

OAIC - Commissioner

From: FALK,Angelene
Sent: Friday, 3 February 2023 9:02 AM
To: HARDIMAN,Leo
Subject: RE: Executive update [SEC=OFFICIAL]

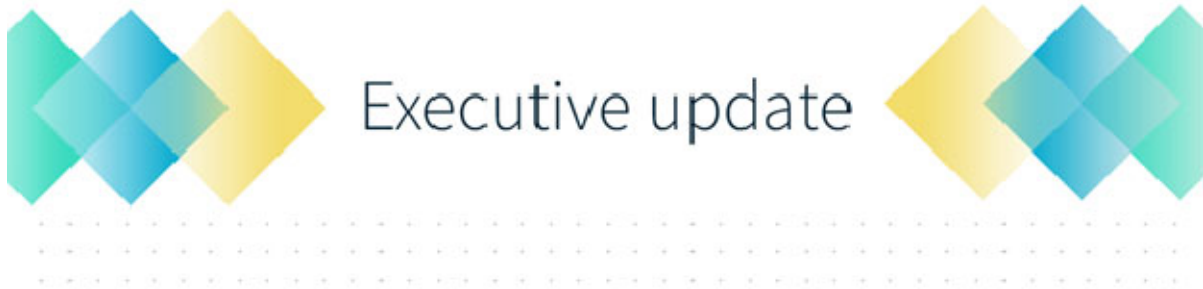
Categories: FOIREQ check

Thanks for the update Leo, lots happening as always.

I'm interested to know who the guest speaker is for your planning day?

Many thanks
Angelene

From: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Sent: Thursday, 2 February 2023 3:23 PM
To: OAIC - Office Aus Information Commissioner <ODL_50038001@oaic.gov.au>
Subject: Executive update [SEC=OFFICIAL]



Good afternoon colleagues,

s 22(1)

A large, solid black rectangular area that covers the majority of the lower half of the page, indicating that the content has been redacted.

FOI Branch restructure

The FOI Branch went live with its new structure yesterday, 1 February. The restructure is designed to facilitate an increased focus on case management in the Information Commissioner review space and an increase in finalisation of IC review matters. The Branch leadership team has done a huge amount of work to implement the changed structure, aided by a very high level of engagement from Branch members.

FOI Branch planning

The FOI Branch will be holding its annual planning forum next Monday and Tuesday, 6 and 7 February. The Branch is looking forward to hearing some external perspective from a guest speaker and to having some focussed time to identify further improvements it can make to its processes.

Kind regards,

Leo.



Leo Hardiman PSM KC | Freedom of Information Commissioner
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+61 2 9942 4200 | s 22(1) | leo.hardiman@oaic.gov.au



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OAIC - Commissioner

From: HARDIMAN,Leo
Sent: Friday, 3 February 2023 9:27 AM
To: HAMPTON,Elizabeth
Cc: FALK,Angelene
Subject: RE: FOI report [SEC=OFFICIAL]

Categories: FOIREQ check

Hi Libby,

I'll ask Rocelle to come back to you with some additional information shortly – she discussed it with me yesterday but was trying to get a thousand things done. In relation to the last point, it would be best, I think, if Angelene oversaw the wording of any response.

Kind regards,

Leo.

From: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>
Sent: Thursday, 2 February 2023 7:20 PM
To: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Subject: RE: FOI report [SEC=OFFICIAL]

Dear Leo

Just wondering whether you and Rocelle have had an opportunity to consider the response to the AGO below? It would be great to respond to the office tomorrow if possible. Please let me know if there is anything I can do to assist.

With thanks

Libby

 **Elizabeth Hampton** | Deputy Commissioner
 Office of the Australian Information Commissioner
 GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](https://www.oaic.gov.au)
 +61 2 9942 4137 | elizabeth.hampton@oaic.gov.au

From: HAMPTON,Elizabeth
Sent: Tuesday, 31 January 2023 12:12 PM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Subject: FW: FOI report [SEC=OFFICIAL]

Good afternoon Commissioners

As mentioned yesterday, the Attorney-General's office had further questions arising from the FOI report sent across last week. A copy of that report is attached.

I have drafted responses to the particular questions below, in blue. **s 22(1)** has confirmed those explanations are correct from BARD's perspective.

I'd like to validate the first point in particular with Rocelle, who knows the details of the system really well. In addition, I'd be grateful for some text regarding the last dot point.

As always, happy to discuss.

Regards

Libby



Elizabeth Hampton | Deputy Commissioner
Office of the Australian Information Commissioner
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](https://www.oaic.gov.au)
+61 2 9942 4137 | elizabeth.hampton@oaic.gov.au

From: [REDACTED] [@ag.gov.au](mailto:[REDACTED]@ag.gov.au)
Sent: Monday, 30 January 2023 10:56 AM
To: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>
Subject: RE: FOI report [SEC=OFFICIAL]

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OFFICIAL

Dear Libby

Thank you very much for this report.

Would be very grateful to receive regular quarterly reports.

Would it also be possible to receive an indication of how many IC reviews have been internally reviewed prior to coming to the OAIC compared with first instance and the open matters more than 12 months old and also those received in the relevant quarter?

The OAIC does not collect data regarding whether an internal review has occurred prior to the lodgement of an IC review. Section 54L of the Freedom of Information Act provides that an IC review can be lodged in relation to an access refusal decision (that is, an original decision that satisfies that definition) or an internal review of an access refusal decision. Similar provisions apply to access grant decisions (s 54M). Division 5 of Part VII of the FOI Act provides some discretion to the Commissioner not to undertake an IC review, however the Commissioner does not have the discretion to decline to undertake an IC review merely because the decision has not been internally reviewed. The OAIC encourages applicants to seek internal review prior to IC review (see FOI Guidelines, 9.3 – 9.5) on the basis that internal review can be quicker and enables the agency to take a fresh look at its decision.

It would also be useful to receive an indication of how many deemed IC reviews relate to matters at first instance or following an application for internal review.

Also, just to clarify:

- in terms of the 'manner of finalisation' table on the second page, I assume that these relate to all IC matters (ie including some that are older than 12 months) rather than just those received during since 19/11/22. That is, of the 270 matters finalised since 19/11/22, there were 7 decisions. Is this a correct understanding?

That is correct – there were 270 matters finalised between 19/11/22 and 19/1/23 (consisting both of matters received more than 12 months ago and less than 12 months ago) and 7 decisions.

- in terms of the deemed IC reviews, is it the case that since 19/11/22 there have been a total of 179 deemed IC reviews with 162 finalised and a total of 165 deemed IC reviews for Home Affairs with 139 finalised?

We received 96 deemed decisions for IC review between 19/11/22 and 19/1/23. Of those 96 new matters, 89 related to Home Affairs.

At the end of that period, we had 83 deemed IC reviews left to resolve.

We finalised 162 IC reviews of deemed decisions in the period. Of those finalised in the period, 139 related to Home Affairs.

- the third page appears to indicate that 20% of IC reviews received in 2019 are yet to be allocated and the intention is for there to be full allocation of 2019 matters by 31 March 2023. Is this a correct understanding? If so, grateful for further clarification as to why these matters have not already been allocated.

Grateful for text to include here

Many thanks

S 22(1)

OFFICIAL

From: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>

Sent: Friday, 27 January 2023 1:15 PM

To: S 22(1) <[S22\(1\)@ag.gov.au](mailto:S22(1)@ag.gov.au)>

Subject: FOI report [SEC=OFFICIAL]

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Dear S 22(1)

As previously discussed, attached is the first FOI report.

If it is convenient for you, we could move this report onto a regular quarterly reporting cycle, such that the next report would provide information about the quarter from January to March this year, the next from April to June etc.

Please let me know if you need further information or would like to discuss.

