

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL

REX PATRICK

Applicant

and

AUSTRALIAN INFORMATION COMMISSIONER

Respondent

INDEX TO THE AFFIDAVIT OF ROCELLE DOWSETT DATED 22 AUGUST 2022

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179.	00613.009	Email from the Applicant to the OAIC dated 31 August 2020	[152]	750
180.	00613.006	Email from the Treasury to the OAIC dated 21 August 2020	[154]	751
181.	00613.007	Email chain between members of the OAIC, including: <ul style="list-style-type: none"> Email from the Intake and Early Resolution Team dated 26 August 2020; Email to the Intake and Early Resolution Team dated 27 August 	[154]	752

No.	Document ID	Document Description	Paragraph Reference	Pages
		2020		
182.	00613.007.A1	Attachment to the email to the Intake and Early Resolution Team dated 27 August 2020 (email from the Treasury to the OAIC dated 21 August 2020)	[154]	753
183.	00613.008	Email chain between members of the OAIC, including: <ul style="list-style-type: none"> Email from Rocelle Ago to the Director of the Intake and Early Resolution team dated 27 August 2020 	[154]	754-756
184.	00613.010	Email from the OAIC (Assistant Director of the Intake and Early Resolution team) to the Treasury dated 31 August 2020	[154]	757-758
185.	00613.011	Email from the Treasury to the OAIC (Assistant Director of the Intake and Early Resolution team) dated 3 September 2020	[155]	759-761
186.	00613.012	Email between members of the OAIC dated 4 September 2020	[155]	762
187.	00613.012.A1	Attachment to the email between members of the OAIC dated 4 September 2020 (email from the Treasury to the OAIC dated 3 September 2020)	[155]	763-765
188.	00613.013	Email from the OAIC (Assistant Director of the Intake and Early Resolution team) to the Treasury dated 17 September 2020	[155]	766-768
189.	00613.014	Email from the Treasury to the OAIC dated 29 September 2020 (response to 54Z notice)	[156]	769-772
190.	00613.017	Email from the OAIC to the Treasury dated 4 November 2021	[158]	773
191.	00613.017.A1	Attachment to the email from the OAIC to the Treasury dated 4 November 2021 (notification of proceedings dated 4 November 2021)	[158]	774-778
192.	00613.018	Email chain between the OAIC and the Treasury, including: <ul style="list-style-type: none"> Email from the OAIC (Director of the SSR team) to the Treasury dated 21 December 2021; Email from the Treasury to the OAIC dated 22 December 2021 	[160]	779-788

No.	Document ID	Document Description	Paragraph Reference	Pages
193.	00613.019	Email chain between the OAIC and the Treasury, including: <ul style="list-style-type: none"> Email from the OAIC to the Treasury dated 6 April 2022; Email from the Treasury to the OAIC dated 7 April 2022; Email from the OAIC to the Treasury dated 20 April 2022 	[161]	789-796
194.	00613.023	Email from the OAIC to the Treasury dated 31 May 2022	[162]	797
195.	00613.023.A6	Attachment to the email from the OAIC to the Treasury dated 31 May 2022 (notice sent under s 55U of the FOI Act dated 31 May 2022)	[162]	798-799
196.	00613.024.A1	Email from the Treasury (Deputy General Counsel) to the OAIC (Review Adviser) dated 3 June 2022	[163]	800-802
197.	00760.001	Email from the Applicant to the OAIC dated 6 August 2020	[166]	803
198.	00760.001.A1	Attachment to the email from the Applicant to the OAIC dated 6 August 2020 (letter from the Applicant dated 6 August 2020)	[166]	804-805
199.	00760.001.A2	Attachment to the email from the Applicant to the OAIC dated 6 August 2020 (notice of decision by DISER dated 15 June 2020)	[166]	806-812
200.	00760.001.A3	Attachment to the email from the Applicant to the OAIC dated 6 August 2020 (notice of internal review decision by DISER dated 30 July 2020)	[166]	813-816
201.	00760.002	Email from the OAIC (Intake and Early Resolution Team) to the Applicant dated 10 August 2020	[167]	817-818
202.	00760.005	Email from the OAIC (Intake and Early Resolution Team) to the Applicant dated 23 December 2020	[168]	819-820
203.	00760.006	Email from the OAIC (Intake and Early Resolution Team) to DISER dated 23 December 2020	[169]	821
204.	00760.006.A2	Attachment to the email from the OAIC (Intake and Early Resolution Team) to DISER dated 23 December 2020 (notice sent under s 54Z of the FOI Act dated 23	[169]	822-825

