laws of the Australian Capital Territory apply to the Contract.

C.C.6 Entire Agreement:

The Contract represents the Parties' entire agreement in relation to the subject matter, at the time this Contract was entered.

Anything that occurred before the making of this Contract shall be disregarded (unless incorporated into the Contract in writing). However, the Supplier represents that the claims made in its Response to the ATM were correct when made and remain correct.

The Parties agree that no agreement or understanding varying or extending the Contract will be legally binding upon either Party unless in writing and agreed by both Parties.

If either Party does not exercise (or delays in exercising) any of its contractual rights, that failure or delay will not prejudice those rights.

C.C.7 Survival:

All Additional Contract Terms (if any), plus Clauses C.C.14 [*Liability of the Supplier*], C.C.17 [*Supplier Payments*], C.C.20 [*Transition Out*], C.C.22 [*Compliance with Commonwealth Laws and Policies*], C.C.22(A) [*Access to Supplier's Premises and Records*], C.C.22(F) [*Fraud*] survive termination or expiry of the Contract.

C.C.8 Notices:

A Notice is deemed to be effected:

- (a) if delivered by hand - upon delivery to the relevant address;
- (b) if sent by registered post - upon delivery to the relevant address; or
- (c) if transmitted electronically - upon actual delivery as evidenced by an acknowledgement of receipt from the recipient's system by any means (including by means of delivery receipt).

A Notice received after 5.00 pm, or on a day that is not a working day in the place of receipt, is deemed to be effected on the next working day in that place.

C.C.9 Assignment:

The Supplier may not assign any rights under the Contract without the Customer's written consent. To seek consent, the Supplier must provide the Customer with a Notice, which includes full details of the proposed assignee and the rights the Supplier proposes to assign.

To decline consent, the Customer must provide a Notice to the Supplier, setting out its reasons, within twenty-eight (28) calendar days of receiving the Notice seeking consent. Otherwise, the Customer is taken to have consented.

C.C.10 Subcontracting:

Subcontracting any part of, or the entire Supplier's obligations under the Contract, will not relieve the Supplier from any of its obligations under the Contract.

The Supplier must ensure that Subcontractors specified in Item C.A.6 [*Subcontractors*] (if any) perform that part of the Services Specified in that item. Unless otherwise agreed by the Customer (in writing) the Supplier must not subcontract any part of its obligations under the Contract other than to Subcontractors named in Item C.A.6. The Supplier must ensure that specified Subcontractors (if any) are not replaced without the prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.

At the Customer's request, the Supplier, at no additional cost to the Customer, must promptly remove from involvement in the Contract any Subcontractor that the Customer reasonably considers should be removed.

Commonwealth Contract Terms

The Supplier must make available to the Customer the details of all Subcontractors engaged to provide the Goods and/or Services under the Contract. The Supplier acknowledges that the Customer may be required to publicly disclose such information.

The Supplier must ensure that any subcontract entered into by the Supplier, for the purpose of fulfilling the Supplier's obligations under the Contract, imposes on the Subcontractor the same obligations that the Supplier has under the Contract (including this requirement in relation to subcontracts).

C.C.11 Delivery and Acceptance:

The Supplier must provide the Goods and/or Services as specified in the *Statement of Work* and meet any requirements and standard specified in the *Statement of Work*.

The Supplier must promptly notify the Customer if the Supplier becomes aware that it will be unable to provide all or part of the Goods and/or Services specified in the *Statement of Work* and advise the Customer when it will be able to so.

Any Goods must be delivered free from any security interest. Unless otherwise stated in the Contract, Goods must be new and unused. Any Services must be provided to the higher of the standard that would be expected of an experienced, professional supplier of similar services and any standard specified in the *Statement of Work*.

The Customer may reject the Goods and/or Services within fourteen (14) calendar days after delivery or such longer period specified in the Contract at Item C.A.2(d) [*Delivery and Acceptance*], if the Goods and/or Services do not comply with the requirements of the Contract ("Acceptance Period").

If during the Acceptance Period circumstances outside the Customer's reasonable control cause a delay in the Customer's evaluation of the compliance of the Goods and/or Services with the Contract, the Customer may give the Supplier a Notice before the end of the original Acceptance Period, setting out the reason for the delay and the revised Acceptance Period date (which must be reasonable having regard to the circumstances causing the delay).

If the Customer does not notify the Supplier of rejection within the Acceptance Period (as extended if applicable), the Customer will be taken to have accepted the Goods and/or Services, though the Customer may accept the Goods and/or Services sooner. Title to Goods transfers to the Customer only on acceptance.

If the Customer rejects the Goods and/or Services, the Customer must issue a Notice clearly stating the reason for rejection and the remedy the Customer requires. No payment will be due for rejected Goods and/or Services until their acceptance.

C.C.12 Licences Approvals and Warranties:

At no cost to the Customer, the Supplier must obtain and maintain all Intellectual Property Rights, licences or other approvals required for the lawful provision of the Goods and/or Services and arrange any necessary customs entry for any Goods.

The Supplier must provide the Customer with all relevant third Party warranties in respect of Goods. If the Supplier is a manufacturer, the Supplier must provide the Customer with all standard manufacturer's warranties in respect of the Goods it has manufactured and supplied.

To the extent permitted by laws and for the benefit of the Customer, the Supplier consents, and must use its best endeavours to ensure that each author of Material consents in writing, to the use by the Customer of the Material, even if the use may otherwise be an infringement of their Intellectual Property Rights and/or Moral Rights.

C.C.13 Specified Personnel:

The Supplier must ensure that the Specified Personnel set out in Item C.A.5 [*Specified Personnel*] (if any) perform the part of the Services specified in that item. The Supplier must ensure that Specified Personnel (if any) are not replaced without the prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.

At the Customer's reasonable request, the Supplier, at no additional cost to the Customer, must as soon as reasonably practicable replace any Specified Personnel that the Customer reasonably considers:

- (a) is not performing the Supplier's obligations under the Contract to the standard or within the timeframe reasonably required by the Customer;
- (b) is not a fit and proper person; or
- (c) is not suitably qualified to perform the Services.

Any Specified Personnel must be replaced with personnel that are acceptable to the Customer.

C.C.14 Liability of the Supplier:

The Supplier will indemnify the Customer and its officials against any claim, loss or damage arising in connection with any negligent or wilful breach of the Supplier's obligations or representations under the Contract.

The Supplier's obligation to indemnify the Customer and its officials will reduce proportionally to the extent that any act or omission, on the part of the Customer or its officials contributed to the claim, loss or damage.

The Supplier's liability under this clause shall not exceed the maximum applicable amount that applies to the claim loss or damage under a scheme operating under Schedule 4 of the *Civil Law (Wrongs) Act 2002* (ACT), or any corresponding State, Territory or Commonwealth legislation, that limits the civil liability of members of particular professions arising from the performance of their professional services, where the Supplier is a member of that scheme, and where that scheme applies to the Goods and/or Services delivered under the Contract.

The Supplier will maintain adequate insurances for the Contract and provide the Customer with proof when reasonably requested.

C.C.15 Termination or Reduction for Convenience:

In addition to any other rights either party has under the Contract,

- (a) the Customer acting in good faith, may at any time; or
- (b) the Supplier, acting in good faith, may notify that it wishes to, terminate the Contract or reduce the scope or quantity of the Goods and/or Services by providing a Notice to the other Party.

If the Supplier issues a Notice under this clause, the Supplier must comply with any reasonable directions given by the Customer. The Contract will terminate, or the scope will be reduced in accordance with the Notice, when the Supplier has complied with all of those directions.

If the Customer issues a Notice under this clause, the Supplier must stop or reduce work in accordance with the Notice and comply with any reasonable directions given by the Customer.

Commonwealth Contract – Services

Commonwealth Contract Terms

In either case, the Supplier must mitigate all loss and expenses in connection with the termination or reduction in scope (including the costs of its compliance with any directions). The Customer will pay the Supplier for Goods and/or Services accepted in accordance with clause C.C.11 [Delivery and Acceptance] and item C.A.2(d) [Delivery and Acceptance] before the effective date of termination or reduction.

If the Customer issues a Notice under this clause, the Customer will also pay the Supplier for any reasonable costs the Supplier incurs that are directly attributable to the termination or reduction, provided the Supplier substantiates these costs to the satisfaction of the Customer.

Under no circumstances will the total of all payments to the Supplier exceed the Contract Price. The Supplier will not be entitled to loss of anticipated profit for any part of the Contract not performed.

C.C.16 Termination for Cause:

The Customer may issue a Notice to immediately terminate or reduce the scope of the Contract if:

- (a) the Supplier does not deliver the Goods and/or Services as specified in the Contract, or notifies the Customer that the Supplier will be unable to deliver the Goods and/or Services as specified in the Contract;
- (b) the Customer rejects the Goods and/or Services in accordance with clause C.C.11 [Delivery and Acceptance] and the Goods and/or Services are not remedied as required by the Notice of rejection;
- (c) the Supplier breaches a material term of the Contract and the breach is not capable of remedy;
- (d) the Supplier does not remediate a material breach of the Contract which is capable of remediation within the period specified by the Customer in a Notice of default issued to the Supplier; or
- (e) subject to the Customer complying with any requirements in the *Corporations Act 2001* (Cth), the Supplier:
 - (i) is unable to pay all its debts when they become due;
 - (ii) if incorporated – has a liquidator, receiver, administrator or other controller appointed or an equivalent appointment is made under legislation other than the *Corporations Act 2001* (Cth); or
 - (iii) if an individual – becomes bankrupt or enters into an arrangement under *Part IX or Part X* of the *Bankruptcy Act 1966* (Cth).

Termination of the Contract under this clause does not change the Customer's obligation to pay any Correctly Rendered Invoice.

C.C.17 Supplier Payments:

If the Supplier is required to submit an invoice to trigger payment, the invoice must be a Correctly Rendered Invoice.

The Supplier must promptly provide to the Customer such supporting documentation and other evidence reasonably required by the Customer to substantiate performance of the Contract by the Supplier.

Payment of any invoice is payment on account only, and does not substantiate performance of the Contract.

If the Supplier owes any amount to the Customer in connection with the Contract, the Customer may offset that amount, or part of it, against its obligation to pay any Correctly Rendered Invoice.

C.C.18 Dispute Resolution:

For any dispute arising under the Contract both the Supplier and the Customer agree to comply with (a) to (d) of this clause sequentially:

- (a) both Contract Managers will try to settle the dispute by direct negotiation;
- (b) if unresolved, the Contract Manager claiming that there is a dispute will give the other Contract Manager a Notice setting out details of the dispute and proposing a solution;
- (c) if the proposed solution is not accepted by the other Contract Manager within five (5) business days, each Contract Manager will nominate a more senior representative, who has not had prior direct involvement in the dispute. These representatives will try to settle the dispute by direct negotiation;
- (d) failing settlement within a further ten (10) business days, the Customer will, without delay, refer the dispute to an appropriately qualified mediator selected by the Customer or, at the Customer's discretion, to the chairperson of an accredited mediation organisation to appoint a mediator, for mediation to commence within fifteen (15) business days of the request.

Representatives for the Supplier and the Customer must attend the mediation. The nominated representatives must have the authority to bind the relevant party and act in good faith to genuinely attempt to resolve the dispute.

The Customer and the Supplier will each bear their own costs for dispute resolution. The Customer will bear the costs of a mediator.

If the dispute is not resolved within thirty (30) business days after mediation commences, either the Supplier or the Customer may commence legal proceedings.

Despite the existence of a dispute, the Supplier will (unless requested in writing by the Customer not to do so) continue their performance under the Contract.

This procedure for dispute resolution does not apply to action relating to clause C.C.16 [Termination for Cause] or to legal proceedings for urgent interlocutory relief.

C.C.19 Transition In:

The Supplier must perform all tasks reasonably required to facilitate the smooth transition of the provision of the Goods and/or Services from any outgoing supplier to the Supplier.