Regards

Libby



Elizabeth Hampton | Deputy Commissioner
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Report to Attorney-General regarding Information Commissioner review matters

Count of open matters on hand (as at date)	19/01/2023	1/04/2023	1/07/2023	1/10/2023	1/01/2024
Total IC reviews on hand	2015				

Count of open matters more than 12 months old (as at date)	19/01/2023	1/04/2023	1/07/2023	1/10/2023	1/01/2024
IC reviews received 2018	51				
IC reviews received 2019	240				
IC reviews received 2020	339				
IC reviews received 2021	468				
IC reviews received 2022	31				
Total IC reviews over 12 months	1129				

Count of IC reviews received and finalised	FYTD				
	19/11/22 - 19/01/23	20/1/23 - 31/3/23	1/4/23 - 30/6/23	1/7/23 - 30/9/23	1/10/23 - 31/12/23
IC reviews received	993	219			
IC reviews finalised (total)	834	270			
KPI (80% finalised within 12 months – as at last day in period)	87%	83%			

Date of report: 25 January 2023

Manner of finalisation	19/11/22 - 19/01/23	20/1/23 - 31/3/23	1/4/23 - 30/6/23	1/7/23 - 30/9/23	1/10/23 - 31/12/23
s54N - out of jurisdiction	47				
s54R - withdrawn	160				
s54W(a)(i) - frivolous, vexatious, misconceived, lacking in substance, not in good faith	11				
s54W(a)(ii) - failure to cooperate	20				
s54W(b) - refer AAT	25				
s55K decision	7				

Finalisation of matters by year of receipt	19/11/22 - 19/01/23	20/1/23 - 31/3/23	1/4/23 - 30/6/23	1/7/23 - 30/9/23	1/10/23 - 31/12/23
IC reviews received 2018	9				
IC reviews received 2019	9				
IC reviews received 2020	6				
IC reviews received 2021	23				
IC reviews received 2022	218				
IC reviews received 2023	5				

Deemed IC reviews	19/11/22 - 19/01/23	20/1/23 - 31/3/23	1/4/23 - 30/6/23	1/7/23 - 30/9/23	1/10/23 - 31/12/23
Count of deemed IC reviews received	96				
Count of deemed IC reviews on hand (as at last date in the period)	83				
Count of deemed IC reviews received re Home Affairs	89				
Count of deemed IC reviews on hand re Home Affairs (as at last date in the period)	76				
Count of deemed IC reviews finalised	162				
Count of deemed IC reviews finalised re Home Affairs	139				

Date of report: 25 January 2023

There were 48 IC reviews affected by the change of government in 2022. As at 19 January 2023:

- 25 had been withdrawn
- 9 were finalised under s 54W(a)
- 14 were ongoing IC reviews.

The OAIC continues to implement changes designed to increase the finalisation of IC review matters over 12 months old:

- The FOI Branch is currently being restructured to ensure, within existing resources, the most efficient and effective approach to the conduct of IC reviews. The restructure will take effect on 1 February 2023 and will put maximum available resources towards the case management of IC review applications, to facilitate increased allocation and progression of aged IC review matters. The restructure has required significant preparatory work which has been undertaken over the last quarter.
- We have maintained a focus on (1) finalising all outstanding 2018 IC reviews by 30 June 2023 and (2) ensuring that all outstanding 2019 IC reviews are allocated and managed with the aim of them being either finalised or ready to proceed to a decision by 30 June 2023. In relation to the existing cohort of 2018 and 2019 IC review applications:
 - All outstanding IC reviews received in 2018 (51) have been allocated and are on track to be finalised by 30 June 2023.
 - Over 80% of IC reviews received in 2019 (193/240) have been allocated for case management, with the remaining 20% to be allocated over the period up to 31 March 2023.
- We continue to identify priority cohorts of aged matters (for example, matters relating to searches, charges and practical refusals) where a precedent decision can be made and other matters within the cohort can be finalised either without proceeding to a s 55K decision or, alternatively, by way of a standardised decision made by a delegate constituted under the power of delegation recently included in the Australian Information Commissioner Act 2010. We have progressed a project for a cohort of decisions relating to charges. We are now progressing a project for a cohort of practical refusal decisions.
- We have progressed finalisation of a cohort of IC review matters relating to the change of government.
- We have engaged an external legal services provider to assist with the preparation of notices on completion of complaint investigations, with a view to freeing up some resource for IC review work over time.
- We are putting forward a proposal to the Department to run at an operating loss for a taskforce to address legacy case load.
- We are reviewing our IC review decision template with a view to simplifying IC review decisions.

Date of report: 25 January 2023

Attachment: Historical information

Count of IC reviews received and finalised	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
IC reviews received	176	456	507	524	373	510	632	802	928	1067	1226	1956
IC reviews finalised (total)	29	253	419	646	482	454	515	610	659	829	1017	1379

Note: The government decided to disband the OAIC in Budget 2014-15, with an associated reduction in OAIC's resources

OAIC - Commissioner

From: FALK,Angelene
Sent: Friday, 3 February 2023 12:50 PM
To: AGO,Rocelle; HARDIMAN,Leo; s 22(1)
Subject: FW: [for approval] Updated FOI instruments of delegation [SEC=OFFICIAL]
Attachments: Updated Delegation instrument FOI - February 2023.pdf

Categories: FOIREQ check

Colleagues attached is the updated delegation instrument for FOI.

Leo as discussed s 22(1) is able to develop business rules on instruction as required.

s 22(1) can you please arrange for the instrument to be published.

Thank you

Angelene

From: OAIC - Executive Assistant <executiveassistant@oaic.gov.au>
Sent: Friday, 3 February 2023 12:21 PM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Cc: s 22(1) @oaic.gov.au
Subject: RE: [for approval] Updated FOI instruments of delegation [SEC=OFFICIAL]

Commissioner,

See attached [D2022/027820 - Updated Delegation instrument FOI - February 2023](#)

Regards, s 22(1)

From: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Sent: Friday, 3 February 2023 11:30 AM
To: s 22(1) @oaic.gov.au; OAIC - Commissioner <commissioner@oaic.gov.au>; OAIC - Executive Assistant <executiveassistant@oaic.gov.au>
Subject: RE: [for approval] Updated FOI instruments of delegation [SEC=OFFICIAL]

Thank you s 22(1)

s 22(1) please apply my signature and pdf to me this morning: Draft updated FOI instrument of delegation – clean copy: [D2022/027820](#)

Regards
 Angelene

From: s 22(1) @oaic.gov.au
Sent: Friday, 3 February 2023 11:23 AM
To: OAIC - Commissioner <commissioner@oaic.gov.au>
Cc: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Subject: [for approval] Updated FOI instruments of delegation [SEC=OFFICIAL]

Dear Commissioner

Please find an updated FOI instrument of delegation in Content Manager for your approval and signature in the snapshot below.

The table below documents agreed changes to the FOI instrument.

New or amended provision/ update to delegation instruments	Comment on amendment	Proposed delegation with reasons	Reflected in updated instrument
AIC Act s 25(e), (g), (h) repealed New subs (2) inserted to allow Commissioner to delegate functions to SES or acting SES employees	Allows for delegation of powers under ss 55K, s 73 and s 86 of FOI Act	SESB1 – AC FOI	Yes – FOI instrument updated

If business rules are considered to be necessary in relation to the exercise of the decision-making power under s 55K, I am available to receive instructions and draft these rules.

Due date	N/A
Fixed or flexible	Flexible
Reason for due date	N/A
Topic for clearance	Updated FOI instrument of delegation
Product (e.g. brief / submission)	Draft updated FOI instrument of delegation – clean copy: D2022/027820
Length / no. of pages	Product for clearance – 8 pages
External party?	No
Clearance	Elizabeth Hampton, Deputy Commissioner Annamie Hale, Assistant Commissioner, Corporate
Responsible director	S 22(1) Director Legal
Prepared by	S 22(1) , Director Legal
Final approval	Angelene Falk Australian Information Commissioner and Privacy Commissioner
Background materials	<i>Privacy Legislation Amendment (Enforcement and Other Measures) Act 2022</i> with Deputy Commissioner and Legal comments: D2022/027812 Draft updated FOI instrument of delegation – marked up copy: D2022/027813 <i>Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022 (Cth)</i> - key provisions and resources – document originally provided by R&S. Updated by Legal to identify provisions that have retrospective operation: D2022/027818

Please don't hesitate to contact me if you have any questions or require assistance.

Kind regards

S 22(1)



s 22(1) | Director, Legal
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GPO Box 5288 Sydney NSW 2001 | oaic.gov.au
s 22(1) [@oaic.gov.au](mailto:s22(1)@oaic.gov.au)

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OAIC - Commissioner

From: FALK,Angelene
Sent: Monday, 6 February 2023 9:11 AM
To: HARDIMAN,Leo
Subject: RE: DHA investigations outcomes [SEC=OFFICIAL]

Categories: FOIREQ check

Thankyou Leo

From: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Sent: Monday, 6 February 2023 8:49 AM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Subject: DHA investigations outcomes [SEC=OFFICIAL]

Good morning Angelene,

I think the attached word document contains the investigations outcomes comparison table.

