

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	24/04/2024 1:34:03 PM AEST
Date Accepted for Filing:	24/04/2024 1:34:06 PM AEST
File Number:	NSD474/2024
File Title:	ESAFETY COMMISSIONER v X CORP.
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

AFFIDAVIT

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: GENERAL**

NO NSD 474 OF 2024

ESAFETY COMMISSIONER

Applicant

X CORP.

Respondent

Affidavit of: Matthew Richard Garey
Address: Level 10, 60 Martin Place, Sydney NSW 2000
Occupation: Lawyer
Date affirmed: 24 April 2024

Contents:

Document Number	Details	Paragraph(s) of affidavit referring to annexure(s)	Page
1.	Affidavit of Matthew Richard Garey in support of application for interlocutory injunction affirmed on 24 April 2024.		
2.	Annexure MG-1 being an email from the Associate to Justice Kennett attaching a copy of the 22 April Orders dated 22 April 2024	3	4

I, Matthew Richard Garey of Level 10, 60 Martin Place, Sydney NSW 2000 in the State of New South Wales, Lawyer, affirm:

1. I am a Senior Executive Lawyer with the Australian Government Solicitor (**AGS**) and an AGS lawyer within the meaning of s 55I of the *Judiciary Act 1903* (Cth). AGS acts for the Applicant, the eSafety Commissioner (**Commissioner**), in the proceeding and I have carriage of this matter for the Commissioner. I make this affidavit on the basis of my own knowledge and belief, save where otherwise stated.



ORDERS OF 22 APRIL 2024

2. On 22 April 2024 at 7:00pm, Justice Kennett made orders requiring X Corp., as soon as reasonably practicable and no later than within 24 hours, to hide the material identified in the removal notice given to X Corp. under s 109 of the *Online Safety Act 2021* (Cth) on 16 April 2024 (**Notice**) behind a notice such that an X user can only see the notice, not the material identified in the Notice, and cannot remove the notice to reveal the material.
3. An authenticated copy of the order was provided by the Associate to Justice Kennett by email on 8:27pm.

A true copy of this email and the orders is annexed hereto and labelled **Annexure MG-1**.

AVAILABILITY OF THE VIDEO

4. I am informed by [REDACTED], Manager of the Illegal and Restricted Content team at the Office of the Commissioner, that on 24 April 2024 from approximately 10:30am to 11am AEST, she undertook a review of the X app of each of the 65 URLs identified in the Notice using a VPN, to confirm whether the material identified in the Notice had been placed behind a notice in accordance with the orders made by Justice Kennett on 22 April 2024.
5. I am informed by [REDACTED] that to do so, she undertook the following steps:
 - a) She accessed the X app on an iPad.
 - b) She activated the Norton Secure VPN such that the IP address was made to appear as though it originated in the United States of America.
 - c) Using the list of URLs identified in the Notice, she accessed each URL individually, which opened up the location in the X app.
6. [REDACTED] identified that 64 of the URLs were still accessible in Australia using the Norton Secure VPN. Two URLs were no longer found to contain the material identified in the Notice. Material at one of the URLs has been removed with text appearing in a browser stating: 'Hmm...this page doesn't exist. Try searching for something else.' and text in the X app stating: "This post has been deleted."
7. I am informed by [REDACTED], an investigator in [REDACTED] team, that on 24 April 2024 from approximately 8:26am to 8:51am AEST he undertook a review on the X site on the internet of each of the 65 URLs identified in the Notice using a VPN, to confirm whether the material identified in the Notice had been placed behind a notice in accordance with the orders made by Justice Kennett on 22 April 2024.
8. I am informed by [REDACTED] that to do so, [REDACTED] undertook the following steps:
 - a) He accessed the X service on the Chrome web browser.



- b) He activated the NordVPN such that the IP address was made to appear as though it originated in the United States of America.
 - c) Using the list of URLs identified in the Notice, he accessed each URL individually, which opened up the location in X on the Chrome web browser.
9. I am further informed by [REDACTED] that [REDACTED] identified that 64 of the URLs were still accessible in Australia using the NordVPN. Two URLs were no longer found to contain the material identified in the Notice. Material at one of the URLs has been removed with text appearing in a browser stating: 'Hmm...this page doesn't exist. Try searching for something else.' and text in the X app stating: "This post has been deleted."