C.C.20 Transition Out:

If the Contract expires or is terminated under clause C.C.16 [Termination for Cause] the Supplier must comply with any reasonable directions given by the Customer in order to facilitate the smooth transition of the provision of the Goods and/or Services to the Customer or to another supplier nominated by the Customer.

C.C.21 Compliance with Laws:

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in any jurisdiction in which any part of the Contract is performed.

Commonwealth Contract Terms

C.C.22 Compliance with Commonwealth Laws and Policies:

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with all Commonwealth laws and policies relevant to the Goods and/or Services and must provide such reports and other information regarding compliance as reasonably requested by the Customer or as otherwise required by a relevant law or policy.

If the Supplier becomes aware of any actual or suspected breach of the requirements set out in clauses A to G below, it must:

- (a) immediately report it to the Customer and provide a written report on the matter within five (5) business days; and
- (b) comply with any reasonable directions by the Customer in relation to any investigation or further reporting of the actual or suspected breach.

A. Access to Supplier's Premises and Records: The Supplier must maintain proper business and accounting records relating to the supply of the Goods and/or Services and performance of the Contract.

The Supplier agrees to provide to the Customer, or its nominee, access to the Supplier's, or its Subcontractor's premises, personnel, documents and other records, and all assistance reasonably requested, for any purpose associated with the Contract or any review of the Supplier's or the Customer's performance under the Contract, including (but not limited to) in connection with a request made under the *Freedom of Information Act 1982* (Cth) or audit or review by the Australian National Audit Office. Unless the access is required for the purpose of a criminal investigation into the Supplier, its employees or subcontractors, the Customer will reimburse the Supplier's substantiated reasonable cost for complying with the Customer's request.

The Supplier must not transfer, or permit the transfer of, custody or ownership, or allow the destruction, of any Commonwealth record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Customer. All Commonwealth records, including any held by Subcontractors, must be returned to the Customer at the conclusion of the Contract.

B. Privacy Act 1988 (Cth) Requirements: In providing the Goods and/or Services, the Supplier agrees to comply, and to ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* (Cth) and not to do anything, which if done by the Customer would breach an Australian Privacy Principle as defined in that Act.**C. Confidential Information:** Other than information available in the public domain, the Supplier agrees not to disclose to any person, other than the Customer, any confidential information relating to the Contract or the Goods and/or Services, without prior written approval from the Customer. This obligation will not be breached where the Supplier is required by law or a stock exchange to disclose the relevant information or where the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation).

The Customer may at any time require the Supplier to arrange for its employees, agents or subcontractors to give a written undertaking relating to nondisclosure of the Customer's confidential information in a form acceptable to the Customer.

The Customer will keep any information in connection with the Contract confidential to the extent it has agreed in writing to keep such specified information confidential. The Customer will not be in breach of any confidentiality agreement if the Customer is required to disclose the information by law, a Minister or a House or Committee of Parliament.

D. Security and Safety: When accessing any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Customer or of which the Supplier is, or should reasonably be aware. The Supplier must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements.

The Supplier must ensure that all information, material and property provided by the Customer for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and is returned as directed by the Customer.

The Supplier acknowledges that unauthorised disclosure of security-classified information is an offence. Legislation (including, but not limited to, the *Criminal Code Act 1995* (Cth)) contains provisions relating to the protection of certain information and sets out the penalties for the unauthorised disclosure of that information.

E. Criminal Code: The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* (Cth). The Supplier must ensure that any subcontractor engaged in connection with the Contract is aware of the information contained in this clause.**F. Fraud:** For the purposes of this clause, Fraud means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means.

The Supplier must take all reasonable steps to prevent and detect Fraud in relation to the performance of this Contract. The Supplier acknowledges the occurrence of Fraud will constitute a breach of this Contract.

If an investigation finds that the Supplier or its employees have committed Fraud, or the Supplier has failed to take reasonable steps to prevent Fraud by an employee or subcontractor, the Supplier must reimburse or compensate the Customer in full.

G. Taxation: The Supplier agrees to comply, and to require its subcontractors to comply, with all applicable laws relating to taxation.

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Commonwealth Contract – Services

Commonwealth Contracting Suite (CCS) Glossary

In the Commonwealth Contracting Suite:

A reference to:

- a) a clause in the form A.A.[x] – is a reference to a clause of the **Approach to Market**;
- b) a clause in the form A.B.[x] – is a reference to a clause of the **Commonwealth ATM Terms**;
- c) an item in the form C.A.[x] – is a reference to an item in the **Statement of Work**;
- d) a clause in the form C.B.[x] – is a reference to a clause in the **Additional Contract Terms**;
- e) a clause in the form C.C.[x] – is a reference to a clause of the **Commonwealth Contract Terms** or the **Commonwealth Purchase Order Terms**, as the case may be.

“**Additional Contract Terms**” means the terms and conditions set out in the section of the Contract with the heading ‘Additional Contract Terms’.

“**Approach to Market or ATM**” means the notice inviting potential suppliers to participate in the procurement.

“**Closing Time**” means the closing time specified in clause A.A.1 [*Key Events and Dates*].

“**Contract**” means the documentation specified in clause C.C.4 [*Precedence of Documents*].

“**Contract Extension Option**” means an option of a Customer to extend the term of a Contract for one or more additional time periods.

“**Contract Manager**” means the contract manager for the Customer and/or Supplier (as relevant) specified in the Contract.

“**Contract Price**” means the total contract price specified in the Contract, including any GST component payable, but does not include any simple interest payable on late payments.

“**Correctly Rendered Invoice**” means an invoice that:

- a) is correctly addressed and calculated in accordance with the Contract;
- b) relates only to Goods and/or Services that have been accepted by the Customer in accordance with the Contract;
- c) includes any purchase order number, and the name and phone number of the Customer’s Contract Manager;
- d) is for an amount which, together with all previously Correctly Rendered Invoices, does not exceed the Contract Price; and
- e) is a valid tax invoice in accordance with the GST Act.

“**Customer**” means a party specified in a Contract as a Customer.

“**Delivery and Acceptance**” means the process by which Goods and/or Services are delivered to a Customer and accepted by the Customer as meeting the terms specified in the Contract.

“**General Interest Charge Rate**” means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day.

“**Goods and/or Services**” means:

- a) the Goods, Services, or Goods and Services and any Material specified in the Contract; and
- b) all such incidental Goods and Services that are reasonably required to achieve the purposes of the Customer as specified in the Contract.

“**GST Act**” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“**GST**” means a Commonwealth goods and services tax imposed by the GST Act.

“**Intellectual Property Rights**” means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are registered or capable of being registered.

Commonwealth Contracting Suite (CCS) Glossary

“Material” means any material brought into existence as a part of, or for the purpose of producing the Goods and/or Services, and includes but is not limited to documents, equipment, information or data stored by any means.

“Moral Rights” means the rights in *Part IX of the Copyright Act 1968 (Cth)*, including the right of attribution, the right against false attribution and the right of integrity.

“Notice” means an official notice or communication under the Contract in writing, from one Contract Manager and delivered to the other Contract Manager, at the postal address, or email address, or facsimile number set out in the Contract or as notified from time to time.

“Requirement” means the description of the Goods and Services described in:

- a) for the purposes of the Commonwealth ATM Terms the section of the Approach to Market with the heading 'Requirement';
- b) for the purposes of the Commonwealth Contract Terms the section of the Statement of Work with the heading 'Requirement';
- c) for the purposes of the Commonwealth Purchase Order Terms the document setting out the Goods and/or Services.

“Specified Personnel” means the personnel specified in the Contract or such other personnel who are accepted by the Customer in accordance with clause C.C.13 [*Specified Personnel*].

“Statement of Requirement” means the section of the Approach to Market with the heading 'Statement of Requirement'.

“Statement of Work” means the section of the Contract, as the case may be, with the heading 'Statement of Work'.

“Supplier” means a party specified in a Contract as a Supplier

Commonwealth Contract – Services

Contract Signing Page

The Parties agree that by signing this Commonwealth Contract – Services, they enter into a Contract comprising:

- a) Additional Contract Terms (if any);
- b) Statement of Work;
- c) Commonwealth Contract Terms;
- d) Commonwealth Contracting Suite Glossary;
- e) Contract Annex 1 – Conflict of Interest Management Plan; and
- f) Contract Annex 2 – Supplementary Information (if any).

EXECUTED as an Agreement

Signed for and on behalf of the **Commonwealth of Australia** as represented by Office of the Special Investigator

ABN 87.767 208 148 by its duly authorised delegate in the presence of

Signature of witness

s 22(1)

Signature of delegate

s 47E(d)

Name _____ s (*print*)

s 22(1)

Kieran Butler

Assistant Director-General

Date:

16/5/22

Executed by s 47F(1)

in the presence of:

Signature of witness

s 47F(1)

Signature

s 47F(1)

Name of witness (*print*)

s 47F(1)

Professor Tim McCormack

Date:

16/05/2022

s 22(1)

(OSI)

From: s 22(1)
Sent: Tuesday, 31 May 2022 10:47 AM
To: timothy.mccormack@utas.edu.au
Cc: s 22(1)
Subject: Commonwealth Contract between OSI and s 47F(1) ~~[SEC=OFFICIAL]~~
Attachments: FORM 1342 current- Financial Institution Details.pdf

OFFICIAL

Good morning Professor McCormack

I refer to the contract arrangement between the Office of the Special Investigator (OSI) and s 47F(1)

In order for the Department of Home Affairs to pay the invoices received from s 47F(1), the accounts payable team has requested updated vendor details to ensure their records are current and correct.

Could you please complete the **attached** Financial Institution Details form and return to myself. Once these details have been updated on the Department's system, a purchase order number will be issued to s 47F(1). It is important the purchase order number is displayed on all invoices issued by s 47F(1) to assist the Department with processing the payments.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me.

Kind regards

s
22(1)

s 22(1)

AFP Secondment / A/g HR Advisor

Office of the Special Investigator

P: s 22(1) M: s 22(1)

E: s 22(1) [@osi.gov.au](mailto:s 22(1)@osi.gov.au)

OFFICIAL



Form 1342

Request for financial institution details

Australian Government
Department of Home Affairs

Please open this form using Adobe Acrobat Reader.
 Either type (in English) in the fields provided or print this form
 and complete it (in English) using a pen and BLOCK LETTERS.

Tick where applicable

To be completed by Departmental Officer who is sending document out

Departmental Contact Officer	
Section	
Postal address	
	Postcode
Email address	

Are you a company, government department or government business, partnership, trust, non-profit organisation, sole trader or incorporated body?

No ► **Go to Part B**

Yes ► **Go to Part A**

Part A – For all businesses

Legal entity name (as per Australian Business Number (ABN))

Business name

Address

Postcode

Telephone number	(Area code)
------------------	--------------

Fax number	(Area code)
------------	--------------

Email address

Internet/Website address

GST details

Have you obtained, or do you intend to obtain, an ABN?

No

Yes ► **ABN (if known)**

Have you registered, for or do you intend to register, for GST?

No

Yes

Group

- Business
- Federal government department
 - Other federal government eg. statutory authorities or business enterprises
 - State government
 - Local government
 - Non-profit organisation

Employees

- Vendor employs 20 or less people
- Vendor employs more than 20 people

Company contact details

Full name

Telephone number	(Area code)
------------------	--------------

Fax number	(Area code)
------------	--------------

Do you have the facility to receive purchase orders electronically?

No

Yes ► **Go to Part C**

Part B – For individuals who do not operate as a business, part of a trust or as a sole trader

Preferred title Mr Mrs Miss Ms Other

Family name

Given names

Address
Postcode

Telephone number	(Area code)
------------------	--------------

Fax number	(Area code)
------------	--------------

Email address

Part C – Additional details

Remittance advice

I wish to receive remittance advice

Note: If box is not ticked you will not receive a remittance advice.

Bank details

Do you have an Australian bank account or an International bank account?

Australian ► **Go to Part D**

International ► **Go to Part E**

Part D – Australian payment details

Provide bank details

BSB number

Account number

Bank account name

Bank name

Branch/Suburb or town

►► **Go to Part F**

Part E – International payment details

In order to complete an overseas electronic payment all details requested below must be provided.