Leo.

Meeting brief

Meeting details

Day and Date	Tuesday, 20 December 2022
Time	13:30 pm
Location	Location (e.g. 4 National Circuit, Barton)
Contact person	Contact person
Contact number	Phone number

Attendees

Name	Position
Leo Hardiman PSM KC	Freedom of Information Commissioner
Pip de Veau	General Counsel Group Manager, Legal Group Department of Home Affairs

Key points

- **IC reviews**
 - IC reviews on hand: 555 (2018: 15, 2019: 57, 2020: 58, 2021:104, 2022: 321)
 - We will be writing to agencies with a view to encouraging agencies to review their 2018 and 2019 IC review matters on hand and to advise the OAIC as to whether the agency wishes to maintain the access refusal reasons claimed or whether they would be willing to make a revised decision.
 - IC reviews – deemed access refusals (undergoing early intervention process (preliminary inquiries, s 54Z letter, confirming whether applicant wishes to proceed): 176

s 22(1)

OAIC - Commissioner

From: HARDIMAN,Leo
Sent: Monday, 6 February 2023 4:30 PM
To: FALK,Angelene; HAMPTON,Elizabeth; AGO,Rocelle
Subject: RE: FOI report [SEC=OFFICIAL]

Categories: FOIREQ check

Thanks Angelene. No comments on the green text from me. On Libby's query, we should retain the numbers for the period rather than include current numbers.

Cheers,

Leo.

From: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Sent: Monday, 6 February 2023 4:19 PM
To: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>; HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>; AGO,Rocelle <Rocelle.Ago@oaic.gov.au>
Subject: RE: FOI report [SEC=OFFICIAL]

Thanks colleagues,

Rocelle and Leo can you please review the text in green below and advise your view on the question from Libby in yellow highlight.

Much appreciated

Angelene

From: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Sent: Monday, 6 February 2023 9:50 AM
To: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>; AGO,Rocelle <Rocelle.Ago@oaic.gov.au>; FALK,Angelene <Angelene.Falk@oaic.gov.au>
Subject: RE: FOI report [SEC=OFFICIAL]

Thanks Libby,

Answers 1 to 3 are fine with me. I think Angelene wanted to clear the last answer.

Kind regards,

Leo.

From: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>
Sent: Monday, 6 February 2023 9:43 AM
To: AGO,Rocelle <Rocelle.Ago@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>; FALK,Angelene <Angelene.Falk@oaic.gov.au>
Subject: RE: FOI report [SEC=OFFICIAL]

Thanks very much Rocelle

Commissioners – in light of Rocelle’s comments below, I proposed to send the following response to the Attorney-General’s office. I would be grateful for your clearance.

Regards

Libby

START

Dear **s 22(1)**

I have responded to your questions in blue below. Please let me know if further information is required.

Regards

Libby

Dear Libby

Thank you very much for this report.

Would be very grateful to receive regular quarterly reports.

Would it also be possible to receive an indication of how many IC reviews have been internally reviewed prior to coming to the OAIC compared with first instance and the open matters more than 12 months old and also those received in the relevant quarter?

Section 54L of the Freedom of Information Act provides that an IC review can be lodged in relation to an access refusal decision (that is, an original decision that satisfies that definition) or an internal review of an access refusal decision. Similar provisions apply to access grant decisions (s 54M). Division 5 of Part VII of the FOI Act provides some discretion to the Commissioner not to undertake an IC review, however the Commissioner does not have the discretion to decline to undertake an IC review merely because the decision has not been internally reviewed. The OAIC encourages applicants to seek internal review prior to IC review (see FOI Guidelines, 9.3 – 9.5) on the basis that internal review can be quicker and enables the agency to take a fresh look at its decision.

Of the 2032 IC reviews currently on hand, 589 (29%) are for IC review of internal review decisions and 21 (1%) are for IC review of deemed internal review decisions. This means that in 70% of the IC reviews on hand the applicants have not sought internal review.

It would also be useful to receive an indication of how many deemed IC reviews relate to matters at first instance or following an application for internal review.

Also, just to clarify:

- in terms of the ‘manner of finalisation’ table on the second page, I assume that these relate to all IC matters (ie including some that are older than 12 months) rather than just those received during since 19/11/22. That is, of the 270 matters finalised since 19/11/22, there were 7 decisions. Is this a correct understanding?

That is correct – there were 270 matters finalised between 19/11/22 and 19/1/23 (consisting both of matters received more than 12 months ago and less than 12 months ago) and 7 decisions.

- in terms of the deemed IC reviews, is it the case that since 19/11/22 there have been a total of 179 deemed IC reviews with 162 finalised and a total of 165 deemed IC reviews for Home Affairs with 139 finalised?

We received 96 deemed decisions for IC review between 19/11/22 and 19/1/23. Of those 96 new matters, 89 related to Home Affairs.

At the end of that period, we had 83 deemed IC reviews left to resolve.

We finalised 162 IC reviews of deemed decisions in the period. Of those finalised in the period, 139 related to Home Affairs.

(Commissioners and Rocelle: Rocelle has advised that we currently (as at 3 February) have 173 matters on hand, of which 117 matters relate to the Department of Home Affairs. If the text above is accurate, I wonder whether we should retain that text rather than provide additional data outside the reporting period? We will be required to produce another report as at 31 March which will pick up our February deemed workload.)

- the third page appears to indicate that 20% of IC reviews received in 2019 are yet to be allocated and the intention is for there to be full allocation of 2019 matters by 31 March 2023. Is this a correct understanding? If so, grateful for further clarification as to why these matters have not already been allocated.

The following factors have impacted on the allocation of IC reviews:

- the significant year on year increases in applications for IC review, without commensurate resources
- the need to focus on other FOI regulatory priorities within the resources allocated to FOI, including a focus on early resolution of incoming applications, an increase of extension of time applications during the start of the pandemic—pandemic related increases to extension of time applications, resolving older complaints to improve agency practice and progressing cohorts of IC review applications including through precedential decisions for administrative efficiency.
- significant staff attrition within the FOI Branch and the need to continually recruit and train new staff and reallocate cases
- the impact of the pandemic on an agency's ability to respond to requests for submissions.

Many thanks

s 22(1)

END



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From: AGO,Rocelle <Rocelle.Ago@oaic.gov.au>

Sent: Friday, 3 February 2023 6:07 PM

To: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>; FALK,Angelene <Angelene.Falk@oaic.gov.au>; HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>

Subject: RE: FOI report [SEC=OFFICIAL]

Good afternoon

Regarding the proposed answer to the first question

- We do collect that data (we track whether it is the initial decision, deemed initial, internal or deemed internal review, we just don't report on it specifically).
- On a preliminary count - of the 2032 matters we have on hand, 589 (29%) applications are for review of internal review decisions and 21 applications are review of deemed internal review decisions (1%). This essentially means that in 70% of IC reviews on hand, the applicants have not sought internal review.
- If we need more granular reporting, for example, number received during a particular time period, I will BARD's assistance.

Regarding the proposed answer to the third question – we currently have 173 matters undergoing the deemed access refusal process, with 117 matters with Home Affairs as the Respondent.

Regarding the fourth question – I had a preliminary discussion with Angelene on Wednesday regarding the factors that have impacted on the timely finalisation of aged/legacy reviews:

- The significant year on year increases in applications for IC review, without commensurate resources
- The need to focus on other FOI regulatory priorities within the resources allocated to FOI, including an increase of extension of time applications during the start of the pandemic
- Significant staff attrition within the FOI Branch and the need to continually recruit and train new staff and reallocate cases
- The impact of the pandemic on an agency's ability to respond to requests for submissions.

Kind regards



Rocelle Ago | Assistant Commissioner
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From: HAMPTON,Elizabeth

Sent: Tuesday, 31 January 2023 12:12 PM

To: FALK,Angelene <Angelene.Falk@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>

Subject: FW: FOI report [SEC=OFFICIAL]

Good afternoon Commissioners

As mentioned yesterday, the Attorney-General's office had further questions arising from the FOI report sent across last week. A copy of that report is attached.

I have drafted responses to the particular questions below, in blue. s 22(1) has confirmed those explanations are correct from BARD's perspective.

I'd like to validate the first point in particular with Rocelle, who knows the details of the system really well. In addition, I'd be grateful for some text regarding the last dot point.

As always, happy to discuss.