No.	Document ID	Document Description	Paragraph Reference	Pages
		December 2020)		
205.	00760.008	Email from the Applicant to the OAIC dated 8 January 2021	[170]	826-827
206.	00760.010	Email from DISER to the OAIC dated 7 April 2021	[172]	828-832
207.	00760.011	Email from the OAIC (Assistant Director of the Intake and Early Resolution Team) to DISER dated 15 April 2021	[173]	833-838
208.	00760.012	Email from DISER to the OAIC (Assistant Director of the Intake and Early Resolution Team) dated 16 April 2021	[174]	839-844
209.	00760.013	Email from DISER to the OAIC dated 16 April 2021	[174]	845-846
210.	00760.013.A1	Attachment to the email DISER to the OAIC dated 16 April 2021 (email from DISER to Snowy Hydro dated 16 April 2021)	[174]	847-849
211.	00760.013.A2	Attachment to the email DISER to the OAIC dated 16 April 2021 (letter from the Applicant to the OAIC dated 6 August 2020)	[174]	850-851
212.	00760.014	Email from DISER to the OAIC (Assistant Director of the Intake and Early Resolution Team) dated 20 April 2021	[175]	852-859
213.	00760.018	Email from DISER to the OAIC dated 16 June 2021	[176]	860-861
214.	00760.020	Email from the OAIC (Review Adviser from the Intake and Early Resolution team) to DISER dated 24 June 2021	[176]	862-863
215.	00760.023	Email chain between the OAIC and DISER, including: <ul style="list-style-type: none"> Email from DISER to the OAIC dated 2 July 2021; Email from the OAIC (Intake and Early Resolution Team) to DISER dated 23 July 2021 	[177]	864-865
216.	00760.024	Email from the OAIC to DISER dated 29 July 2021	[177]	866-868
217.	00760.025	Email from DISER to the OAIC dated 29 July 2021	[177]	869-872
218.	00760.027	Email from the OAIC to DISER dated 4 November 2021	[178]	873

No.	Document ID	Document Description	Paragraph Reference	Pages
219.	00760.027.A1	Attachment to the email from the OAIC to DISER dated 4 November 2021 (notification of proceedings dated 4 November 2021)	[178]	874-879
220.	00863.001	Email from the Applicant to the OAIC dated 14 September 2020	[180]	880
221.	00863.001.A1	Attachment to the email from the Applicant to the OAIC dated 14 September 2020 (letter from the Applicant dated 14 September 2020)	[180]	881
222.	00863.002	Email from the OAIC (Intake and Early Resolution Team) to the Applicant dated 15 September 2020	[180]	882-883
223.	00863.003	Email from the OAIC to DISER dated 16 September 2020	[181]	884
224.	00863.004	Email from DISER to the OAIC dated 17 September 2020	[182]	885-886
225.	00863.005	Email from the OAIC to DISER dated 18 September 2020	[182]	887-889
226.	00863.006	Email from DISER to the OAIC dated 28 September 2020	[183]	890-893
227.	00863.006.A1	Attachment to the email from DISER to the OAIC dated 28 September 2020 (notice of decision by DISER dated 28 September 2020)	[183]	894-901
228.	00863.007	Email from the OAIC to the Applicant dated 30 September 2020	[184]	902-904
229.	00863.008	Email from the Applicant to the OAIC dated 1 October 2020	[184]	905-908
230.	00863.008.A1	Attachment to the email from the Applicant to the OAIC dated 1 October 2020 (notice of charges and consultation by DISER dated 28 July 2020)	[184]	909-912
231.	00863.009	Email from the OAIC to DISER dated 2 October 2020	[184]	913-916
232.	00863.011	Email from the OAIC to the Applicant dated 7 January 2021	[186]	917-918
233.	00863.012	Email from the OAIC (Intake and Early Resolution Team) to DISER dated 7 January 2021	[187]	919