Account name

Account holders address

Account number

IBAN (Europe, Middle East, Asia, Africa)

Note: All accounts require the account number in the International Bank Account Number (IBAN) format

Swift code/ BIC

Name of banking institution

Bank branch address

Postcode

Payment currency

Additional information

Document 13 - Page 2 of 2

IFSC code (India only)

ABA/Routing/Transit code (for USA and Canada)

CNAPS code (China only)

Clabe number (Mexico), RUT code (Chile), CPF or CNP (Brazil)

Intermediary bank details (if required)

If the overseas payment is required to be processed through an intermediary bank, the following details are required.

Name of banking institution

Bank branch address

Postcode

Swift code

Account number

Part F – This section must be completed

Declaration – this form must be signed by the person providing the information or by an officer of your company who is authorised to do so.

I have supplied the details and declare them to be true and correct.

Signature of person providing the details

Day Month Year

Date

Enter as dd/mm/yyyy or use dropdown to enter date

Name of person providing the details

Title/Position in company

s 22(1)

(OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Wednesday, 3 August 2022 5:28 PM
To: s 22(1)
Cc: Kieran BUTLER; Robertson, Susan; Clarke, Jesse; Michael Bliss (DFAT)
Subject: RE: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

Thanks s 22(1)

My best wishes,

Tim

From: s 22(1) @OSI.GOV.AU>
Sent: Wednesday, 3 August 2022 5:10 PM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: Kieran BUTLER s 47E(d) @osi.gov.au; zz [External] s 47E(d) @ag.gov.au
s 47E(d) @ag.gov.au; Clarke, Jesse(2) s 47E(d) @ag.gov.au; Michael Bliss (DFAT)
s 47E(d) @dfat.gov.au>
Subject: RE: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

OFFICIAL

Thanks Tim, and no problem. We'll wait to hear back from you after you've consulted with OIL/DFAT.

Regards,
s 22(1)**OFFICIAL**

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Tuesday, 2 August 2022 11:39 AM
To: s 22(1) @OSI.GOV.AU>
Cc: Kieran BUTLER s 47E(d) @osi.gov.au; zz [External] s 47E(d) @ag.gov.au
s 47E(d) @ag.gov.au; Clarke, Jesse(2) s 47E(d) @ag.gov.au; Michael Bliss (DFAT)
s 47E(d) @dfat.gov.au>
Subject: RE: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

Thanks s 22(1)

I am sorry not to have written to you and to Keiran sooner with an update on my progress. I expect to be able to send through a draft report to AGD and DFAT by Monday next week. While those departments are reviewing my draft, I will finalise footnotes, formatting and editing and then, when I receive feedback from the departments, will be able to send through my final report. Please don't hesitate to call me if there is anything you want to discuss on timing (s 47F(1)).

I am unsure how long the departments will take to review my draft and provide feedback to me as per the terms of my engagement. I have cc'd Sue and Jesse from OIL and Michael from DFAT as an alert to them of my anticipated

timefram. I have asked both Michael and Jesse earlier to whom I should forward my draft report – whether to OIL or to DFAT or to both departments – and ask that question again here. If I don't hear back on that, I will send it through to all of you.

Yours with thanks and my best wishes,

Tim

From: s 22(1) @OSI.GOV.AU>
Sent: Tuesday, 2 August 2022 11:28 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Subject: RE: OSI - draft contract for legal services [SEC=OFFICIAL]

OFFICIAL

Dear Professor McCormack,

I'm emailing to seek an update about when you anticipate you will be in a position to send us your legal advice? Please give me a call on s 22(1) if you would like to discuss.

Kind Regards,
s 22(1)

OFFICIAL

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Monday, 16 May 2022 4:37 PM
To: s 22(1) @OSI.GOV.AU>
Cc: Kieran BUTLER s 47E(d) @osi.gov.au>
Subject: RE: OSI - draft contract for legal services [SEC=OFFICIAL]

Hi s 22(1) and Keiran,

I apologise for the delay in responding but please see attached draft contract with the relevant fields completed, signed and witnessed. I understand the scope of work, the management plan for conflict of interest and also the requirement of consultation with a tied provider.

I will wait to receive a final copy of the contract signed by you Keiran and I'm looking forward to getting stuck in to the work.

Yours with my best wishes,

Tim

From: s 22(1) @OSI.GOV.AU>
Sent: Monday, 9 May 2022 10:56 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: Kieran BUTLER s 47E(d) @osi.gov.au>
Subject: OSI - draft contract for legal services [SEC=OFFICIAL]

OFFICIAL

Dear Professor McCormack,

We recently received approval from the Office of Legal Services Coordination (OLSC) for you to perform tied international public law work.

Please find attached a draft contract for the legal services we would like to engage you to undertake. There are some sections highlighted in yellow (pages 1, 7 and 10) where I would be grateful if you could please insert relevant details (things such as your ABN and the legal name of your entity etc).

I also draw your attention to page 3 of the contract which sets out the request for advice (modified from the initial discussion with Pat, but I believe you discussed this with Kieran) and page 10 which contains a proposed conflict of interest management plan.

I would be happy to discuss any aspect of the contract if you have any queries – my number is s 22(1) .

The OLSC approval is subject to the following conditions:

- The request for advice is confined to s 42(1) ,
- s 33(a)(iii), s 47G(1)(a)
- That any advice prepared by Professor McCormack is to be settled in consultation with, and reflecting any comments made by, a tied provider.
 - If OIL is the tied provider consulted, then the advice/s should also be shared with DFAT Legal.

Kind Regards,
s 22(1)

s 22(1)

Director

Legal & Policy Unit

Office of the Special Investigator

T: s 22(1)

M: s 22(1)

E: s 22(1) [@osi.gov.au](mailto:s 22(1)@osi.gov.au)

OFFICIAL

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s 22(1)

(OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Monday, 29 August 2022 6:08 PM
To: Mark WEINBERG
Subject: Re: The Hague and the UK ~~{SEC=OFFICIAL}~~

You're welcome Mark,

s 47F(1) email address which I did not previously have to hand is s 47F(1).

Yours with my warmest regards

Tim

Get [Outlook for Android](#)

From: Mark WEINBERG s 47E(d) @osi.gov.au>
Sent: Monday, August 29, 2022 4:18:24 PM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Subject: RE: The Hague and the UK ~~{SEC=OFFICIAL}~~

~~OFFICIAL~~

Dear Tim,

Thank you for your email concerning useful contacts in London and The Hague. I will get back to you in the next week or two if Chris and I want to take you up on your kind offer to provide relevant introductions.

Warmest regards
 Mark

~~OFFICIAL~~

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Thursday, 25 August 2022 9:52 PM
To: Mark WEINBERG s 47E(d) @osi.gov.au>
Cc: Chris MORAITIS s 47E(d) @osi.gov.au>
Subject: The Hague and the UK

Dear Mark,

Thanks for the chat on Monday afternoon. As promised, I have been thinking about the people I think you and Chris could benefit from meeting with in The Hague and also in the UK. My suggestions are:

The Hague:

In addition to Karim Khan, ICC Prosecutor, there are two others at the ICC I would recommend you try to meet with:

§ 47F(1) [redacted] § 47F(1) and knows Article 17 better than anyone at the Court in my view. § 47F(1) [redacted] He has been with the ICC almost since its inception and is a repository of institutional knowledge. § 22(1) [redacted] I can introduce him to you but if you'd prefer to approach him yourselves don't hesitate to let him know that I gave you his name and email address;

§ 47F(1) [redacted] You could ask § 47F(1) just about anything to do with the Rome Statute and the approach of the ICC – particularly Article 17 and Article 28 on Command Responsibility;

There are also three others who were with the ICC and are still living in The Hague:

§ 47F(1) [redacted] – particularly on complementarity and the Court's relationship with relevant States;

§ 47F(1) [redacted] returned from the ICC to the § 47F(1) [redacted] and is now back in The Hague § 47F(1) [redacted]

§ 47F(1) [redacted] The Hague Office for the § 47F(1) [redacted] will have good insights into Article 17 and also Article 28 on Command Responsibility.

In the UK, there are several who have previously (or still currently) undertake trial advocacy work in international criminal tribunals:

§ 47F(1) [redacted] a Senior Trial Lawyer for the OTP at the ICC § 47F(1) [redacted] was an excellent trial lawyer and will have some real insights into ICC-related matters;

§ 47F(1) [redacted] He acted as *amicus curiae* on the § 47F(1) [redacted] and has been involved since in a number of ICTY trials and trials before other international criminal tribunals. He has had less to do with the ICC but certainly has had extensive international criminal trial advocacy experience.

§ 47F(1) [redacted] a barrister § 47F(1) [redacted] specialising in international criminal law. She is currently defence counsel for § 47F(1) [redacted] who is appealing his conviction and sentence at the ICC. She has been involved in a number of international criminal trials.

You also asked me for names of IHL academics in the UK. In my view, the best two are:

§ 47F(1) [redacted] Oxford University (<https://www.law.ox.ac.uk>) § 47F(1) [redacted]

§ 47F(1) [redacted] Cambridge University (<https://www.law.cam.ac.uk>) § 47F(1) [redacted]
§ 47F(1) [redacted]

I hope these names help. I know all of them very well. You are most welcome to let you know I suggested you meet with them.

Yours with my best wishes

Tim

Professor Tim McCormack FAAL

Faculty of Law

College of Arts, Law and Education

University of Tasmania

Private Bag 89

Hobart Tasmania 7001, Australia

T: +61 3 6226 7146 | F: +61 3 6226 7623

Twitter: @_TimMcCormack

www.utas.edu.au/law/



I acknowledge the muwinina people as the traditional owners and custodians of the land on which the Law School stands and I pay my respects to their past elders. The muwinina loved and nurtured this land for millennia and sovereignty over it was never ceded. I lament the reality that dispossession of the muwinina was so violent, so comprehensive and so devastating that I am unable to pay my respects to present and emerging elders. I am, however, grateful that through profound resilience a remnant of our palawa people survived dispossession and faithfully passed on their cultural, linguistic, spiritual and legal traditions. Consequently our Aboriginal community is thriving today and I pay my deep respects to their elders past, present and emerging.



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§ 22(1) (OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Wednesday, 14 September 2022 4:36 PM
To: § 22(1) Kieran BUTLER
Subject: RE: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

Thanks very much for letting me know § 22(1) – I will work my way through the other suggested revisions and then plan on getting stuck in to this extra issue.

Yours with my warmest regards,

Tim

From: § 22(1) @osi.gov.au>
Sent: Wednesday, 14 September 2022 3:40 PM
To: Tim McCormack <timothy.mccormack@utas.edu.au>; Kieran BUTLER § 47E(d) @osi.gov.au>
Subject: RE: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

OFFICIAL

Dear Professor McCormack,

Thank you very much for the update and we look forward to receiving your advice.

We agree that it would be useful for your advice to cover the additional matter of § 42(1) I am in the process of getting advice about the correct contract variation form to use, and I'll come back to you in due course about that. However, I wanted to let you know in the interim that we would like your advice to address that extra issue.

Regards,
 § 22(1)

OFFICIAL

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Tuesday, 13 September 2022 4:39 PM
To: § 22(1) @osi.gov.au>; Kieran BUTLER § 47E(d) @osi.gov.au>
Subject: RE: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

Dear § 22(1) and Keiran,

I write to confirm that I received written feedback on my draft advice from OIL and DFAT colleagues yesterday and am meeting with them by Zoom on Thursday to discuss. The feedback is helpful and constructive and the revisions I make will undoubtedly improve/strengthen the advice I deliver to OSI. I expect to complete my revisions next week and, depending on whether OIL/DFAT want to see my tracked changes to approve them and, if so how long they take to do so, I hope to be able to hand over my advice late next week.

I will be able to make all the suggested revisions within the scope of my engagement save for one major issue. OIL and DFAT have recommended that I include an explanation of s 42(1)

I agree with that observation but that additional work is beyond the scope of your engagement of me and I am unable to complete that additional work within the terms of my existing contract.