Regards

Libby



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Office of the Australian Information Commissioner
GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](https://www.oaic.gov.au)
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From: S 22(1) [redacted]@ag.gov.au>
 Sent: Monday, 30 January 2023 10:56 AM
 To: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>
 Subject: RE: FOI report [SEC=OFFICIAL]

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OFFICIAL

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Would be very grateful to receive regular quarterly reports.

Would it also be possible to receive an indication of how many IC reviews have been internally reviewed prior to coming to the OAIC compared with first instance and the open matters more than 12 months old and also those received in the relevant quarter?

The OAIC does not collect data regarding whether an internal review has occurred prior to the lodgement of an IC review. Section 54L of the Freedom of Information Act provides that an IC review can be lodged in relation to an access refusal decision (that is, an original decision that satisfies that definition) or an internal review of an access refusal decision. Similar provisions apply to access grant decisions (s 54M). Division 5 of Part VII of the FOI Act provides some discretion to the Commissioner not to undertake an IC review, however the Commissioner does not have the discretion to decline to undertake an IC review merely because the decision has not been internally reviewed. The OAIC encourages applicants to seek internal review prior to IC review (see FOI Guidelines, 9.3 – 9.5) on the basis that internal review can be quicker and enables the agency to take a fresh look at its decision.

It would also be useful to receive an indication of how many deemed IC reviews relate to matters at first instance or following an application for internal review.

Also, just to clarify:

- in terms of the 'manner of finalisation' table on the second page, I assume that these relate to all IC matters (ie including some that are older than 12 months) rather than just those received during since 19/11/22. That is, of the 270 matters finalised since 19/11/22, there were 7 decisions. Is this a correct understanding?

That is correct – there were 270 matters finalised between 19/11/22 and 19/1/23 (consisting both of matters received more than 12 months ago and less than 12 months ago) and 7 decisions.

- in terms of the deemed IC reviews, is it the case that since 19/11/22 there have been a total of 179 deemed IC reviews with 162 finalised and a total of 165 deemed IC reviews for Home Affairs with 139 finalised?

We received 96 deemed decisions for IC review between 19/11/22 and 19/1/23. Of those 96 new matters, 89 related to Home Affairs.

At the end of that period, we had 83 deemed IC reviews left to resolve.

We finalised 162 IC reviews of deemed decisions in the period. Of those finalised in the period, 139 related to Home Affairs.

- the third page appears to indicate that 20% of IC reviews received in 2019 are yet to be allocated and the intention is for there to be full allocation of 2019 matters by 31 March 2023. Is this a correct

understanding? If so, grateful for further clarification as to why these matters have not already been allocated.

Grateful for text to include here

Many thanks

S 22(1)

OFFICIAL

From: HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>

Sent: Friday, 27 January 2023 1:15 PM

To: S 22(1) <[S22\(1\)@ag.gov.au](mailto:S22(1)@ag.gov.au)>

Subject: FOI report [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.

Dear S 22(1)

As previously discussed, attached is the first FOI report.

If it is convenient for you, we could move this report onto a regular quarterly reporting cycle, such that the next report would provide information about the quarter from January to March this year, the next from April to June etc.

Please let me know if you need further information or would like to discuss.

Regards

Libby



Elizabeth Hampton | Deputy Commissioner
Office of the Australian Information Commissioner
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OAIC - Commissioner

From: FALK,Angelene
Sent: Monday, 13 February 2023 12:40 PM
To: HARDIMAN,Leo; HAMPTON,Elizabeth; AGO,Rocelle
Cc: s 22(1)
Subject: For tabling - OAIC Senate Estimates opening statement February 13 2023 Draft
Attachments: For tabling - OAIC Senate Estimates opening statement February 13 2023 Draft.DOCX
Categories: FOIREQ check

For consideration and comment

OAIC Senate Estimates opening statement – February 2023

**From: Australian Information Commissioner and Privacy Commissioner
Angelene Falk**

Thank you for the opportunity to provide a brief opening statement. This evening I am joined by FOI Commissioner Leo Hardiman PSM KC.

I will provide just a short update on some relevant matters covering both privacy and information access.

The OAIC's investigations into the personal information handling practices of Optus following their data breach is continuing as a high priority for the office. As a result of additional budget funding, we have built a Major Investigations unit that has the appropriate expertise and resources.

Since our appearance in November last year I have also commenced investigations into Medibank and Australian Clinical Labs following their data breaches of Australian's personal information.

We are also well progressed with our investigations into the personal information handling practices of Bunnings Group Limited and Kmart Australia Limited, focusing on the companies' use of facial recognition technology.

This promises to be a major year for privacy in Australia.

We welcomed the Privacy Legislation Amendment (Enforcement and Other Measures) Act 2022 in December, which enhances the OAIC's ability to regulate in line with community expectations and protect Australians' privacy in the digital environment.

The Act has introduced significantly increased penalties for serious and or repeated privacy breaches and greater powers for the OAIC in resolving breaches.

We look forward to the much-needed overhaul of the *Privacy Act 1988* progressing this year.

We will continue to co-regulate the Consumer Data Right with the ACCC, ensuring participants uphold the system's fundamental privacy safeguards and that consumer information is protected as it is expanded across the economy.

On FOI

We aim to provide a fair, efficient and effective FOI review process. While we finalise many incoming applications through our triage and early resolution process, the significant year on year increases in applications for IC review is an ongoing challenge for the OAIC. However, the significant year on year increases in applications for review is an ongoing challenge for the OAIC.

While in 2015-16 the OAIC was receiving around 500 review applications and finalising around 450, in 2021-22 we received 1956 and finalised 1379. Despite our increased finalisation rates, the number of applications on hand that are over 12 months has grown.

We are implementing further initiatives to improve the Information Commissioner merit review processes within our resources, and to address the aged case load. This includes a further restructure of our FOI Branch overseen by FOI Commissioner Hardiman, streamlining processes and focusing resources to address the legacy case load.

We are also consulting on revised guidelines for the Information Publication Scheme, to support agencies to make information that is of interest to the community proactively available without requiring an FOI application.

Thank you

OAIC - Commissioner

From: HARDIMAN,Leo
Sent: Monday, 20 February 2023 9:24 AM
To: FALK,Angelene
Subject: RE: DUE: IAGB Legal report - reporting content [SEC=OFFICIAL]

Categories: FOIREQ check

Angelene,

As I note below, the leadership of your staff is a matter for you. I do not see any issue for me to try and 'work through' with you.

There is no need for an acknowledgement of 'receipt' of this email.

Cheers,

Leo.

From: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Sent: Friday, 17 February 2023 5:50 PM
To: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Subject: RE: DUE: IAGB Legal report - reporting content [SEC=OFFICIAL]

Leo I acknowledge receipt of your email, I'll come back to you next week to work through the responsiveness issue you've raised.

Regards
 Angelene

From: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Sent: Thursday, 16 February 2023 2:23 PM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Subject: FW: DUE: IAGB Legal report - reporting content [SEC=OFFICIAL]

Angelene,

While I don't find the attribution to me of 'evident frustration' useful it is, in any case, a misinterpretation. So let me put my views more directly in the hope of clarifying any misunderstanding:

- The IAGB process as designed is not in my view an efficient use of resources. It needs to be simplified having regard to what is practically required to provide you, as agency head and accountable authority, sufficient assurance that the organisation for which you are responsible is complying with its FOI obligations.
- Corporate needs to fully engage with the redesign of that process and its ongoing management.
 - The IAGB function is inherently a corporate function.
 - Given the state of the FOI regulatory function and the resources allocated to it, there is simply no capacity for FOI Branch resources to be distracted by management of a corporate compliance function. That is obvious, and must have been so for a very long time.
 - I do not have any control over the corporate functions of the OAIC. Nor am I an employee working for you. It is not appropriate that the FOI Commissioner's time be spent dealing with management of a corporate compliance assurance activity. It is perhaps appropriate that the FOI Commissioner be engaged in consideration of the outcomes of that activity through Exec's consideration of IAGB

outcomes. I am happy to be engaged in that way should you find it helpful in managing your assurance process.

Whatever the original intention, I appreciate your understanding, now expressed, that the activity is appropriately dealt with separately from the FOI function.

Would I find it helpful if a number of your employees were more responsive to me in my role as FOI Commissioner? Indeed, I would. That is, of course, a matter of leadership for you as agency head.

Regards,

Leo.

From: FALK,Angelene <Angelene.Falk@oaic.gov.au>

Sent: Wednesday, 15 February 2023 7:53 PM

To: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>

Subject: RE: DUE: IAGB Legal report - reporting content [SEC=OFFICIAL]

Leo I agree this can move from you and the FOI Branch.

