



Australian Government

Department of Climate Change, Energy,
the Environment and Water

Office of the Australian Information Commissioner

Email: foidr@oaic.gov.au

Dear Office of the Australian Information Commissioner

Submissions: Direction as to certain procedures to be followed in IC reviews ('Agency Direction') and Direction as to certain procedures to be followed by applicants in Information Commissioner review.

Thank you for the opportunity to consult on the draft revisions to the Directions.

The Department of Climate Change, Energy, the Environment and Water ('department') submits that the requirement to engage with applicants outlined in paragraphs 4.2 to 4.8 of the Agency Direction would place an undue administrative burden on the department.

The current IC review process gives the department 3 weeks to provide a written response to an application for IC review, without a requirement to conduct a consultation with the applicant. Under current resourcing, the department regularly needs extensions of time to meet the current obligations.

The new process would require the department to engage in a more complex process, which may involve written correspondence, telephone conversations, and meetings between applicants, information law advisors, and Senior Executive Service decision makers. This would create additional work including information law advisors needing to brief decision makers regarding options at each step of the process.

The complexity of this process will be exacerbated by the fact that the department is regularly notified of IC reviews after significant time has passed since the original decision, in some cases as long as five years. Staff movements and other factors such as Machinery of Government changes in the intervening period may make it challenging to conduct a consultation process. For example, information regarding the original decision may be located on file management systems that are difficult to access or original decision makers may have changed jobs.

The requirements of the Agency Direction will add additional strain to the department's ability to meet its statutory obligations.

The department further objects to the mandatory nature of the consultation obligation. The department regularly provides submissions to IC reviews where there is no realistic chance that the review will be successful. One example of this is when a third-party objects to the release of material but provides no meaningful grounds upon which the material may be exempt. Requiring the department to consult with the IC applicant in such circumstances would burden the department while providing no measurable benefit to the public interest.

If the OAIC implements the requirement, the department submits that the proposed 8 week time period is inadequate.

Please contact Paul Grutt, Principal Legal Officer at FOI@dcceew.gov.au, should you have any questions.

Yours sincerely

Lillian Riches
General Counsel (acting)
Legal Division
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DCCEEW.gov.au

John Gorton Building - King Edward Terrace, Parkes ACT 2600 Australia
GPO Box 858 Canberra ACT 2601 ABN: 63 573 932 849