Affirmed by the deponent

at SYDNEY

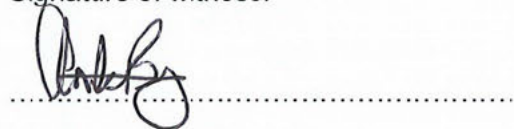
in the STATE OF NSW

on 24 APRIL 2024



Before me:

Signature of witness:



Name of witness:

AMBER BARNEY

Qualification of witness:

SOLICITOR WITHIN THE MEANING
OF S 551 OF THE JUDICIARY ACT

ANNEXURE MG-1

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NSW
DIVISION: GENERAL

NO NSD 474 OF 2024

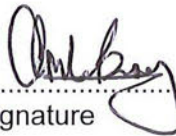
ESAFETY COMMISSIONER

Applicant

X CORP

Respondent

The following 7 pages is the annexure marked MG-1 referred to in the affidavit of Matthew Richard Garey made 24 April 2024 before me:


.....
Signature

.....
Qualification *SOLICITOR WITHIN THE MEANING*
OF S 551 OF THE
JUDICIARY ACT

From: [Associate Kennett J](#)
To: [Garey, Matthew](#); [Barney, Amber](#)
Cc: [Bisas, Jacqueline](#); [Silove, Jake](#); jquill@tglaw.com.au; [NSW Reg](#); [Associate Kennett J](#); nsd4742024@fedcourt.gov.au
Subject: RE: eSafety Commissioner v X Corp - urgent application [AGSDMS-DMS.FID5151389] [SEC=OFFICIAL:Sensitive]
Date: Monday, 22 April 2024 8:27:00 PM
Attachments: [20240422 - NSD474_2024 - Orders of Kennett J.pdf](#)

OFFICIAL:Sensitive

Dear practitioners

Please find **attached** a sealed copy of the orders made by Justice Kennett at this evening's interlocutory hearing.

Kind regards
Hannah

Hannah Webb (sender)
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8548
E associate.kennettj@fedcourt.gov.au

Andrew O'Beid
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8590
E associate.kennettj@fedcourt.gov.au

From: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>
Sent: Monday, April 22, 2024 5:17 PM
To: Garey, Matthew <Matthew.Garey@ags.gov.au>; Barney, Amber <Amber.Barney@ags.gov.au>
Cc: Bisas, Jacqueline <Jacqueline.Bisas@ags.gov.au>; Silove, Jake <Jake.Silove@ags.gov.au>; jquill@tglaw.com.au; [NSW Reg <nswreg@fedcourt.gov.au>](mailto:nswreg@fedcourt.gov.au); Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>
Subject: RE: eSafety Commissioner v X Corp - urgent application [AGSDMS-DMS.FID5151389] [SEC=OFFICIAL:Sensitive]

OFFICIAL:Sensitive

Dear practitioners

I advise that the matter number for this proceeding is NSD474/2024.

Kind regards
Hannah

Hannah Webb (sender)
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8548
E associate.kennettj@fedcourt.gov.au

Andrew O'Beid
Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8590
E associate.kennettj@fedcourt.gov.au

From: Garey, Matthew <Matthew.Garey@ags.gov.au>
Sent: Monday, April 22, 2024 5:10 PM
To: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>; Barney, Amber <Amber.Barney@ags.gov.au>
Cc: Bisas, Jacqueline <Jacqueline.Bisas@ags.gov.au>; Silove, Jake <Jake.Silove@ags.gov.au>; jquill@tglaw.com.au; NSW Reg <nswreg@fedcourt.gov.au>
Subject: RE: eSafety Commissioner v X Corp - urgent application [SEC=OFFICIAL:Sensitive] [AGSDMS-DMS.FID5151389]
Importance: High

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OFFICIAL: Sensitive

Dear Associate

Thank you. Confirming receipt for the Applicant.

Regards
Matthew

Matthew Garey
Senior Executive Lawyer
Australian Government Solicitor
T 02 958 17625 M 0448 702 960
matthew.garey@ags.gov.au

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

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From: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>
Sent: Monday, 22 April 2024 5:03 PM
To: Barney, Amber <Amber.Barney@ags.gov.au>
Cc: Garey, Matthew <Matthew.Garey@ags.gov.au>; Bisas, Jacqueline <Jacqueline.Bisas@ags.gov.au>; Silove, Jake <Jake.Silove@ags.gov.au>; jquill@tglaw.com.au; NSW Reg <nswreg@fedcourt.gov.au>; Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>
Subject: RE: eSafety Commissioner v X Corp - urgent application [AGSDMS-DMS.FID5151389] [SEC=OFFICIAL:Sensitive]

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Dear practitioners

Thank you for your email. I confirm we have successfully downloaded the materials provided through the filesharing link, and have received the interlocutory application for suppression orders. We are arranging for registry to accept the lodged documents and provide a matter number.

Justice Kennett can accommodate a hearing in person at 5.30 pm this evening in courtroom 19A. I provide below a Microsoft Teams link to facilitate any remote appearances necessary.

I would be grateful for confirmation of receipt of this email, and suitability of the listing time.