Your engagement was I think a well intended proposal to provide you with cross office engagement on an area of expertise as you joined the OAIC.

But I appreciate the matters you have raised and will have a change actioned.

There are other requirements relating to information governance that may usefully be included in the IAGB, and so the shift makes sense on a number of fronts.

I'm sorry its caused evident frustration.

Regards

Angelene

From: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>

Sent: Wednesday, 15 February 2023 7:04 PM

To: FALK,Angelene <Angelene.Falk@oaic.gov.au>

Subject: FW: DUE: IAGB Legal report - reporting content [SEC=OFFICIAL]

Angelene,

I haven't received any response to my email immediately below (which is par for the course). I think perhaps Annamie should discuss with you what it is that, by way of a single and relatively simple report, the IAGB should consider and subsequently provide to Exec re assurance of compliance with organisational FOI obligations. I had been very clear with Legal that what I wanted to settle was a template report which would serve both the IAGB's purposes and Exec's purposes, preferably with a lot less distraction of resources than the IAGB as organised to date has required. After months and months, this is what results.

More broadly, while the concept of the IAGB may have been put forward by Rocelle, I am not sure why my time as Commissioner, or time of the FOI Branch, is being taken up with this. The FOI Branch could perhaps usefully contribute technical input to the IAGB process where, on occasion, that is needed. In my view, it is clear that the function is otherwise a corporate function. It should not be yet another thing distracting the very limited resources of the FOI Branch from the enormous core statutory function task before it. To the extent I have input to the compliance oversight, it should be through Exec.

Regards,

Leo.

s 22(1)



OAIC - Commissioner

From: FALK,Angelene
Sent: Wednesday, 22 February 2023 7:57 AM
To: HARDIMAN,Leo; OAIC - Executive Assistant
Cc: s 22(1) AGO,Rocelle
Subject: Re: Secretary AGD / OAIC - 1/23 [SEC=OFFICIAL]

Categories: FOIREQ check, Preparation

Thanks Leo

I can't get onto the system so sending this from my phone. I would appreciate seeing the list prior if you or Rocelle can please forward. As you say indicating they will be provided to s 22(1) may be more appropriate.

s 22(1) please provide the areas of discussion to s 22(1) as follows

FOI resources and personnel
 AAT and fees
 Law reform: minor amendments to the FOI Act
 Commonwealth FOI culture and leadership

Thank you
 Angelene

From: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Sent: Tuesday, February 21, 2023 6:38 pm
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>; OAIC - Executive Assistant <executiveassistant@oaic.gov.au>
Cc: s 22(1) @oaic.gov.au; AGO,Rocelle <Rocelle.Ago@oaic.gov.au>
Subject: RE: Secretary AGD / OAIC - 1/23 [SEC=OFFICIAL]

Angelene,

I have the technical amendments details, and can bring them along or can indicate we'll provide them to Celeste, which might be more appropriate as there's not much for s 22(1) to engage with there.

I'd like to say something about Commonwealth culture and leadership in the FOI context.

Leo.

From: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Sent: Tuesday, 21 February 2023 4:59 PM
To: OAIC - Executive Assistant <executiveassistant@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Cc: s 22(1) @oaic.gov.au
Subject: RE: Secretary AGD / OAIC - 1/23 [SEC=OFFICIAL]

Leo based on our previous discussion regarding this meeting I was proposing the following areas:

- FOI resources and personnel
- AAT referrals and fees
- Law reform: minor amendments to the FOI Act

Rocelle indicated there were some minor amendments that could be considered and that she would send through some points which I haven't yet received. It may be that we can raise at a high level that we are interested in whether there may be a legislative vehicle if there are minor amendments identified for efficiency purposes.

If you have any suggestions or additions please let me know. I'd like s 22(1) to be able to send a response across asap.

Regards
Angelene

From: OAIC - Executive Assistant <executiveassistant@oaic.gov.au>
Sent: Tuesday, 21 February 2023 2:53 PM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Cc: s 22(1) <[s22\(1\)@oaic.gov.au](mailto:s22(1)@oaic.gov.au)>
Subject: Secretary AGD / OAIC - 1/23 [SEC=OFFICIAL]

Afternoon Commissioners,

Confirmed with s 22(1) (EA), in preparation for the above meeting on Thursday @ 3.30pm, the Secretary welcomes any areas of discussion to be forwarded beforehand.

Regards,
s22(1)



s 22(1) | Executive Assistant to Angelene Falk
 Australian Information Commissioner and Privacy Commissioner
 Office of the Australian Information Commissioner
 GPO Box 5288 Sydney NSW 2001 | oaic.gov.au
 s22(1) | executiveassistant@oaic.gov.au

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OAIC - Commissioner

From: HARDIMAN,Leo
Sent: Wednesday, 22 February 2023 9:19 AM
To: FALK,Angelene
Cc: AGO,Rocelle
Subject: FW: Potential legislative amendments [SEC=OFFICIAL]

Categories: FOIREQ check

Angelene,

These are the technical amendments. They are all minor. I think item 3 is meant to refer to a 'valid IC review application', and I think for item 4 the current IGIS is a 'he' but we could neutralise it by referring to they/them.

Rocelle – would you mind resending to both Angelene and me with those two very minor changes if you agree?
Thanks.

Leo.

From: AGO,Rocelle <Rocelle.Ago@oaic.gov.au>
Sent: Monday, 20 February 2023 12:45 PM
To: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Subject: Potential legislative amendments [SEC=OFFICIAL]

Hi Leo

As discussed, following the Executive Committee meeting, I had undertaken to provide a list of legislative amendments that may improve IC review procedures/processes.

Please see the proposed amendments to the *Freedom of Information Act 1982* below:

FOI Act Amendments			
Item	Issue	Context	Provision
1.	Making an IC review application	To assist in the more efficient triage and early resolution of matters, we encourage applicants to lodge their applications through an online form which is integrated into the OAIC's case management database. We request an amendment that would encourage the use of the online form. This could be achieved through amending s 54N(4)(c) by removing 'to an electronic address'.	Section 54N se for making particular, s method in v application OAIC: (a) delivery to Commission Information in a current (b) postage by address me (c) sending by to an electr the Informa
2.	Resolution of IC review by agreement (Part VII Review by	The Hawke Review recommended that:	Part VII

FOI Act Amendments			
	Information Commissioner)	<p><i>Recommendation 5 – Resolution of Applications by Agreement</i></p> <p><i>The Review recommends the FOI Act be amended to make it clear that an agreed outcome finalises an Information Commissioner review and, in these circumstances, a written decision of the Information Commissioner is not required.</i></p> <p>This amendment would assist in more efficient finalisation of IC reviews and provide greater clarity regarding the finalisation of an FOI request/process.</p>	
3.	Concurrent internal and external review (Part VII Review by Information Commissioner – Division 3)	<p>Applicants on occasion have applied for both internal and external review after receiving the primary FOI decision. This results in confusion, double handling, and inefficiencies in undertaking both internal and IC reviews.</p> <p>We request an amendment that streamlines the review process and makes it clear that while an applicant has the choice of seeking internal review or IC review, the applicant cannot seek IC review where an internal review process is on hand.</p>	Part VII – Div 3
4.	Evidence of Inspector-General of Intelligence and Security for s 33 exempt documents – (Part VII Review by Information Commissioner)	<p>Section 33 provides an exemption to disclosure under FOI for documents affecting national security, defence or international relations.</p> <p>Division 9 of Part VII sets out a process by which the Inspector-General of Intelligence and Security (IGIS) must give evidence in relation to a document over which the exemption is claimed.</p> <p>Section 33(1)(c) is the most commonly applied subsection of s 33. However, it has been the experience of the OAIC that the IGIS will advise, under s 55ZAC, that she is not appropriately qualified to give evidence on such matters.</p>	ss 33, 55ZA, 55

On the issue of matters finalised under s 54W(b), it may also be worth suggesting removal of the application fee for applicants whose IC review application for IC review has been declined under s 54W(b).

