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AFFIDAVIT

Name Guitang Lu

Address

Occupation

Date

I say on oath:

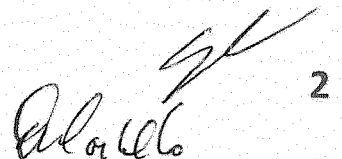
- 1 I am the plaintiff.
- 2 I swear this affidavit in support of my judicial review matter.

Materials before second defendant

- 3 Annexed and marked **A** is a true copy of my Notice of Appeal dated 21 March 2022 and some of its attachments.
- 4 Annexed and marked **B** is a true copy of the directions order that the second defendant made on 6 April 2022.
- 5 Annexed and marked **C** is a true copy of my amendment to the notice of appeal dated on 8 April 2022 and its attachment.
- 6 Annexed and marked **D** is a true copy of my submissions in reply dated 22 May 2022.
- 7 Referring to Ground 1 concerning procedural fairness in my amended summons (**AS[X]**), I recognise that the NCAT Appeal Panel had the materials in Annexures **A** to **D** before them by 21 July 2022 and they could reach their decision under review from among these materials.
- 8 Referring to Ground 2 concerning consideration, I recognise that the NCAT Appeal Panel did not consider the materials in Annexures **B** and **C**.

Missing submissions dated 29 April 2022

- 9 On 21 July 2022 I received the NCAT Appeal Panel's decision with written reasons (**AD**), in which the NCAT Appeal Panel did not identify my submissions dated 29 April 2022 and 176 pages of other materials filed together with it on 2 May 2022 (**AD[14]**). Annexed and marked **E** is a true copy of my submissions dated 29 April 2022 and some other materials filed together.


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- 10 After I commenced the proceeding at the Supreme Court on 19 October 2022, I received NCAT correspondence on 2 November 2022, which purported to insert a "submission and 169 pages of attachments dated 2 May 2022" into their initial decision record. With reference to **AS[7(h)]**, annexed and marked **F** is a true copy of NCAT correspondence dated 2 November 2022.
- 11 Referring to Ground 1 concerning procedural fairness, I recognise that the NCAT Appeal Panel could even reach their decision without my submissions dated 29 April 2022.
- 12 Referring to Ground 2 concerning consideration, I recognise that the NCAT Appeal Panel did not consider my submissions dated 29 April 2022 and supporting materials.

Sound recording and transcript

- 13 On 21 October 2022, I requested the sound recording from the second defendant when I served the summons. In early November 2022 I received the sound recording CD from the second defendant. Annexed and marked **G** is a true copy of the transcript (**TS[X]**) prepared by T Pty Ltd, which showed the recording from 2:15 pm to 2:55 pm, 26 May 2022.
- 14 With reference to **AS[7(e)-(f)]**, I rely on Annexure **G** to say that I substantially relied on my written submissions at the hearing of 26 May 2022.

Missing conversation from recording

- 15 With reference to **AS[7(e)]**, I further rely on a missing conversation which was not included in the sound recording.
- 16 I recognise that the sound recording is an abridged recording, for slightly above 39 minutes.
- 17 Annexed and marked **H** is a true copy of my phone bill showing my connection via my mobile number 0433251006 to the NCAT phone hearing number 97655580 for 44:10 minutes from 2:12:16 pm, 26 May 2022, thus ending at 2:56:26 pm.
- 18 I recall that at the hearing I had a short conversation about dates with Senior Member (SM) before **TS[p2-16]**. As far as I can call, the conversation occurred to the effect as follows:

Me: Senior Member, can I confirm the date of my submissions you received?




SM: We received your submission in reply of 23 May 2022.

Me: How about the other submission?

SM: We received your other submission of 8 April 2022.

Me: Sorry. 8 April 2022 is my amended notice of appeal. I have two submission folders. One is my main submission. The other is my submission in reply.

SM: What is the date of your submission?

Me: Let me check the date.... It is dated 29 April 2022, but I filed on 2 May 2022.

- 19 At the hearing I heard no objections from neither Senior Members nor M [redacted] [redacted] about the dates. Subsequently I was directed by Senior Member S [redacted] to start my oral submissions at **TS[p2-16]**.

Additional materials

- 20 With reference to **AS[8.i]**, I rely on additional materials to say that that the second defendant's decision making has aided or encouraged the first defendant's bullying or oppressive conduct:

- a. annexed and marked **I** is a true copy of the email that I received from M [redacted] [redacted] about his five-digit costs on 5 March 2022.
- b. annexed and marked **J** is a true copy of the email that I received from Mr. [redacted] about his costs on 21 July 2022.
- c. annexed and marked **K** is a true copy of my statement dated 8 September 2022, which was about the first defendant's costs action in July 2022, further costs action from September 2022 and associated circumstances.

[Handwritten signature]
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