I raise this matter with you now so that you can discuss with Mark Weinberg, Chris Moraitis and any other colleagues you deem relevant to the discussions. It seems to me that there are several possibilities here. One of course is that I do not undertake the additional work and simply state in my advice that this issue is beyond the scope of what you have engaged me to do. If, however, you agree with the suggestion from OIL and DFAT that this work would be desirable, it seems to me that there are two ways to proceed. One would be to vary the existing contract and add this task to the list of questions as well as make the necessary adjustments for the extra time required. An alternative approach would be to complete the advise without this extra work (one advantage of course is that you will have my final advice sooner) and we enter into a new contract for this task. My estimate is that I would not need an allocation of no more than 3 days to complete the additional work.

I will press on with the other revisions and wait to hear back from you on this particular issue.

Yours with my warmest regards,

Tim

From: Tim McCormack

Sent: Wednesday, 10 August 2022 9:46 PM

To: s 22(1) <[redacted]@OSI.GOV.AU>; Kieran BUTLER s 47E(d) <[redacted]@osi.gov.au>

Subject: RE: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

Dear s 22(1) and Keiran,

I write to confirm that I have now sent through my draft report to OIL and to DFAT and am waiting on feedback from them before I finalise and forward to OSI.

Yours with thanks for your patience,

Tim

From: s 22(1) <[redacted]@OSI.GOV.AU>

Sent: Wednesday, 3 August 2022 5:10 PM

To: Tim McCormack <timothy.mccormack@utas.edu.au>

Cc: Kieran BUTLER s 47E(d) <[redacted]@osi.gov.au>; zz [External] s 47E(d) <[redacted]@ag.gov.au>; s 47E(d) <[redacted]@ag.gov.au>; Clarke, Jesse(2) s 47E(d) <[redacted]@ag.gov.au>; Michael Bliss (DFAT) s 47E(d) <[redacted]@dfat.gov.au>

Subject: RE: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

OFFICIAL

Thanks Tim, and no problem. We'll wait to hear back from you after you've consulted with OIL/DFAT.

Regards,
s 22(1)

OFFICIAL

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Tuesday, 2 August 2022 11:39 AM
To: § 22(1) <§ 22(1)@OSI.GOV.AU>
Cc: Kieran BUTLER § 47E(d) <§ 47E(d)@osi.gov.au>; zz [External] § 47E(d) <§ 47E(d)@ag.gov.au>; Clarke, Jesse(2) § 47E(d) <§ 47E(d)@ag.gov.au>; Michael Bliss (DFAT) § 47E(d) <§ 47E(d)@dfat.gov.au>
Subject: RE: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

Thanks § 22(1)

I am sorry not to have written to you and to Keiran sooner with an update on my progress. I expect to be able to send through a draft report to AGD and DFAT by Monday next week. While those departments are reviewing my draft, I will finalise footnotes, formatting and editing and then, when I receive feedback from the departments, will be able to send through my final report. Please don't hesitate to call me if there is anything you want to discuss on timing (§ 47F(1)).

I am unsure how long the departments will take to review my draft and provide feedback to me as per the terms of my engagement. I have cc'd Sue and Jesse from OIL and Michael from DFAT as an alert to them of my anticipated timeframe. I have asked both Michael and Jesse earlier to whom I should forward my draft report – whether to OIL or to DFAT or to both departments – and ask that question again here. If I don't hear back on that, I will send it through to all of you.

Yours with thanks and my best wishes,

Tim

From: § 22(1) <§ 22(1)@OSI.GOV.AU>
Sent: Tuesday, 2 August 2022 11:28 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Subject: RE: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

OFFICIAL

Dear Professor McCormack,

I'm emailing to seek an update about when you anticipate you will be in a position to send us your legal advice? Please give me a call on § 22(1) if you would like to discuss.

Kind Regards,
 § 22(1)

OFFICIAL

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Monday, 16 May 2022 4:37 PM
To: § 22(1) <§ 22(1)@OSI.GOV.AU>

Cc: Kieran BUTLER s 47E(d) [@osi.gov.au](mailto:osigov@osi.gov.au)>
 Subject: RE: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

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To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: Kieran BUTLER s 47E(d) [@osi.gov.au](mailto:osigov@osi.gov.au)>
Subject: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

OFFICIAL

Dear Professor McCormack,

We recently received approval from the Office of Legal Services Coordination (OLSC) for you to perform tied international public law work.

Please find attached a draft contract for the legal services we would like to engage you to undertake. There are some sections highlighted in yellow (pages 1, 7 and 10) where I would be grateful if you could please insert relevant details (things such as your ABN and the legal name of your entity etc).

I also draw your attention to page 3 of the contract which sets out the request for advice (modified from the initial discussion with Pat, but I believe you discussed this with Kieran) and page 10 which contains a proposed conflict of interest management plan.

I would be happy to discuss any aspect of the contract if you have any queries – my number is s 22(1)

The OLSC approval is subject to the following conditions:

- The request for advice is confined to s 42(1),
- s 33(a)(iii), s 47G(1)(a)
- That any advice prepared by Professor McCormack is to be settled in consultation with, and reflecting any comments made by, a tied provider.
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Kind Regards,
s 22(1)

s 22(1)

Director

Legal & Policy Unit

Office of the Special Investigator

T: s 22(1)

M: s 22(1)
E: s 22(1) @osi.gov.au

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s 22(1) (OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Wednesday, 5 October 2022 9:19 AM
To: s 22(1); Kieran BUTLER
Subject: RE: OSI - contract variation form ~~[SEC=OFFICIAL]~~
Attachments: 221004 contract variation McCormack.pdf

Thank you s 22(1)

Please see attached signed 2nd page of the variation. I've read through the description of the contract changes and am happy with them as an accurate summary of the increased scope of the advice. I have identified and read through a number of High Court authorities and hope to complete my additions to the advice by the end of next week. I will send my revised draft back to OIL and DFAT with tracked changes and as for their feedback and approval of those changes. Once I have approval from colleagues in both agencies, I look forward to delivering my advice to the OSI through you and Keiran.

Yours with my best wishes,

Tim

From: s 22(1) @osi.gov.au
Sent: Tuesday, 4 October 2022 1:55 PM
To: Tim McCormack <timothy.mccormack@utas.edu.au>; Kieran BUTLER s 47E(d) @osi.gov.au
Subject: OSI - contract variation form ~~[SEC=OFFICIAL]~~

OFFICIAL

Dear Professor McCormack,

Thank you for your patience while we sorted out the contract variation at our end. Please find attached a draft contract variation for your consideration. If you are happy with the contract variation, could you please sign the second page? (The first page of the contract variation, which is not included in the attached scan, was our internal approval process – you are not missing a page of the contract variation.)

We welcome any comments you have on the contract variation, particularly the description of the contract changes.

Regards,
 s 22(1)

s 22(1)
 Director
 Legal & Policy Unit
Office of the Special Investigator
T: s 22(1)
M: s 22(1)
E: s 22(1) @osi.gov.au

OFFICIAL

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Wednesday, 14 September 2022 4:36 PM
To: s 22(1) <[REDACTED]@osi.gov.au>; Kieran BUTLER s 47E(d) <[REDACTED]@osi.gov.au>
Subject: CM: RE: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

Thanks very much for letting me know s 22(1) – I will work my way through the other suggested revisions and then plan on getting stuck in to this extra issue.

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Tim

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To: Tim McCormack <timothy.mccormack@utas.edu.au>; Kieran BUTLER s 47E(d) <[REDACTED]@osi.gov.au>
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OFFICIAL

Dear Professor McCormack,

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We agree that it would be useful for your advice to cover the additional matter of the s 42(1) [REDACTED]. I am in the process of getting advice about the correct contract variation form to use, and I'll come back to you in due course about that. However, I wanted to let you know in the interim that we would like your advice to address that extra issue.

Regards,
 s 22(1) [REDACTED]

OFFICIAL

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Dear s [REDACTED] and Keiran,

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s 42(1)

I agree with that observation but that additional work is beyond the scope of your engagement of me and I am unable to complete that additional work within the terms of my existing contract.

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Sent: Wednesday, 10 August 2022 9:46 PM

To: s 22(1) <[REDACTED]> @OSI.GOV.AU>; Kieran BUTLER s 47E(d) <[REDACTED]> @osi.gov.au>

Subject: RE: OSI - draft contract for legal services [SEC=OFFICIAL]

Dear s [REDACTED] and Keiran,

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Tim

From: s 22(1) <[REDACTED]> @OSI.GOV.AU>

Sent: Wednesday, 3 August 2022 5:10 PM

To: Tim McCormack <timothy.mccormack@utas.edu.au>

Cc: Kieran BUTLER s 47E(d) <[REDACTED]> @osi.gov.au>; zz [External] s 47E(d) <[REDACTED]> @ag.gov.au

s 47E(d) <[REDACTED]> @ag.gov.au>; Clarke, Jesse(2) s 47E(d) <[REDACTED]> @ag.gov.au>; Michael Bliss (DFAT)

s 47E(d) <[REDACTED]> @dfat.gov.au>

Subject: RE: OSI - draft contract for legal services [SEC=OFFICIAL]

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s 22(1)

OFFICIAL

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Sent: Tuesday, 2 August 2022 11:39 AM
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Cc: Kieran BUTLER § 47E(d) <§ 47E(d)@osi.gov.au>; zz [External] § 47E(d) <§ 47E(d)@ag.gov.au>; Clarke, Jesse(2) § 47E(d) <§ 47E(d)@ag.gov.au>; Michael Bliss (DFAT) § 47E(d) <§ 47E(d)@dfat.gov.au>
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I am sorry not to have written to you and to Keiran sooner with an update on my progress. I expect to be able to send through a draft report to AGD and DFAT by Monday next week. While those departments are reviewing my draft, I will finalise footnotes, formatting and editing and then, when I receive feedback from the departments, will be able to send through my final report. Please don't hesitate to call me if there is anything you want to discuss on timing (§ 47F(1)).

I am unsure how long the departments will take to review my draft and provide feedback to me as per the terms of my engagement. I have cc'd Sue and Jesse from OIL and Michael from DFAT as an alert to them of my anticipated timeframe. I have asked both Michael and Jesse earlier to whom I should forward my draft report – whether to OIL or to DFAT or to both departments – and ask that question again here. If I don't hear back on that, I will send it through to all of you.

Yours with thanks and my best wishes,

Tim

From: § 22(1) <§ 22(1)@OSI.GOV.AU>
Sent: Tuesday, 2 August 2022 11:28 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Subject: RE: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

OFFICIAL

Dear Professor McCormack,

I'm emailing to seek an update about when you anticipate you will be in a position to send us your legal advice? Please give me a call on § 22(1) if you would like to discuss.

Kind Regards,
 § 22(1)

OFFICIAL

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Monday, 16 May 2022 4:37 PM
To: § 22(1) <§ 22(1)@OSI.GOV.AU>
Cc: Kieran BUTLER § 47E(d) <§ 47E(d)@osi.gov.au>
Subject: RE: OSI - draft contract for legal services [~~SEC=OFFICIAL~~]

Hi § 22(1) and Keiran,

I apologise for the delay in responding but please see attached draft contract with the relevant fields completed, signed and witnessed. I understand the scope of work, the management plan for conflict of interest and also the requirement of consultation with a tied provider.

I will wait to receive a final copy of the contract signed by you Keiran and I'm looking forward to getting stuck in to the work.

Yours with my best wishes,

Tim

From: s 22(1) [redacted] <[redacted]@OSI.GOV.AU>
Sent: Monday, 9 May 2022 10:56 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: Kieran BUTLER s 47E(d) [redacted] <[redacted]@osi.gov.au>
Subject: OSI - draft contract for legal services [SEC=OFFICIAL]

OFFICIAL

Dear Professor McCormack,

We recently received approval from the Office of Legal Services Coordination (OLSC) for you to perform tied international public law work.

Please find attached a draft contract for the legal services we would like to engage you to undertake. There are some sections highlighted in yellow (pages 1, 7 and 10) where I would be grateful if you could please insert relevant details (things such as your ABN and the legal name of your entity etc).