Kind regards



Rocelle Ago | Assistant Commissioner
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+612 9942 4205 | rocelle.ago@oaic.gov.au

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OAIC - Commissioner

From: FALK,Angelene
Sent: Wednesday, 22 February 2023 3:27 PM
To: AGO,Rocelle; HARDIMAN,Leo
Subject: RE: Potential legislative amendments [SEC=OFFICIAL]

Categories: FOIREQ check

Thank you Leo and Rocelle

From: AGO,Rocelle <Rocelle.Ago@oaic.gov.au>
Sent: Wednesday, 22 February 2023 9:22 AM
To: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>; FALK,Angelene <Angelene.Falk@oaic.gov.au>
Subject: RE: Potential legislative amendments [SEC=OFFICIAL]

Good morning

Please see updated table below:

FOI Act Amendments			
Item	Issue	Context	Provision
1.	Making an IC review application	To assist in the more efficient triage and early resolution of matters, we encourage applicants to lodge their applications through an online form which is integrated into the OAIC's case management database. We request an amendment that would encourage the use of the online form. This could be achieved through amending s 54N(4)(c) by removing 'to an electronic address'.	Section 54N sets out the methods for making an application, in particular, s 54N(4)(c) sets out the method in which an application may be made to the OAIC: (a) delivery to the Information Commissioner (b) postage by electronic address (c) sending by electronic address to an electronic address of the Information Commissioner
2.	Resolution of IC review by agreement (Part VII Review by Information Commissioner)	The Hawke Review recommended that: <i>Recommendation 5 – Resolution of Applications by Agreement</i> <i>The Review recommends the FOI Act be amended to make it clear that an agreed outcome finalises an Information Commissioner review and, in these circumstances, a written decision of the Information Commissioner is not required.</i> This amendment would assist in more efficient finalisation of IC reviews and provide greater	Part VII

FOI Act Amendments			
		clarity regarding the finalisation of an FOI request/process.	
3.	Concurrent internal and external review (Part VII Review by Information Commissioner – Division 3)	<p>Applicants on occasion have applied for both internal and external review after receiving the primary FOI decision. This results in confusion, double handling, and inefficiencies in undertaking both internal and IC reviews.</p> <p>We request an amendment that streamlines the review process and makes it clear that while an applicant has the choice of seeking internal review or IC review, the applicant cannot seek IC review where an internal review process is on hand.</p>	Part VII – Div 3
4.	Evidence of Inspector-General of Intelligence and Security for s 33 exempt documents – (Part VII Review by Information Commissioner)	<p>Section 33 provides an exemption to disclosure under FOI for documents affecting national security, defence or international relations.</p> <p>Division 9 of Part VII sets out a process by which the Inspector-General of Intelligence and Security (IGIS) must give evidence in relation to a document over which the exemption is claimed.</p> <p>Section 33(1)(c) is the most commonly applied subsection of s 33. However, it has been the experience of the OAIC that the IGIS will advise, under s 55ZAC, that they are not appropriately qualified to give evidence on such matters.</p>	ss 33, 55ZA, 55

Kind regards



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From: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Sent: Wednesday, 22 February 2023 9:19 AM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Cc: AGO,Rocelle <Rocelle.Ago@oaic.gov.au>
Subject: FW: Potential legislative amendments [SEC=OFFICIAL]

Angelene,

These are the technical amendments. They are all minor. I think item 3 is meant to refer to a 'valid IC review application', and I think for item 4 the current IGIS is a 'he' but we could neutralise it by referring to they/them.

Rocelle – would you mind resending to both Angelene and me with those two very minor changes if you agree?
Thanks.

Leo.

From: AGO,Rocelle <Rocelle.Ago@oaic.gov.au>
Sent: Monday, 20 February 2023 12:45 PM
To: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Subject: Potential legislative amendments [SEC=OFFICIAL]

Hi Leo

As discussed, following the Executive Committee meeting, I had undertaken to provide a list of legislative amendments that may improve IC review procedures/processes.

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2.	Resolution of IC review by agreement (Part VII Review by Information Commissioner)	The Hawke Review recommended that: <i>Recommendation 5 – Resolution of Applications by Agreement</i> <i>The Review recommends the FOI Act be amended to make it clear that an agreed outcome finalises an Information Commissioner review and, in these circumstances, a written decision of the Information Commissioner is not required.</i> This amendment would assist in more efficient finalisation of IC reviews and provide greater clarity regarding the finalisation of an FOI request/process.	Part VII

FOI Act Amendments			
3.	Concurrent internal and external review (Part VII Review by Information Commissioner – Division 3)	<p>Applicants on occasion have applied for both internal and external review after receiving the primary FOI decision. This results in confusion, double handling, and inefficiencies in undertaking both internal and IC reviews.</p> <p>We request an amendment that streamlines the review process and makes it clear that while an applicant has the choice of seeking internal review or IC review, the applicant cannot seek IC review where an internal review process is on hand.</p>	Part VII – Div 3
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On the issue of matters finalised under s 54W(b), it may also be worth suggesting removal of the application fee for applicants whose IC review application for IC review has been declined under s 54W(b).

Kind regards



Rocelle Ago | Assistant Commissioner
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 Office of the Australian Information Commissioner
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 +612 9942 4205 | rocelle.ago@oaic.gov.au

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OAIC - Commissioner

From: HARDIMAN,Leo
Sent: Tuesday, 28 February 2023 3:09 PM
To: s 22(1); AGO,Rocelle
Cc: S 22(1); HAMPTON,Elizabeth; FALK,Angelene; OAIC - Executive Assistant; S 22(1); HALE,Annamie; DRAYTON,Melanie
Subject: RE: [For action] - Responses to SEQoNs from Supplementary Budget Estimates February 2023 - action by midday Thursday 16 March 2023 [SEC=OFFICIAL]
Categories: FOIREQ check

Thanks s 22(1)

I don't see a need for Libby to be distracted by this particular QoN – ie, I am happy to clear something directly without taking up Libby's time. I'll then discuss the proposed response with Angelene.

Kind regards,

Leo.

From: s 22(1) <s22(1)@oaic.gov.au>
Sent: Tuesday, 28 February 2023 2:49 PM
To: s 22(1) <s22(1)@oaic.gov.au>; AGO,Rocelle <Rocelle.Ago@oaic.gov.au>
Cc: s 22(1) <s22(1)@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>; HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>; FALK,Angelene <Angelene.Falk@oaic.gov.au>; OAIC - Executive Assistant <executiveassistant@oaic.gov.au>; s 22(1) <s22(1)@oaic.gov.au>; s 22(1) <s22(1)@oaic.gov.au>; HALE,Annamie <Annamie.Hale@oaic.gov.au>; DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>
Subject: [For action] - Responses to SEQoNs from Supplementary Budget Estimates February 2023 - action by midday Thursday 16 March 2023 [SEC=OFFICIAL]

Dear Rocelle and s 22(1)

With regards to the response to QoN No. LCC-SBE23-10 ([D2023/004257](#)) the proposed clearance timeline is as follows:

- Submit for clearance to Assistant Commissioner FOI by cob Friday 3 March
- Assistant Commissioner FOI submit for clearance to Deputy Commissioner by cob Tuesday 7 March
- Deputy Commissioner submit for clearance to FOI Commissioner by cob Thursday 9 March
- FOI Commissioner submit for clearance to Commissioner by cob Monday 13 March

Commissioner to provide approval for submission of QoN response by cob Wednesday 15 March.

Agency Head cleared responses are due back to AGD by midday Thursday 16 March.

It would be appreciated if I could be copied into any emails sent for clearance.

Regards
 s 22(1)

From: s 22(1) <s22(1)@oaic.gov.au>
Sent: Thursday, 23 February 2023 4:52 PM

To: FALK,Angelene <Angelene.Falk@oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>; HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>; AGO,Rocelle <Rocelle.Ago@oaic.gov.au>
Cc: HALE,Annamie <Annamie.Hale@oaic.gov.au>; DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>; s 22(1) <[REDACTED]@oaic.gov.au>

Subject: (FYI - QON) - Responses to SEQoNs from Supplementary Budget Estimates February 2023 - action by midday Thursday 16 March 2023 [SEC=OFFICIAL]

Good afternoon all

FYI - Flagging that AGD has started to circulate questions on notice. Today we received the QoN relating to the number of s54W(b) referrals in the last four years.

The QoN is allocated to BARD and FOI Group for action. Clearances timelines will be advised on s 22(1) return next week. The QoN is due back to AGD on Thursday 16 March.