Microsoft Teams [Need help?](#)

[Join the meeting now](#)

Meeting ID: 414 035 539 303
Passcode: ivVf4E

Dial-in by phone

[+61 2 9161 1229.931420716#](#) Australia, Sydney
[Find a local number](#)

Phone conference ID: 931 420 716#

Join on a video conferencing device

Tenant key: federalcourts@m.webex.com
Video ID: 135 459 500 7

[More info](#)

For organizers: [Meeting options](#) | [Reset dial-in PIN](#)

Kind regards
Hannah

Hannah Webb (sender)

Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8548
E associate.kennettj@fedcourt.gov.au

Andrew O'Beid

Associate to the Hon. Justice Kennett
Federal Court of Australia | NSW
P 02 8099 8590
E associate.kennettj@fedcourt.gov.au

From: Barney, Amber <Amber.Barney@ags.gov.au>

Sent: Monday, April 22, 2024 4:49 PM

To: Associate Kennett J <Associate.KennettJ@fedcourt.gov.au>

Cc: Garey, Matthew <Matthew.Garey@ags.gov.au>; Bisas, Jacqueline <Jacqueline.Bisas@ags.gov.au>; Silove, Jake <Jake.Silove@ags.gov.au>; jquill@tglaw.com.au;

NSW Reg <nswreg@fedcourt.gov.au>

Subject: eSafety Commissioner v X Corp - urgent application [SEC=OFFICIAL:Sensitive] [AGSDMS-DMS.FID5151389]

Some people who received this message don't often get email from amber.barney@ags.gov.au. [Learn why this is important](#)

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Dear Associate

eSafety Commissioner v X Corp

We act for the eSafety Commissioner (the Applicant) in the above matter. We have lodged the following documents on the ePortal:

- Originating application, concise statement and supporting affidavit of Toby Allan Dagg dated 22 April 2024. We note that we will seek a suppression order in respect of Confidential Annexure TAD-2 to Mr Dagg's affidavit. We will file that application, together with a further affidavit, shortly.
- Submissions dated 22 April 2024
- A letter supporting the urgent application

We have also uploaded these documents, as well as Confidential Annexure TAD-2, to Sigbox: <https://ags-sb2.sig-box.com/index.php/s/CgORLvM2tcGdmA>. We will provide you with the password in a separate email.

At his request, we have copied in Justin Quill, who acts for X Corp in other proceedings in this Court and whom we have contacted in relation to this proceeding.

We respectfully request an urgent hearing before his Honour as soon as practicable.

Counsel appearing for the Applicant is Christopher Tran. Counsel for the Applicant will appear in person, but we would be grateful if the Court could facilitate a video link in the event that the Respondent wishes to appear remotely.

Yours sincerely

Amber Barney
Lawyer
Australian Government Solicitor
T 02 9581 7433 M 0428 739 189
amber.barney@ags.gov.au

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

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Federal Court of Australia
District Registry: New South Wales Registry
Division: General

No: NSD474/2024

ESAFETY COMMISSIONER
Applicant

X CORP.
Respondent

ORDER

JUDGE: Justice Kennett

DATE OF ORDER: 22 April 2024

WHERE MADE: Sydney

In these orders, a reference to **the Notice** refers to the removal notice given to the respondent under s 109 of the *Online Safety Act 2021* (Cth) on 16 April 2024.

THE COURT ORDERS THAT:

1. There be an interim injunction under s 122(1)(b) of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) requiring the respondent, as soon as reasonably practicable and no later than within 24 hours, to hide the material identified in the Notice behind a notice such that an X user can only see the notice, not the material identified in the Notice, and cannot remove the notice to reveal the material.
2. Order 1 has effect until 5 pm on Wednesday 24 April 2024 or earlier order.
3. Pursuant to s 37AI of the *Federal Court of Australia 1976* (Cth) (the Act) and on the grounds referred to in s 37AG(1)(a) and (b) of the Act, until the determination of the application for an ongoing suppression order under s 37AF, there be no disclosure, by publication or otherwise, of Confidential Annexure TAD-2 to the affidavit of Toby Allan Dagg, affirmed on 22 April 2024.
4. Order 3 does not prevent disclosures to and between the following authorised persons:
 - 4.1. Judges of this Court;
 - 4.2. necessary Court staff (including transcription service providers);
 - 4.3. the parties;
 - 4.4. legal representatives of the parties instructed in these proceedings;



- 4.5. witnesses or proposed witnesses in the proceedings;
 - 4.6. Commonwealth officers acting in the course of their duties; and
 - 4.7. judicial officers and necessary staff of any court hearing an appeal from any decision made in the course of this proceeding.
5. Order 3 does not prevent disclosure of the information referred to in that Order by a Commonwealth officer acting in the course of their duties.
 6. Order 3 operates throughout the Commonwealth of Australia.
 7. No person is to be allowed to access Confidential Annexure TAD-2 on the Court file until further order.

Date that entry is stamped: 22 April 2024

Sia Lagos
Registrar