I also draw your attention to page 3 of the contract which sets out the request for advice (modified from the initial discussion with Pat, but I believe you discussed this with Kieran) and page 10 which contains a proposed conflict of interest management plan.

I would be happy to discuss any aspect of the contract if you have any queries – my number is s 22(1) [redacted]

The OLSC approval is subject to the following conditions:

- The request for advice is confined to s 42(1) [redacted]
- s 33(a)(iii), s 47G(1)(a) [redacted]
- That any advice prepared by Professor McCormack is to be settled in consultation with, and reflecting any comments made by, a tied provider.
 - If OIL is the tied provider consulted, then the advice/s should also be shared with DFAT Legal.

Kind Regards,

s 22(1) [redacted]

s 22(1) [redacted]

Director

Legal & Policy Unit

Office of the Special Investigator

T: s 22(1) [redacted]

M: s 22(1) [redacted]

E: s 22(1) [redacted] <[redacted]@osi.gov.au>

OFFICIAL

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CONTRACT VARIATION FORM

CONTRACT AMENDMENT #1

TO CONTRACT: Professor Tim McCormack
CONTRACT REFERENCE ID: 20220516
AUSTENDER CONTRACT ID: CN3893415

For the provision of:
Additional legal advice on further questions

Customer

Customer Name: Office of the Special Investigator
Customer ABN: 87 767 208 148
Address: GPO Box 812
Canberra ACT 2601
Contact Officer: s 22(1)
Position: Director
Branch/Division: Legal and Policy Team
Telephone: s 22(1)
Email Address: s 22(1) @osi.gov.au

Supplier

Supplier Name: s 47F(1)
Supplier ABN: s 47F(1)
Address: s 47F(1)

Contract Details

The Contract changes as agreed by the Customer and the Supplier by email are as follows:

Contract Value

	Contract Value (GST exclusive)	GST	Total Contract Value (GST Inclusive)
Previous Contract Value (AUD)	\$s 47G(1)(a)	\$s 47G(1)(a)	\$s 47G(1)(a)
Amendment Value (AUD)	\$s 47G(1)(a)	\$s 47G(1)(a)	\$s 47G(1)(a)
New Contract Value (AUD)	\$s 47G(1)(a)	\$s 47G(1)(a)	\$s 47G(1)(a)

Description of Contract Changes

To request further legal advice. The contract price will increase by \$ s 47G(1)(a) to a total of \$ s 47G(1)(a) including GST.

The further topic on which legal advice is sought is the s 42(1)

Signed for and on behalf of the Office of the Special Investigator

Name: Kieran Butler, Assistant Director-General

Signature: s 47E(d)

Date: 4/10/22

Signed for and on behalf of McCormack s 47G(1)(a)

Name: Professor Tim McCormack

Signature: s 47F(1)

Date: 4/10/22

§ 22(1) (OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Sunday, 23 October 2022 5:23 PM
To: § 22(1)
Cc: § 22(1); Kieran BUTLER
Subject: RE: § 47F(1) contact details ~~[SEC=OFFICIAL]~~

Dear § 22(1)

I am sorry to report that my colleagues in London did not respond to my request for contact information for § 47F(1) § 47F(1). Please accept my apologies (although I suspect that Mark and Chris are well and truly on their way back to Australia if not already back home by now).

I take this opportunity to advise you and Keiran that I have completed my revised advice including the extra work on the § 42(1) and that revised draft is now with OIL/DFAT awaiting comment. I am hopeful that I will have their feedback soon and able to finalise and forward to you.

Yours with my best wishes

Tim

From: § 22(1) @osi.gov.au
Sent: Monday, 17 October 2022 11:42 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: § 22(1) @osi.gov.au
Subject: RE: § 47F(1) contact details ~~[SEC=OFFICIAL]~~

OFFICIAL

Thanks very much Tim – appreciate your assistance.

Kind Regards,
 § 22(1)

OFFICIAL

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Monday, 17 October 2022 11:21 AM
To: § 22(1) @osi.gov.au
Cc: § 22(1) @osi.gov.au
Subject: RE: § 47F(1) contact details ~~[SEC=OFFICIAL]~~

Thanks for your message § 22(1)

I don't have personal contact details for § 47F(1) I'm sorry but I do know a couple of people in London who might. I will try and contact them today and let you know as soon as I hear back.

Yours with my warmest regards,

Tim

From: s 22(1) @osi.gov.au>
Sent: Monday, 17 October 2022 10:48 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: s 22(1) @osi.gov.au>
Subject: s 47F(1) contact details [SEC=OFFICIAL]

OFFICIAL

Dear Professor McCormack,

As you may know, Mark Weinberg and Chris Moraitis are currently overseas on OSI business. Thanks again for your meeting recommendations – they were extremely helpful.

Mark and Chris met with several current and former ICC officials in The Hague last week, some of whom recommended they seek a meeting with s 47F(1) while they're in London this week. Do you happen to have s 47F(1) personal contact details? Our London Post is having difficulties locating a contact s 47F(1)

Regards,
 s 22(1)

s 22(1)

Director

Legal & Policy Unit

Office of the Special Investigator

T: s 22(1)

M: s 22(1)

E: s 22(1) @osi.gov.au

OFFICIAL

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s 22(1)

(OSI)

From: s 22(1) (OSI)
Sent: Friday, 4 November 2022 3:38 PM
To: 'Tim McCormack'
Subject: RE: Address details ~~[SEC=OFFICIAL]~~

OFFICIAL

Helen is speaking with Jesse Clarke this afternoon so that might move things along.

Regards,
 s 22(1)

OFFICIAL

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Friday, 4 November 2022 3:33 PM
To: s 22(1) @osi.gov.au
Subject: RE: Address details ~~[SEC=OFFICIAL]~~

Thought it was easiest just to cc you in to my response to Rae s 22(1)

I sent my revised draft to OIL & DFAT colleagues 2 weeks ago. Up to Chris whether he wants to contact OIL colleagues and shake the tree a bit.

My best wishes

Tim

From: s 22(1) @osi.gov.au
Sent: Friday, 4 November 2022 3:28 PM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Subject: RE: Address details ~~[SEC=OFFICIAL]~~

OFFICIAL

Thanks very much Tim.

Cheers,
 s 22(1)

OFFICIAL

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Friday, 4 November 2022 3:25 PM
To: Sharp, Raelene (OSI) s 47E(d) @osi.gov.au
Cc: s 22(1) @osi.gov.au
Subject: RE: Address details ~~[SEC=OFFICIAL]~~

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Thanks Rae,

I've just spoken with s 22(1) in OIL and explained the proposed course of action – to send through the draft advice to Mark, you, Paul and Patrick on the basis that it is still in draft form awaiting feedback on revisions from OIL

& DFAT colleagues. I explained that you have a significant meeting next week and want to see the draft advice before that meeting. [redacted] s 22(1) has asked if he can please seek approval for that course of action indicating that he did not think there would be a problem and promising to respond to me before close of business today. I will wait to hear back from him but be ready to send through the draft as soon as I hear from him.

Please don't hesitate to reach out if there is anything you want to discuss. My best contact number of [redacted] s 47F(1) I've cc'd [redacted] s 22(1) in because she has written to me separately for an update on where I'm at on the advice.

Yours with my best wishes

Tim

From: Sharp, Raelene (OSI) [redacted] s 47E(d) [redacted]@osi.gov.au>
Sent: Friday, 4 November 2022 3:04 PM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Subject: Address details [redacted] ~~[SEC=OFFICIAL]~~

OFFICIAL

Hi Tim,

Great to chat. Assuming you get approval to provide a copy of the draft advice, could it be sent to these addresses please:

- [redacted] s 47E(d) [redacted]@osi.gov.au

With thanks,
Rae

Raelene Sharp SC
Counsel assisting the Special Investigator

03 9225 7631 | [redacted] s 47E(d) | rae.sharp@vicbar.com.au | [Vicbar Profile](#)
[redacted] s 47E(d) | [redacted] s 47E(d) [redacted], Melbourne

Clerk: [Foley's List](#) | 03 9225 7777 | foleys@foleys.com.au
Owen Dixon Chambers East | 205 William Street, Melbourne 3000 | DX: 92

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s 22(1)

(OSI)

From: Sharp, Raelene (OSI)
Sent: Friday, 4 November 2022 3:42 PM
To: Tim McCormack
Cc: s 22(1) (OSI)
Subject: RE: Address details [~~SEC=OFFICIAL~~]

OFFICIAL

Thanks, Tim.

That sounds promising.

We look forward to receiving the draft (assuming you are allowed to send it!).

Regards,
 Rae

Raelene Sharp SC
Counsel assisting the Special Investigator

03 9225 7631 | s 47E(d) | rae.sharp@vicbar.com.au | [Vicbar Profile](#)
 Owen Dixon Chambers West | s 47E(d) | 525 Lonsdale Street, Melbourne

Clerk: [Foley's List](#) | **03 9225 7777** | foleys@foleys.com.au
 Owen Dixon Chambers East | 205 William Street, Melbourne 3000 | DX: 92

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From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Friday, 4 November 2022 3:25 PM
To: Sharp, Raelene (OSI) s 47E(d) @osi.gov.au
Cc: s 22(1) @osi.gov.au
Subject: RE: Address details [~~SEC=OFFICIAL~~]

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Thanks Rae,

I've just spoken with s 22(1) in OIL and explained the proposed course of action – to send through the draft advice to Mark, you, Paul and Patrick on the basis that it is still in draft form awaiting feedback on revisions from OIL & DFAT colleagues. I explained that you have a significant meeting next week and want to see the draft advice before that meeting. s 22(1) has asked if he can please seek approval for that course of action indicating that he did not think there would be a problem and promising to respond to me before close of business today. I will wait to hear back from him but be ready to send through the draft as soon as I hear from him.

Please don't hesitate to reach out if there is anything you want to discuss. My best contact number of s 47F(1) I've cc'd s 22(1) in because she has written to me separately for an update on where I'm at on the advice.

Yours with my best wishes

Tim

From: Sharp, Raelene (OSI) [s 47E(d)] <[redacted]@osi.gov.au>
Sent: Friday, 4 November 2022 3:04 PM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Subject: Address details [SEC=OFFICIAL]

OFFICIAL

Hi Tim,

Great to chat. Assuming you get approval to provide a copy of the draft advice, could it be sent to these addresses please:

[redacted]@osi.gov.au
[redacted]@osi.gov.au
[redacted]@osi.gov.au
[redacted]@osi.gov.au

With thanks,
Rae

Raelene Sharp SC
Counsel assisting the Special Investigator

03 9225 7631 | [redacted] | rae.sharp@vicbar.com.au | [Vicbar Profile](#)
Owen Dixon Chambers West | [redacted], 525 Lonsdale Street, Melbourne

Clerk: [Foley's List](#) | **03 9225 7777** | foleys@foleys.com.au
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s 22(1)

(OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Friday, 4 November 2022 5:06 PM
To: Weinberg, Mark (OSI); Coghlan, Paul (OSI); Doyle, Patrick (OSI); Sharp, Raelene (OSI); s 22(1) (OSI)
Cc: Clarke, Jesse; s 22(1); s 22(1); s 22(1); s 22(1); s 22(1); Marie-Charlotte McKenna (s 47E(d) @dfat.gov.au); s 22(1)
Subject: draft advice
Attachments: 221104 s 42(1) - revised draft.pdf

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Dear Mark,

I am pleased to advise that I have received approval to forward the attached draft advice on s 42(1) to you and your OSI colleagues on the basis that it is still under review with Colleagues in OIL and in DFAT and so remains subject to change on the basis of feedback to be received. I will of course forward you the final version after I have received feedback and incorporated any further revisions required.

You will see on the bottom of page 7 that there is placeholder for a removed paragraph. The contents of that paragraph are under review and I anticipate that further text will be included in the final version of the advice.

I sincerely hope that my advice is helpful to you and to your Office and I look forward to further engagement in relation to my advice in due course.