Regards

s 22(1)

From: s 22(1)

Sent: Thursday, 23 February 2023 4:48 PM

To: AGO,Rocelle <Rocelle.Ago@oaic.gov.au>; s 22(1) <[REDACTED]@oaic.gov.au>; s 22(1) <[REDACTED]@oaic.gov.au>

Cc: HALE,Annamie <Annamie.Hale@oaic.gov.au>

Subject: For action - Responses to SEQoNs from Supplementary Budget Estimates February 2023 - action by midday Thursday 16 March 2023 [SEC=OFFICIAL]

Hi Rocelle and s 22(1)

OAIC accepted the following question notice during the recent Estimates Hearing:

How many decisions were made under 54W(b) in the last four years—if you can do them year by year—that refused to continue the review and permitted the pathway to the AAT?

s 22(1) can your team please provide the figures within the template: [D2023/004257](https://www.oaic.gov.au/foi/foi-requests/2023/004257).

@AGO,Rocelle could FOI Group draft the response incorporating s54W(b).

The responses are due to AGD by midday Thursday 16 March s 22(1) please advise clearance timeline on your return.

Regards

s22(1)

s 22(1)

OAIC - Commissioner

From: HARDIMAN,Leo
Sent: Wednesday, 1 March 2023 2:13 PM
To: s 22(1); AGO,Rocelle
Cc: s 22(1); HAMPTON,Elizabeth; FALK,Angelene; OAIC - Executive Assistant;
s 22(1); DRAYTON,Melanie; HALE,Annamie; s 22(1)
Subject: RE: [For action] LCC-SBE23-106 Supplementary Budget Estimates, February - written questions on notice [SEC=OFFICIAL]
Categories: FOIREQ check

Hi Rocelle,

As indicated yesterday, grateful if you could submit this one directly to me and take a little longer with prep of the response.

Thanks,

Leo.

From: s 22(1) @oaic.gov.au>
Sent: Wednesday, 1 March 2023 2:11 PM
To: AGO,Rocelle <Rocelle.Ago@oaic.gov.au>
Cc: s 22(1) @oaic.gov.au>; HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>; HAMPTON,Elizabeth <Elizabeth.Hampton@oaic.gov.au>; FALK,Angelene <Angelene.Falk@oaic.gov.au>; OAIC - Executive Assistant <executiveassistant@oaic.gov.au>; s 22(1) @oaic.gov.au>; DRAYTON,Melanie <Melanie.Drayton@oaic.gov.au>; HALE,Annamie <Annamie.Hale@oaic.gov.au>; s 22(1) @oaic.gov.au>
Subject: [For action] LCC-SBE23-106 Supplementary Budget Estimates, February - written questions on notice [SEC=OFFICIAL]

Dear Rocelle

A written QoN has been received from Senator Shoebridge as per the attached template.

A link to the template to provide the response to the QoN is provided here:

QoN No.	QoNs Subject	Responsible officer	Template TRIM Link
LCC-SBE23-106	Re AAT case is MDCT v NDIA and IC review MR22/01029	Rocelle Ago	D2023/004641

Proposed clearance timeline:

- Submit for clearance to Assistant Commissioner FOI by cob Friday 3 March
- Assistant Commissioner FOI submit for clearance to Deputy Commissioner by cob Tuesday 7 March
- Deputy Commissioner submit for clearance to FOI Commissioner by cob Thursday 9 March
- FOI Commissioner submit for clearance to Commissioner by cob Monday 13 March

Commissioner to provide approval for submission of QoN response by cob Wednesday 15 March.

Agency Head cleared responses are due back to AGD by midday Thursday 16 March.

It would be appreciated if I could be copied into any emails sent for clearance.

Regards

s 22(1)

s 22(1)

OAIC - Commissioner

From: FALK,Angelene
Sent: Monday, 6 March 2023 12:28 PM
To: HARDIMAN,Leo
Subject: RE: My resignation as FOI Commissioner [SEC=OFFICIAL]

Categories: FOIREQ check

Dear Leo

I have received your advice that you have resigned from your appointment as FOI Commissioner.

Thank you for setting out your focus for the remainder of your appointment, and your approach to the litigation, Executive meetings and monthly updates.

I wish to acknowledge your service to the Commonwealth as FOI Commissioner and wish you the best for the future.

Regards
 Angelene



Angelene Falk | Australian Information Commissioner and Privacy Commissioner
 Office of the Australian Information Commissioner
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 +61 2 9942 4030 | executiveassistant@oaic.gov.au

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From: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Sent: Monday, 6 March 2023 9:03 AM
To: FALK,Angelene <Angelene.Falk@oaic.gov.au>
Subject: My resignation as FOI Commissioner [SEC=OFFICIAL]

Angelene,

I am writing to let you know that I have written to the Governor-General, by letter dated 5 March 2023, resigning my appointment as FOI Commissioner. My resignation will take effect on Friday 19 May 2023. I have notified the AGO of my resignation and will be writing to FOI Branch staff immediately after sending this note to you.

I have issued a statement regarding my resignation via LinkedIn. The terms of that statement are set out below. I ask that neither you, the OAIC nor any person representing it make any statement relating to me and/or my resignation without my express written agreement to its terms.

As my statement notes, I intend during the remainder of my appointment to focus on the bedding down of changes I have been leading, including those necessary to improve IC review outcomes. I will of course also be focussing on completing as many IC review decisions as possible. I note the terms of s 11 of the *Australian Information Commissioner Act 2010* and the functions and powers conferred on me by that section. I note also your duties as PGPA Act accountable authority and APS agency head. While I feel sure there will be no disagreement between us on this point, I note here my understanding that you will perform those duties in a way which, to the fullest extent possible, facilitates my performance of the FOI functions and exercise of related powers while I remain FOI Commissioner.

I mention also:

- I will not now maintain further active involvement in your submissions in the *Patrick* unreasonable delay matter, although so far as I am aware they are essentially finalised. I would however appreciate being informed of any issue which might impact on the administration of the FOI Act (such as the s 55U issue which arose last week) and am of course happy to offer views on any technical issue arising.
- I do not see significant utility in me participating in the OAIC Exec going forward. In my experience, that forum has relatively little focus on the FOI side of the agency's core regulatory functions. To the extent my input is needed for anything, I am happy to provide it.
- I also think we should put our weekly catch ups aside. I intend to provide you with a monthly update (commencing the end of this week for February) on how we are progressing with matters. This update will follow my monthly outcomes meetings with the Branch Head and Directors. We can discuss any other matters arising on an *ad hoc* basis if and when necessary.

Regards,

Leo.

STATEMENT REGARDING RESIGNATION OF MY APPOINTMENT AS COMMONWEALTH FREEDOM OF INFORMATION COMMISSIONER

I have, by writing to the Governor-General dated 5 March 2023, resigned my appointment as Commonwealth Freedom of Information Commissioner. My resignation will take effect on Friday 19 May 2023.

The Commonwealth FOI system is a small but important adjunct to the doctrine of responsible government inherent in our Westminster system of government. It provides one check on the integrity and apolitical nature of the Australian Public Service. Essential to the proper functioning of the FOI system in that context is the provision of timely access to information in accordance with legally robust access decisions, including Information Commissioner (IC) review decisions.

As FOI Commissioner, I have identified and have been leading the implementation of significant changes to the way in which the Commonwealth's core FOI regulatory functions are undertaken, led and managed. One significant purpose of these changes is to enable larger numbers of IC review matters to be actively managed to conclusion, so as to reduce the current backlog of IC reviews and promote more timely access to government-held information. The FOI Branch in the OAIC has shown enormous commitment to the implementation of these changes and the purpose of increasing timeliness of information access. I take this opportunity to express my sincere thanks to the members of the Branch. I will continue to focus on the implementation and bedding down of these changes throughout the remainder of my appointment.

Further changes are, however, necessary in my view to ensure that the timeliness of IC reviews and, consequently, access to government-held information, is increased. The making of those changes is not within the powers conferred on me as FOI Commissioner. I have come to the view that I will not be able, in the absence of those changes, to increase timeliness of IC reviews and access in a way which best promotes the objects of the FOI Act. I have accordingly decided the most appropriate course is to resign my appointment.

I thank the Commonwealth for the opportunity to carry out the role of Freedom of Information Commissioner. I do not propose to make any further comment regarding my resignation.



Leo Hardiman PSM KC | Freedom of Information Commissioner
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+61 2 9942 4200 | +61 **S 22(1)** | leo.hardiman@oaic.gov.au



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OAIC - Commissioner

From: FALK,Angelene
Sent: Tuesday, 7 March 2023 8:48 AM
To: HARDIMAN,Leo
Subject: For information: message to staff

Categories: FOIREQ check

Leo I will send the message below to all staff shortly this morning.

