

From: [DEWR - FOI](#)
To: [OAIC - FOI DR](#)
Cc: [DEWR - FOI](#)
Subject: DEWR Submission regarding Consultation on draft revisions to the "Direction as to certain procedures to be followed in Information Commissioner reviews (for agencies and by applicants)"
Date: Saturday, 1 July 2023 12:02:45 PM

Dear Office of the Australian Information Commissioner,

Thank you for consulting with agencies on the two draft Information Commissioner (IC) Review Procedure Directions which are being proposed to be issued by the IC under s55(2)(e)(ii) of the FOI Act. The Department of Employment and Workplace Relations (the department) has a couple of suggestions for OAIC to consider in finalising those directions, as set out below.

Timeframes

The department suggests it would be preferable for agencies to have the same 30-day timeframe to make either a revised section 55G decision or provide submissions in support of access refusal of documents (refer paragraph [3.3] to [3.4] under agencies Directions *Commencement of Review*). This timeframe is consistent with other timeframes provided for agencies and ministers to make a substantive or internal review decision, for example under sections 15(5)(b) and 54C(3) of the FOI Act.

Initial engagement between the parties

The proposed Directions set out a compulsory engagement process (paras [1.23-1.24] in applicant's Directions, and [4.2] to [4.3] of agencies Directions). The department understands that this process is intended to facilitate greater engagement between applicants and respondent agencies/Ministers during an IC review and potentially see an earlier and more efficient resolution to IC reviews.

While the department can envisage the process might achieve that goal in many cases, the department is concerned about the compulsory nature of this engagement process and whether it would be appropriate in the circumstances of all IC review applications.

The applicant is already seeking the intervention of OAIC and, given his or her review rights, may see this forced process of having to further deal with the agency it is escalating an issue from - rather than OAIC to which its applying - as daunting or frustrating, particularly where the applicant is already dissatisfied with the agency's decision (and often, internal review).

In circumstances where the relationship between the applicant and the respondent agency is strained or has broken down, a forced initial engagement between the parties could be unproductive and potentially entrench an applicant in their position, at a point where third-party intervention by OAIC has not only been asked for, but could provide a circuit breaker leading to a more efficient outcome.

Accordingly, the department suggests that OAIC consider whether the new initial engagement process should be discretionary. If it is added as a new compulsory process then the department suggests that OAIC consider whether there should be specified exceptions to appropriately deal with the concerns outlined above.

Again, the department thanks the OAIC for the opportunity to provide a submission in relation to these matters.

The department raises no concerns with this submission being published.

If you have any queries, please feel free to contact the Information Law Team.

Kind regards,

Information Law Team

Department of Employment and Workplace Relations

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