Yours with my warmest regards,

Tim

Professor Tim McCormack FAAL

Faculty of Law
 College of Arts, Law and Education
 University of Tasmania
 Private Bag 89
 Hobart Tasmania 7001, Australia
 T: +61 3 6226 7146 | F: +61 3 6226 7623
 Twitter: @_TimMcCormack
www.utas.edu.au/law/



I acknowledge the muwinina people as the traditional owners and custodians of the land on which the Law School stands and I pay my respects to their past elders. The muwinina loved and nurtured this land for millennia and sovereignty over it was never ceded. I lament the reality that dispossession of the muwinina was so violent, so comprehensive and so devastating that I am unable to pay my respects to present and emerging elders. I am, however, grateful that through profound resilience a remnant of our palawa people survived dispossession and faithfully passed on their cultural, linguistic, spiritual and legal traditions. Consequently our Aboriginal community is thriving today and I pay my deep respects to their elders past, present and emerging.



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s 22(1)

(OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Wednesday, 9 November 2022 8:59 AM
To: Weinberg, Mark (OSI)
Subject: Your meetings

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.

Dear Mark,

As I prepare to fly out to s 22(1) I want to wish you all the best for your meetings in Sydney this week. I hope my draft advice was helpful in your preparations for the discussions you are about to have and I look forward to engaging with you when I return.

Yours with my warmest regards,

Tim

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s 22(1)

(OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Saturday, 12 November 2022 12:24 AM
To: Weinberg, Mark (OSI)
Cc: Moraitis, Chris (OSI); Butler, Kieran (OSI); s 22(1) (OSI); Sharp, Raelene (OSI); Coghlan, Paul (OSI); Doyle, Patrick (OSI); s 22(1); Clarke, Jesse; s 22(1); Harvey, Nina; Marie-Charlotte McKenna (s 47E(d) @dfat.gov.au); s 22(1); s 22(1); s 22(1)
Subject: s 42(1) Advice
Attachments: 221111 Command Responsibility Advice.pdf

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Dear Mark,

I am pleased to now forward the final version of my advice on s 42(1) foreshadowed last week when I sent through the draft version. I have received and responded to feedback from colleagues in OIL and in DFAT on my revisions to the original draft advice and the attached reflects the latest feedback.

Thank you for the opportunity to prepare this advice which I hope will be useful to you and your colleagues in OSI. s 33(a)(iii)

I look forward to ongoing interaction when I return to Australia at the end of next week.

Yours with my warmest regards,

Tim

Professor Tim McCormack FAAL

Faculty of Law
 College of Arts, Law and Education
 University of Tasmania
 Private Bag 89
 Hobart Tasmania 7001, Australia
 T: +61 3 6226 7146 | F: +61 3 6226 7623
 Twitter: @_TimMcCormack
www.utas.edu.au/law/



I acknowledge the muwinina people as the traditional owners and custodians of the land on which the Law School stands and I pay my respects to their past elders. The muwinina loved and nurtured this land for millennia and sovereignty over it was never ceded. I lament the reality that dispossession of the muwinina was so violent, so comprehensive and so devastating that I am unable to pay my respects to present and emerging elders. I am, however, grateful that through profound resilience a remnant of our palawa people survived dispossession and faithfully passed on their cultural, linguistic, spiritual and legal traditions. Consequently our Aboriginal community is thriving today and I pay my deep respects to their elders past, present and emerging.



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s 22(1)

(OSI)

From: s 22(1) (OSI)
Sent: Monday, 14 November 2022 9:33 AM
To: 'Tim McCormack'; Butler, Kieran (OSI)
Subject: RE: attached invoice [~~SEC=OFFICIAL~~]

OFFICIAL

Dear Professor McCormack,

Thank you very much for your final advice and invoice. I've asked our finance people to pay your invoice – please let me know if there are any issues.

Kind Regards,

s 22(1)

OFFICIAL

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Saturday, 12 November 2022 12:34 AM
To: s 22(1) @osi.gov.au; Butler, Kieran (OSI) s 47E(d) @osi.gov.au
Subject: attached invoice

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.

Dear s 22(1)

Now that I have been able to finalise and send through my advice on s 42(1) following receipt of feedback on my revised draft from OIL and DFAT colleagues, I attach my invoice as per the extension to the contract. Please let me know if you need any additional information from me.

Yours with my warmest regards (and thanks again for your patience in the entire process),

Tim

Professor Tim McCormack FAAL

Faculty of Law
 College of Arts, Law and Education
 University of Tasmania
 Private Bag 89
 Hobart Tasmania 7001, Australia
 T: +61 3 6226 7146 | F: +61 3 6226 7623
 Twitter: @_TimMcCormack
www.utas.edu.au/law/



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s 47F(1)

s 47F(1)

11 November 2022

TAX INVOICE

ABN: s 47F(1)

Invoice No: 022023

s 22(1)
Director
Legal and Policy Team
Office of the Special Investigator

s 47E(d)

Email: s 22(1) [@osi.gov.au](mailto:s 22(1)@osi.gov.au)

Re: Professor Tim McCormack's preparation of advice on the specific questions asked by the OSI on s 42(1) and incorporating revisions based on feedback from the Office of International Law in the Attorney-General's Department and the Department of Foreign Affairs and Trade

15 days at agreed daily rate of \$ s 47G(1)(a) per day: \$ s 47G(1)(a)

GST payable \$ s 47G(1)(a)

TOTAL \$ s 47G(1)(a)

From: [Tim McCormack](#)
To: [Chris MORAITIS](#)
Cc: [Helen DANIELS](#); [Kieran BUTLER](#)
Subject: RE: public lecture today [SEC=UNOFFICIAL]
Date: Monday, 22 November 2021 11:41:42 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.jpg](#)

Thanks Chris – no surprises for you in my lecture today – only support for you to keep up the good work.

Warmest regards,

Tim

From: Chris MORAITIS [s 47E\(d\) \[REDACTED\]](#) @osi.gov.au>
Sent: Monday, 22 November 2021 10:33 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: Helen DANIELS [s 47E\(d\) \[REDACTED\]](#) @osi.gov.au>; Kieran BUTLER [s 47E\(d\) \[REDACTED\]](#) @osi.gov.au>
Subject: RE: public lecture today [~~SEC=UNOFFICIAL~~]

~~UNOFFICIAL~~

Thanks Tim

Will try and have a listen. Also heard your recent abc interview on war crimes (and OSI references). Copied Helen and Kieran too.

All good here – we’re progressing along – we can talk about it all when we meet again.

Regards

Chris

~~UNOFFICIAL~~

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Monday, 22 November 2021 10:29 AM
To: Chris MORAITIS [s 47E\(d\) \[REDACTED\]](#) @osi.gov.au>
Subject: public lecture today

Dear Chris,

My apologies for not advising you sooner about today’s Sir Frank Kitto Memorial Lecture which some of your staff may want to listen to:

<https://www.une.edu.au/connect/events/events/annual-sir-frank-kitto-public-lecture>.

I’m sure the lecture will be recorded and available online on the UNE Law School website after

the lecture.

Hope you're well and look forward to catching up soon. s 22(1)

My best wishes

Tim

Professor Tim McCormack FAAL

Faculty of Law
College of Arts, Law and Education
University of Tasmania
Private Bag 89
Hobart Tasmania 7001, Australia
T: +61 3 6226 7146 | F: +61 3 6226 7623
Twitter: @_TimMcCormack
www.utas.edu.au/law/



I acknowledge the muwinina people as the traditional owners and custodians of the land on which the Law School stands and I pay my respects to their past elders. The muwinina loved and nurtured this land for millennia and sovereignty over it was never ceded. I lament the reality that dispossession of the muwinina was so violent, so comprehensive and so devastating that I am unable to pay my respects to present and emerging elders. I am, however, grateful that through profound resilience a remnant of our palawa people survived dispossession and faithfully passed on their cultural, linguistic, spiritual and legal traditions. Consequently our Aboriginal community is thriving today and I pay my deep respects to their elders past, present and emerging.



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s 22(1) (OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Tuesday, 28 February 2023 11:16 AM
To: s 22(1) (OSI)
Cc: s 22(1) (OSI)
Subject: RE: In Melbourne this week [~~SEC=OFFICIAL~~]

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.

Thank you so much for this invitation s 22(1) – I am most grateful to Mark and would very much like to join the meeting for the morning and for lunch. Will need to leave for the airport for my return flight to Hobart after lunch and so probably will not stay right through to 2:30pm.

s 22(1)
 I have something for Mark and hope that I can be there by 0920 to pass it on to him s 22(1)

Thanks for your's and s 22(1) mobile nos. I will call one of you when I arrive on Thursday morning.

With my warmest regards,

Tim

From: s 22(1) @osi.gov.au>
Sent: Tuesday, February 28, 2023 9:50 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: s 22(1) @osi.gov.au>
Subject: In Melbourne this week [~~SEC=OFFICIAL~~]

OFFICIAL

Dear Tim,

Mark has asked me to let you know that the OSI Melbourne Team will be meeting with s 33(a)(iii) on Thursday from 9.30 am to 2.30 pm and you are welcome to join all or part of this meeting if you would like. You are also welcome to join the group for lunch at 1 pm.

The meeting will be held in the Barristers Chamber Board Room on level 1 of s 47E(d). If you ring either myself (s 22(1)) or s 22(1) (s 22(1)) we will escort you up.

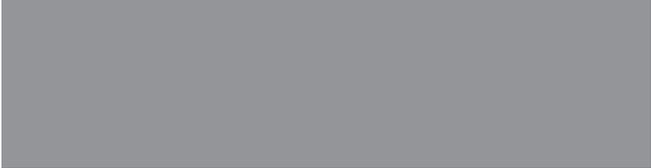
Otherwise, Mark is available prior to this meeting.

Kind regards

s 22(1)

s 22(1)
 Executive Assistant to the Special Investigator
Office of the Special Investigator
M: s 22(1)

E:s 22(1) [@osi.gov.au](mailto:osig@osi.gov.au)



OFFICIAL

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s 22(1) (OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Wednesday, 31 May 2023 5:30 PM
To: s 22(1) (OSI)
Subject: RE: Kolomeitz - PhD thesis [~~SEC=OFFICIAL:Sensitive~~]

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Thank you s 22(1) – most helpful to have the link. s 22(1)
 Despite the automated reply on my email account, I am receiving emails and reading them. Please let Mark know that I am available here while I'm away. I have a Dutch SIM in my mobile but also still accessible on my Australian mobile number either through WhatsApp or Signal. If you would like the Dutch mobile no as well please do not hesitate to ask for it.

There is a media frenzy right now back home in Oz isn't there – not likely to abate any time soon with tomorrow's impending judgment in the defamation proceedings.

Yours with my warmest regards,

Tim

From: s 22(1) @osi.gov.au>
Sent: Wednesday, May 31, 2023 9:46 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Subject: Kolomeitz - PhD thesis [~~SEC=OFFICIAL:Sensitive~~]

OFFICIAL: Sensitive

Good morning Tim,

Mark has asked me to send you the link to Dr Kolomeitz's PhD thesis which has been referred to in recent media reports. It is [Kolomeitz2023 PhD.pdf \(adelaide.edu.au\)](#)

Best wishes

s 22(1)

s 22(1)
 Executive Assistant to the Special Investigator
Office of the Special Investigator
M: s 22(1)
E: s 22(1) [@osi.gov.au](#)

OFFICIAL: Sensitive

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s 22(1)

(OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Wednesday, 31 May 2023 9:46 AM
To: s 22(1) (OSI)
Subject: Automatic reply: Kolomeitz - PhD thesis [~~SEC=OFFICIAL:Sensitive~~]

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I am on extended leave from the University of Tasmania and will not be back in the office until the end of June 2023. I may well take some time to respond to your email. If you have Law Course Co-ordination queries, please email s 47F(1)@utas.edu.au

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s 22(1)

(OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Tuesday, 27 June 2023 4:17 PM
To: Moraitis, Chris (OSI); Weinberg, Mark (OSI)
Cc: Butler, Kieran (OSI)
Subject: RE: varia ~~[SEC=OFFICIAL]~~

Thanks for your messages Mark and Chris,

I do expect to be in Canberra 22-25 August to s 22(1)

Perhaps we can catch up then Chris?