.....

Dear colleagues

I am writing to inform you that Freedom of Information Commissioner Leo Hardiman PSM KC has resigned from his appointment as Freedom of Information Commissioner, with effect from Friday 19 May 2023.

A spokeswoman for the Hon Attorney-General Mark Dreyfus KC, MP has stated that a merit-based selection process to fill the upcoming vacancy will commence shortly, and acting arrangements for the FOI Commissioner will be announced in due course.

I acknowledge Commissioner Hardiman's service to the Commonwealth as FOI Commissioner and wish him all the best for the future.

Regards

Angelene

From: s 22(1) on behalf of [FALK, Angelene](#)
To: [OAIC - Office Aus Information Commissioner](#)
Subject: FOI Commissioner resignation [SEC=OFFICIAL]
Date: Tuesday, 7 March 2023 9:38:01 AM
Attachments: [image006.jpg](#)
[image007.jpg](#)
[image008.png](#)
[image009.png](#)
[image010.png](#)
[image011.png](#)



Dear colleagues

I am writing to inform you that Freedom of Information Commissioner Leo Hardiman PSM KC has resigned from his appointment as Freedom of Information Commissioner, with effect from Friday 19 May 2023.

A spokeswoman for the Hon Attorney-General Mark Dreyfus KC, MP has stated that a merit-based selection process to fill the upcoming vacancy will commence shortly, and acting arrangements for the FOI Commissioner will be announced in due course.

I acknowledge Commissioner Hardiman's service to the Commonwealth as FOI Commissioner and wish him all the best for the future.

I wish to thank the FOI Branch for your ongoing hard work and commitment. We will continue to provide updates and support staff through this period of transition.

Regards

Angelene



Angelene Falk | Australian Information Commissioner and Privacy Commissioner
Office of the Australian Information Commissioner
GPO Box 5288 Sydney NSW 2001 | oaic.gov.au
+61 2 9942 4213 | executiveassistant@oaic.gov.au



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From: [HARDIMAN,Leo](#)
To: [FALK,Angelene](#)
Cc: [AGO,Rocelle](#)
Subject: FW: Potential legislative amendments [SEC=OFFICIAL]
Date: Wednesday, 22 February 2023 9:18:49 AM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Angelene,

These are the technical amendments. They are all minor. I think item 3 is meant to refer to a valid IC review *application*, and I think for item 4 the current IGIS is a *he* but we could neutralise it by referring to they/them.

Rocelle – would you mind resending to both Angelene and me with those two very minor changes if you agree? Thanks

Leo

From: AGO,Rocelle <Rocelle.Ago@oaic.gov.au>
Sent: Monday, 20 February 2023 12:45 PM
To: HARDIMAN,Leo <Leo.Hardiman@oaic.gov.au>
Subject: Potential legislative amendments [SEC=OFFICIAL]

Hi Leo

As discussed, following the Executive Committee meeting, I had undertaken to provide a list of legislative amendments that may improve IC review procedures/processes.

Please see the proposed amendments to the *Freedom of Information Act 1982* below:



FOI Act Amendments				
Item	Issue	Context	Provision	Amendment requested
1.	Making an IC review application	To assist in the more efficient triage and early resolution of matters, we encourage applicants to lodge their applications through an online form which is integrated into the OAIC's case management database. We request an amendment that would encourage the use of the online form. This could be achieved through amending s 54N(4)(c) by removing to an electronic address.	Section 54N sets out the requirements for making an IC review application. In particular, s 54N(4) prescribes the method in which the IC review application may be delivered to the OAIC: (a) delivery to the Information Commissioner at the address of the Information Commissioner specified in a current telephone directory; (b) postage by pre-paid post to an address mentioned in paragraph (a); (c) sending by electronic communication to an electronic address specified by the Information Commissioner.	Amend s 54N(4)(c) to remove the reference to an electronic address and include the power for the Information Commissioner to specify the electronic method to receive the IC review application.
2.	Resolution of IC review by agreement (Part VII Review by Information Commissioner)	The Hawke Review recommended that: <i>Recommendation 5 – Resolution of Applications by Agreement</i> <i>The Review recommends the FOI Act be amended to make it clear that an agreed outcome finalises an Information Commissioner review and, in these circumstances, a written decision of the Information Commissioner is not required.</i> This amendment would assist in more efficient finalisation of IC reviews and provide greater clarity regarding the finalisation of an FOI request/process.	Part VII	Amend the FOI Act to provide for the resolution of IC review applications by agreement without requiring a formal IC review decision.
3.	Concurrent internal and external review (Part VII Review by Information Commissioner – Division 3)	Applicants on occasion have applied for both internal and external review after receiving the primary FOI decision. This results in confusion, double handling, and inefficiencies in undertaking both internal and IC reviews. We request an amendment that streamlines the review process and makes it clear that while an applicant has the choice of seeking internal review or IC review, the applicant cannot seek IC review where an internal review process is on hand.	Part VII – Div 3	Amend the FOI Act to provide that a valid IC review cannot be made while an internal review process remains on foot or until an internal review process is complete.
4.	Evidence of Inspector-General of Intelligence and Security for s 33 exempt documents – (Part VII Review by Information Commissioner)	Section 33 provides an exemption to disclosure under FOI for documents affecting national security, defence or international relations. Division 9 of Part VII sets out a process by which the Inspector-General of Intelligence and Security (IGIS) must give evidence in relation to a document over which the exemption is claimed. Section 33(1)(c) is the most commonly applied subsection of s 33. However, it has been the experience of the OAIC that the IGIS will advise, under s 55ZAC, that she is not appropriately qualified to give evidence on such matters.	ss 33, 55ZA, 55ZB, 55ZC, 55ZD	Amend Division 9 of Part VII of the FOI Act so that evidence is only required to be sought from the Inspector-General of Intelligence and Security when the documents under review are subject to s 33(1)(a) and (b) (security of the Commonwealth and defence of the Commonwealth) of the FOI Act. Provide the Information Commissioner with a discretion to request the IGIS to give evidence if the exempt documents are subject to ss 33(1)(c) and 33(b), and to consult IGIS as she sees fit.

On the issue of matters finalised under s 54W(b), it may also be worth suggesting removal of the application fee for applicants whose IC review application for IC review has been declined under s 54W(b)

Kind regards



Rocelle Ago | Assistant Commissioner
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+612 9942 4205 | rocelle.ago@oaic.gov.au

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From: FALK,Angelene
To: AGO,Rocelle; HARDIMAN,Leo
Subject: RE: Potential legislative amendments [SEC=OFFICIAL]
Date: Wednesday, 22 February 2023 3:27:00 PM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Thank you Leo and Rocelle

From: AGO,Rocelle <Rocelle_Ago@oiaic.gov.au>
Sent: Wednesday, 22 February 2023 9:22 AM
To: HARDIMAN,Leo <Leo_Hardiman@oiaic.gov.au>; FALK,Angelene <Angelene_Falk@oiaic.gov.au>
Subject: RE: Potential legislative amendments [SEC=OFFICIAL]

Good morning

Please see updated table below:

FOI Act Amendments				
Item	Issue	Context	Provision	Amendment requested
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Kind regards



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 Freedom of information
 Office of the Australian Information Commissioner
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 +612 9942 4205 | rocelle.ago@oiaic.gov.au

From: HARDIMAN, Leo <Leo.Hardiman@oaic.gov.au>
Sent: Wednesday, 22 February 2023 9:19 AM
To: FALK, Angelene <Angelene.Falk@oaic.gov.au>
Cc: AGO, Rocelle <Rocelle.Ago@oaic.gov.au>
Subject: FW: Potential legislative amendments [SEC=OFFICIAL]

Angelene,

These are the technical amendments. They are all minor. I think item 3 is meant to refer to a valid IC review *application*, and I think for item 4 the current IGIS is a *he* but we could neutralise it by referring to *they/them*.

Rocelle – would you mind resending to both Angelene and me with those two very minor changes if you agree? Thanks

Leo

From: AGO, Rocelle <Rocelle.Ago@oaic.gov.au>
Sent: Monday, 20 February 2023 12:45 PM
To: HARDIMAN, Leo <Leo.Hardiman@oaic.gov.au>
Subject: Potential legislative amendments [SEC=OFFICIAL]

Hi Leo

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				to give evidence if the exempt documents are subject to ss 33(1)(c) and 33(b), and to consult IGIS as she sees fit
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Kind regards



Rocelle Ago | Assistant Commissioner
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