

**FORTESCUE & ORS v ELEMENT ZERO & ORS, NSD527/2024:**  
**APPLICANTS' 37AF / FCR 2.32 APPLICATION RE NON-PARTY ACCESS REQUESTS;**  
**OUTLINE OF SUPPLEMENTARY SUBMISSIONS**

**Introduction**

1. The Applicants have significantly narrowed their second suppression application by their proposed Further Amended Interlocutory Application dated 26 July 2024 (FAIA), following the Court's observations at the last CMH (10 July 2024).
2. The Applicants' suppression claims in the FAIA are marked in the material provided to her Honour's chambers in **blue** boxes, for determination at the 1 August 2024 hearing. The text in **red** boxes is the subject of the Applicants' first (informal) suppression application, to be case managed at the 19 August 2024 hearing.
3. In support of the FAIA, the Applicants rely on the affidavit of Paul Alexander Dewar affirmed 4 July 2024 (Dewar 5) and the affidavit of Kevin Gar Yuen Huang affirmed 26 July 2024. The Applicants continue to rely on their submissions dated 9 July 2024.
4. Dewar 5 annexes confidential evidence and two confidential agreements. The Applicants make an application for suppression of that material (PAD-A, PAD-20 and PAD-21) under FCA Act ss 37AF and 37AG(1)(a).

**Claims not pressed**

5. The Applicants no longer press for suppression of:
  - (a) Private investigation reports: FAIA Anx A items 1, 2, 3 and 4. The Applicants agree with the Respondents' proposed orders concerning these documents.
  - (b) Deponents' signatures: FAIA Anx A items 9, 19, 24, 60, 87, 94.
  - (c) Certain Category 2 claims in FAIA Anx A items 38, 42, 60, 64, 69, 72, 80, 87, 93, 98, and 100.

**Claims pressed**

6. The balance of the Applicants' claims are pressed in whole or in part. Amended claims are marked up in FAIA, Anx A.
7. The Applicants' claims are categorised according to the following categories: **(1)** Personal information; **(2)** Fortescue's confidential information, **(3)** Confidential information the subject of a confidentiality agreement with M entity, and

**(4)** Confidential information for which the Applicants owe obligations of confidence to B entity. The Applicants rely on their previous submissions explaining the basis for suppression in each category.

8. Of the pressed claims, the following table shows duplicate items or closely related claims, such that the Court need only make one decision for each subparagraph:

#	FAIA Anx A Item Nos.	Reason	Cat.
(a)	10, 20, 25, 88, 96	Addresses of deponents. The Applicants seek suppression of their street number and name, consistently with the Court's <b>Guide</b> to the Anonymisation of Personal and Sensitive Information (PAD-19).	<b>1</b>
(b)	11, 16, 23, 35, 36(c), 48, 50, 58, 65(c), 77, 79, 96, 109	Telephone numbers of individuals. The Applicants seek suppression only of the last three digits of phone numbers, consistently with the Guide.	<b>1</b>
(c)	37, 68, 92, 103	References to Dr Forrest's email addresses, consistently with the Guide.	<b>1</b>
(d)	6, 8, 21, 22, 89	References to same values (or same approximate values) of Applicants' cumulative spend on its technology.	<b>2</b>
(e)	39-40, duplicated in 70-71	Same email chain. Decisions regarding items 39-40 can carry over to items 70-71.	<b>2</b>
(f)	43-44, duplicated in 73-74	Same email chain. Decisions regarding items 43 to 44 can carry over to items 73 and 74.	<b>2</b>
(g)	51, duplicated in 81	Same \$ value. Decisions regarding item 51 can carry over to item 81.	<b>2</b>
(h)	52-54, duplicated in 82-84	Same email chain. Decisions regarding items 52-54 can carry over to items 82-84.	<b>2, 4</b>
(i)	55(b)-55(i); each of which is duplicated in 85(b)-85(i)	Same document. Decisions regarding items 55(b)-55(i) can carry over to the corresponding claims at items 85(b)-85(i).	<b>2</b>
(j)	56, duplicated in 86	Same email chain. Decision regarding item 56 can carry over to item 86.	<b>2, 4</b>
(k)	7, 26, 27, 36, 75	Means of identifying M entity (by person).	<b>3</b>

#	FAIA Anx A Item Nos.	Reason	Cat.
(l)	29, 36(e)	Means of identifying M entity (by work).	3
(m)	36(a),(b),(d); each of which is duplicated in 65(a),(b),(d)	Same collection of emails. Decisions over items 36(a)-(d) can carry over to the corresponding claims at 65(a)-(d).	3
(n)	31, duplicated in 66	Same email. Decision regarding item 31 can carry over to item 66.	3
(o)	30, 36, 61	Means of identifying M entity (by name).	3
(p)	32, 36(f)	Confidential information subject to agreement with M entity.	3
(q)	7(a), 28, 47, 55(a), 67, 76(a), 85(a), 90, 91, 102	Means of identifying B entity (by name).	4
(r)	33, 46, 47(a), 75	Obligations of confidence owed to B entity.	4
(s)	45-46, duplicated in 75-76	Decision regarding items 45-46 can carry over to items 75-76.	4
(t)	49, duplicated in 78	Decision regarding item 49 can carry over to item 78.	4

9. The following items in Anx A may require individual determination: 5, 12, 13, 14, 15, 17, 18, 34, 41, 57, 59, 95, 97, 99(a)-(c), 101, 104, 105, 105(a)-(d), 106, 107, 108.

**WH Wu, SK Yates**

Counsel for the Applicants

26 July 2024