I don't have any firm plans to be in Melbourne in the short term Mark but will certainly be in touch if that changes.

My best wishes

Tim

From: Moraitis, Chris (OSI) s 47E(d) @osi.gov.au>
Sent: Tuesday, June 27, 2023 3:47 PM
To: Tim McCormack <timothy.mccormack@utas.edu.au>; Weinberg, Mark (OSI) s 47E(d) @osi.gov.au>
Cc: Butler, Kieran (OSI) <Kieran.A.Butler@osi.gov.au>
Subject: Re: varia ~~[SEC=OFFICIAL]~~

Hi Tim

Great to hear from you. We look forward to catching up with you and hearing about all these developments.

s 22(1)

Catch up soon

Warm regards

Chris

OFFICIAL

From: "Tim McCormack" <timothy.mccormack@utas.edu.au>
Date: Tuesday, 27 June 2023 at 4:30:33 am
To: "Weinberg, Mark (OSI)" s 47E(d) @osi.gov.au>, "Moraitis, Chris (OSI)" s 47E(d) @osi.gov.au>
Cc: "Butler, Kieran (OSI)" s 47E(d) @osi.gov.au>
Subject: varia

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.

Dear Mark and Chris,

I hope you are both well and the work of the Office is progressing well. s 22(1)

s 33(a)(iii)

I am flying to Wellington tomorrow to deliver the Sir Kenneth Keith Lecture at this year's Australian New Zealand Society of International Law meeting. I decided to focus on the Burnham, Brereton and Haddon-Cave Inquiries and your own OSI criminal investigations in terms of the international legal obligation on States to investigate alleged war crimes, the previous reticence of States to do so in relation to their own forces and the importance and significance of NZ, Aus and the UK now taking the obligation more seriously. I want to assure you both that everything I discuss will be from the public domain. I understand the confidentiality I am subjected to and will be extremely careful to protect them.

I look forward to catching up in due course.

Yours with my warmest regards,

Tim

Professor Tim McCormack FAAL

Faculty of Law

College of Arts, Law and Education

University of Tasmania

Private Bag 89

Hobart Tasmania 7001, Australia

T: +61 3 6226 7146 | F: +61 3 6226 7623

Twitter: @_TimMcCormack

www.utas.edu.au/law/



I acknowledge the muwinina people as the traditional owners and custodians of the land on which the Law School stands and I pay my respects to their past elders. The muwinina loved and nurtured this land for millennia and sovereignty over it was never ceded. I lament the reality that dispossession of the muwinina was so violent, so comprehensive and so devastating that I am unable to pay my respects to present and emerging elders. I am, however, grateful that through profound resilience a remnant of our palawa people survived dispossession and faithfully passed on their cultural, linguistic, spiritual and legal traditions. Consequently our Aboriginal community is thriving today and I pay my deep respects to their elders past, present and emerging.



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s 22(1)

(OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Tuesday, 27 June 2023 2:07 PM
To: s 22(1) (OSI)
Subject: Automatic reply: s 33(a)(iii) query about security clearance [~~SEC=OFFICIAL~~]

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I am on extended leave from the University of Tasmania and will not be back in the office until the end of June 2023. I may well take some time to respond to your email. If you have Law Course Co-ordination queries, please email s 47F(1)@utas.edu.au

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§ 22(1) (OSI)

From: § 22(1) (OSI)
Sent: Friday, 4 November 2022 3:16 PM
To: 'Tim McCormack'
Subject: RE: § 47F(1) contact details [SEC=OFFICIAL]

Follow Up Flag: Follow up
Flag Status: Completed

OFFICIAL

Hi Tim,

Have you heard back from OIL/DFAT with their comments yet? Mark asked about your advice today, but we're cognisant you may still be waiting for comments and we can follow up with OIL/DFAT if that's the case.

Regards,
 § 22(1)

OFFICIAL

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Sunday, 23 October 2022 5:23 PM
To: § 22(1) @osi.gov.au>
Cc: § 22(1) @osi.gov.au>; Kieran BUTLER § 47E(d) @osi.gov.au>
Subject: RE: § 47F(1) contact details [SEC=OFFICIAL]

Dear § 22(1)

I am sorry to report that my colleagues in London did not respond to my request for contact information for § 47F(1). Please accept my apologies (although I suspect that Mark and Chris are well and truly on their way back to Australia if not already back home by now).

I take this opportunity to advise you and Keiran that I have completed my revised advice including the extra work on § 42(1) and that revised draft is now with OIL/DFAT awaiting comment. I am hopeful that I will have their feedback soon and able to finalise and forward to you.

Yours with my best wishes

Tim

From: § 22(1) @osi.gov.au>
Sent: Monday, 17 October 2022 11:42 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: § 22(1) @osi.gov.au>
Subject: RE: Sir Adrian Fulford's contact details [SEC=OFFICIAL]

OFFICIAL

Thanks very much Tim – appreciate your assistance.

Kind Regards,
 § 22(1)

OFFICIAL

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Monday, 17 October 2022 11:21 AM
To: s 22(1) <[REDACTED]@osi.gov.au>
Cc: s 22(1) <[REDACTED]@osi.gov.au>
Subject: RE: s 47F(1) [REDACTED] contact details [SEC=OFFICIAL]

Thanks for your message s 22(1)

I don't have personal contact details for s 47F(1) [REDACTED]. I'm sorry but I do know a couple of people in London who might. I will try and contact them today and let you know as soon as I hear back.

Yours with my warmest regards,

Tim

From: s 22(1) <[REDACTED]@osi.gov.au>
Sent: Monday, 17 October 2022 10:48 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: s 22(1) <[REDACTED]@osi.gov.au>
Subject: s 47F(1) [REDACTED] contact details [SEC=OFFICIAL]

OFFICIAL

Dear Professor McCormack,

As you may know, Mark Weinberg and Chris Moraitis are currently overseas on OSI business. Thanks again for your meeting recommendations – they were extremely helpful.

Mark and Chris met with several current and former ICC officials in The Hague last week, some of whom recommended they seek a meeting with s 47F(1) [REDACTED] ICC Judge) while they're in London this week. Do you happen to have s 47F(1) [REDACTED] personal contact details? Our London Post is having difficulties locating a contact s 47F(1) [REDACTED]

Regards,
s 22(1) [REDACTED]

s 22(1) [REDACTED]

Director
Legal & Policy Unit
Office of the Special Investigator

T: s 22(1) [REDACTED]

M: s 22(1) [REDACTED]

E: s 22(1) [REDACTED] <[\[REDACTED\]@osi.gov.au](mailto:[REDACTED]@osi.gov.au)>

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s 22(1)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Monday, 7 August 2023 10:25 AM
To: Butler, Kieran (OSI) s 47E(d) @osi.gov.au>
Subject: ANU Public Lecture

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Dear Keiran,

When you and I last spoke, I promised to send through details of the public lecture I will be delivering at ANU on 24 August. You and any of your colleagues are, of course, most welcome to attend:

[The Annual Kirby Lecture in International Law: The International Criminal Court and global criminal justice: are we making progress? | ANU College of Law](#)

I will reach out to Chris and hope to see you both while I am in the national capital.

Yours with my warmest regards,

Tim

Professor Tim McCormack FAAL

Faculty of Law
 College of Arts, Law and Education
 University of Tasmania
 Private Bag 89
 Hobart Tasmania 7001, Australia
 T: +61 3 6226 7146 | F: +61 3 6226 7623
 Twitter: @_TimMcCormack
www.utas.edu.au/law/



I acknowledge the muwinina people as the traditional owners and custodians of the land on which the Law School stands and I pay my respects to their past elders. The muwinina loved and nurtured this land for millennia and sovereignty over it was never ceded. I lament the reality that dispossession of the muwinina was so violent, so comprehensive and so devastating that I am unable to pay my respects to present and emerging elders. I am, however, grateful that through profound resilience a remnant of our palawa people survived dispossession and faithfully passed on their cultural, linguistic, spiritual and legal traditions. Consequently our Aboriginal community is thriving today and I pay my deep respects to their elders past, present and emerging.



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§ 22(1) (OSI)

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Monday, 21 August 2023 3:47 PM
To: § 22(1) (OSI)
Cc: OSI FOI and Privacy; Butler, Kieran (OSI)
Subject: RE: Freedom of Information request consultation – Personal information and professional affairs (ss 27 and 27A) - OSI FOI23/01 – Response requested by 28 August 2023 ~~[SEC=OFFICIAL]~~

Thanks § 22(1)

I'll ask § 22(1) to let you know when Chris and I finish.

Yours in anticipation

Tim

From: § 22(1) @osi.gov.au
Sent: Monday, August 21, 2023 12:08 PM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: OSI FOI and Privacy § 47E(d) @osi.gov.au; Butler, Kieran (OSI) § 47E(d) @osi.gov.au
Subject: RE: Freedom of Information request consultation – Personal information and professional affairs (ss 27 and 27A) - OSI FOI23/01 – Response requested by 28 August 2023 ~~[SEC=OFFICIAL]~~

OFFICIAL

Dear Professor McCormack,

That is very fortuitous timing! Yes, if you have time after your meeting with Chris, that would be great to discuss the FOI request.

Regards,
 § 22(1)

OFFICIAL

From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Monday, 21 August 2023 10:44 AM
To: § 22(1) @osi.gov.au
Cc: OSI FOI and Privacy § 47E(d) @osi.gov.au; Butler, Kieran (OSI) § 47E(d) @osi.gov.au
Subject: Re: Freedom of Information request consultation – Personal information and professional affairs (ss 27 and 27A) - OSI FOI23/01 – Response requested by 28 August 2023 ~~[SEC=OFFICIAL]~~

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Thanks for bringing this to my attention. I will be at OSI offices tomorrow at 1130 to catch up with Chris Moraitis. Should you and I catch up briefly after that meeting to discuss?

Yours with my best wishes

Tim

Get [Outlook for Android](#)

From: s 22(1) [redacted] @osi.gov.au>
Sent: Monday, August 21, 2023 10:27:05 AM
To: Tim McCormack <timothy.mccormack@utas.edu.au>
Cc: OSI FOI and Privacy s 47E(d) [redacted] @osi.gov.au>; Butler, Kieran (OSI) s 47E(d) [redacted] @osi.gov.au>
Subject: Freedom of Information request consultation – Personal information and professional affairs (ss 27 and 27A) - OSI FOI23/01 – Response requested by 28 August 2023 [~~SEC=OFFICIAL~~]

Dear Professor McCormack

The Office of the Special Investigator (OSI) has received a request under the *Freedom of Information Act 1982* (FOI Act) that captures a document containing information concerning you. A copy of the document is **attached**.

It appears to us that you may have an interest in the potential disclosure of this document and that you may wish to contend that it is conditionally exempt because of concerns for your [personal privacy \(s 47F\)](#) and/or [lawful business or professional affairs \(s 47G\)](#).

Next Steps

Could you please advise by reply email by 28 August 2023 whether you consider the document (or any part of it) is exempt from disclosure and, if so, provide your reasons in this regard. This will help the OSI to make an informed decision about whether to give the FOI applicant access to the document.

Your reasons do not need to be complex or lengthy, and you may wish to consider:

- the extent to which the information is well known,
- whether you are known to be (or to have been) associated with the matters dealt with in the document,
- the availability of the information from publicly accessible sources, and
- any other matters that you consider relevant.

OFFICIAL

While your comments will be given careful consideration, the final decision about whether to release the documents rests with the decision-maker in the OSI. If the decision-maker decides to grant access to any documents whose release you opposed, you will be given written notice of the decision and the opportunity to seek review before the documents are released.

Please be aware that if documents are released, they may be published on the OSI’s Disclosure Log or made public by the applicant.

If a response is not received from you by 28 August 2023, the OSI may proceed to make a decision based on the available information.

Further information

Please give me a call if you would like to discuss further, or you can contact our FOI officer by email at s 47E(d) [redacted] @osi.gov.au. You can also access [When an FOI request affects you](#) on the website of the Office of the Australian Information Commissioner website.

Kind regards,

s [redacted]

s 22(1)

Director

Legal & Policy Unit

Office of the Special Investigator

T: s 22(1)

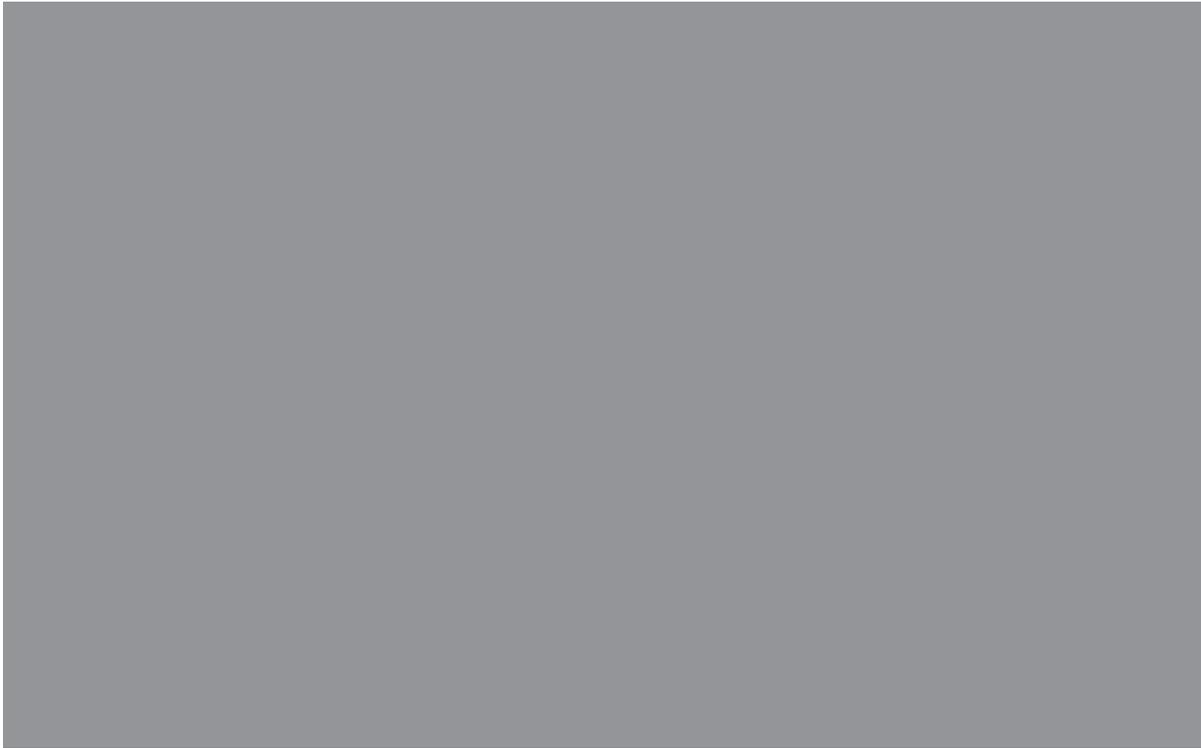
M: s 22(1)

E: s 22(1) @osi.gov.au

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From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Thursday, 25 August 2022 9:52 PM
To: Mark WEINBERG § 47E(d) [@osi.gov.au](mailto:§ 47E(d)@osi.gov.au)>
Cc: Chris MORAITIS § 47E(d) [@osi.gov.au](mailto:§ 47E(d)@osi.gov.au)>
Subject: The Hague and the UK

Dear Mark,

Thanks for the chat on Monday afternoon. As promised, I have been thinking about the people I think you and Chris could benefit from meeting with in The Hague and also in the UK. My suggestions are:

The Hague:

In addition to Karim Khan, ICC Prosecutor, there are two others at the ICC I would recommend you try to meet with:

§ 47F(1)
§ 47F(1)
§ 47F(1) and knows Article 17 better than anyone at the Court in my view. § 47F(1)
§ 47F(1) He has been
with the ICC almost since its inception and is a repository of institutional knowledge. § 22(1)
§ 47F(1) I can introduce him to you
but if you'd prefer to approach him yourselves don't hesitate to let him know that I gave you his
name and email address;

§ 47F(1)
§ 47F(1)
§ 47F(1) You could ask § 47F(1) just about anything to
do with the Rome Statute and the approach of the ICC – particularly Article 17 and Article 28 on

Command Responsibility;

There are also three others who were with the ICC and are still living in The Hague:

s 47F(1) – particularly on complementarity and the Court’s relationship with relevant States;

s 47F(1) returned from the ICC to the s 47F(1) and is now back in The Hague s 47F(1)

s 47F(1) The Hague Office for the s 47F(1) will have good insights into Article 17 and also Article 28 on Command Responsibility.

In the UK, there are several who have previously (or still currently) undertake trial advocacy work in international criminal tribunals:

s 47F(1) a Senior Trial Lawyer for the OTP at the ICC and s 47F(1) was an excellent trial lawyer and will have some real insights into ICC-related matters;

s 47F(1) He acted as *amicus curiae* on the s 47F(1) and has been involved since in a number of ICTY trials and trials before other international criminal tribunals. He has had less to do with the ICC but certainly has had extensive international criminal trial advocacy experience.

s 47F(1) a barrister s 47F(1) specialising in international criminal law. She is currently defence counsel for s 47F(1) who is appealing his conviction and sentence at the ICC. She has been involved in a number of international criminal trials.

You also asked me for names of IHL academics in the UK. In my view, the best two are:

s 47F(1) Oxford University (<https://www.law.ox.ac.uk> s 47F(1))

s 47F(1) Cambridge University (<https://www.law.cam.ac.uk> s 47F(1))

I hope these names help. I know all of them very well. You are most welcome to let you know I suggested you meet with them.

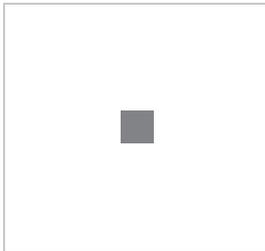
Yours with my best wishes

Tim

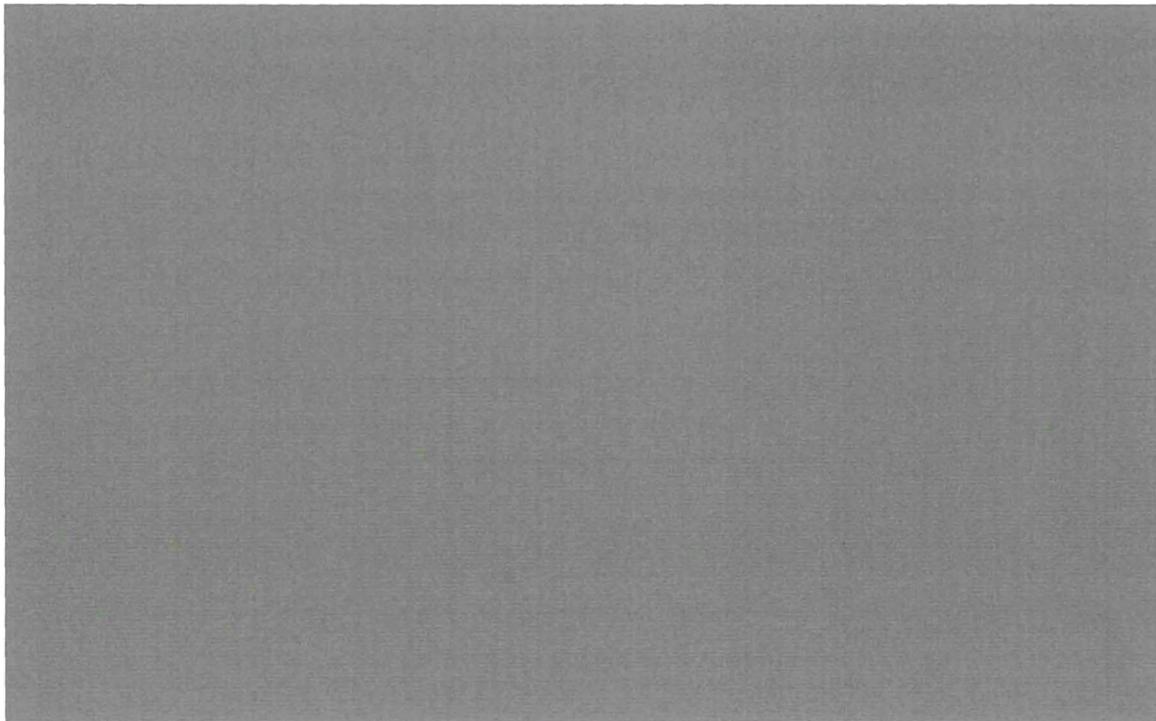
Professor Tim McCormack FAAL
Faculty of Law
College of Arts, Law and Education
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Private Bag 89
Hobart Tasmania 7001, Australia
T: +61 3 6226 7146 | F: +61 3 6226 7623
Twitter: @_TimMcCormack
www.utas.edu.au/law/



I acknowledge the muwinina people as the traditional owners and custodians of the land on which the Law School stands and I pay my respects to their past elders. The muwinina loved and nurtured this land for millennia and sovereignty over it was never ceded. I lament the reality that dispossession of the muwinina was so violent, so comprehensive and so devastating that I am unable to pay my respects to present and emerging elders. I am, however, grateful that through profound resilience a remnant of our palawa people survived dispossession and faithfully passed on their cultural, linguistic, spiritual and legal traditions. Consequently our Aboriginal community is thriving today and I pay my deep respects to their elders past, present and emerging.



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From: Tim McCormack <timothy.mccormack@utas.edu.au>
Sent: Thursday, 25 August 2022 9:52 PM
To: Mark WEINBERG ^{s 47E(d)} [\[redacted\]@osi.gov.au](mailto:[redacted]@osi.gov.au)>
Cc: Chris MORAITIS ^{s 47E(d)} [\[redacted\]@osi.gov.au](mailto:[redacted]@osi.gov.au)>
Subject: The Hague and the UK

Dear Mark,

Thanks for the chat on Monday afternoon. As promised, I have been thinking about the people I think you and Chris could benefit from meeting with in The Hague and also in the UK. My suggestions are:

The Hague:

In addition to Karim Khan, ICC Prosecutor, there are two others at the ICC I would recommend you try to meet with:

^{s 47F(1)} [redacted]
 [redacted]
 [redacted] and knows Article 17 better than anyone at the Court in my view. ^{s 47F(1)} [redacted]
 [redacted] He has been with the ICC almost since its inception and is a repository of institutional knowledge. ^{s 22(1)} [redacted]
 [redacted] I can introduce him to you but if you'd prefer to approach him yourselves don't hesitate to let him know that I gave you his name and email address;

^{s 47F(1)} [redacted]
 [redacted]
 [redacted] You could ask ^{s 47F(1)} [redacted] just about anything to do with the Rome Statute and the approach of the ICC – particularly Article 17 and Article 28 on

Command Responsibility;

There are also three others who were with the ICC and are still living in The Hague:

s 47F(1) [redacted]
[redacted] – particularly on complementarity and the Court's relationship with relevant States;

s 47F(1) [redacted]
[redacted], returned from the ICC to the s 47F(1) [redacted] and is now back in The Hague s 47F(1) [redacted]

s 47F(1) [redacted]
[redacted]
[redacted] The Hague Office for the s 47F(1) [redacted] will have good insights into Article 17 and also Article 28 on Command Responsibility.

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s 47F(1) [redacted]
s 47F(1) [redacted] a Senior Trial Lawyer for the OTP at the ICC and s 47F(1) [redacted]
s 47F(1) [redacted] was an excellent trial lawyer and will have some real insights into ICC-related matters;

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s 47F(1) [redacted] Cambridge University
(<https://www.law.cam.ac.uk>) s 47F(1) [redacted]

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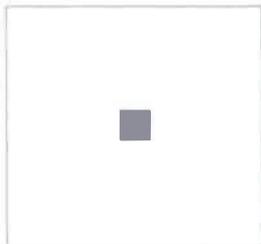
Yours with my best wishes

Tim

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