No.	Document ID	Document Description	Paragraph Reference	Pages
234.	00863.012.A3	Attachment to the email from the OAIC (Intake and Early Resolution Team) to DISER dated 7 January 2021 (notice sent under s 54Z of the FOI Act dated 7 January 2021)	[187]	920-922
235.	00863.013	Email from DISER to the OAIC dated 7 April 2021	[188]	923-927
236.	00863.014	Email from the OAIC to DISER dated 15 April 2021	[188]	928-933
237.	00863.016	Email from DISER to the OAIC dated 1 June 2021 (response to 54Z notice)	[189]	934-935
238.	00863.069	Email from DISER to the OAIC dated 11 June 2021	[189]	936-939
239.	00863.070	Email from the OAIC (Review Adviser) to the Applicant dated 27 August 2021	[190]	940-942
240.	00863.071	Email from the Applicant to the OAIC dated 10 September 2021	[190]	943-946
241.	00863.026	Email from the OAIC (Review Adviser) to DISER dated 14 September 2021	[192]	947
242.	00863.072	Email from DISER to the OAIC dated 28 September 2021	[192]	948-949
243.	00863.028	Email from the OAIC to DISER dated 4 November 2021	[194]	950
244.	00863.028.A1	Attachment to the email from the OAIC to DISER dated 4 November 2021 (notification of proceedings dated 4 November 2021)	[194]	951-956
245.	00863.029	Email from the OAIC (Assistant Review Adviser) to DISER dated 5 November 2021	[195]	957
246.	00863.030	Email chain between the OAIC and DISER, including: <ul style="list-style-type: none"> Email from DISER to the OAIC (Assistant Review Adviser) dated 16 November 2021 	[196]	958-959
247.	00863.031	Email from the OAIC (Assistant Review Adviser) to DISER dated 23 November 2021	[196]	960-962
248.	00863.032	Email chain between the OAIC and DISER, including: <ul style="list-style-type: none"> Email from DISER to the OAIC dated 23 November 2021; 	[196]	963-966

No.	Document ID	Document Description	Paragraph Reference	Pages
		<ul style="list-style-type: none"> Email from the OAIC to DISER dated 23 November 2021 		
249.	00863.033	<p>Email chain between the OAIC and DISER, including:</p> <ul style="list-style-type: none"> Emails from DISER to the OAIC (Assistant Review Adviser) dated 2 December 2021 providing material; Email from the OAIC (Assistant Review Adviser) to DISER dated 7 December 2021 	[196], [197]	967-973
250.	00863.034	Email chain between the OAIC and DISER, including email from DISER to the OAIC dated 9 December 2021 seeking extension of time	[198]	974-981
251.	00863.036	Email from DISER to the OAIC dated 22 December 2021	[198]	982-989
252.	00863.035	<p>Email chain between the OAIC and DISER, including:</p> <ul style="list-style-type: none"> Email from the OAIC (Review Adviser) to DISER dated 22 February 2022; Email from DISER to the OAIC dated 7 March 2022; Email from the OAIC (Review Adviser) to DISER dated 7 March 2022; Email from DISER to the OAIC dated 22 March 2022; Email from the OAIC (Review Adviser) to DISER dated 22 March 2022 	[199]	990-995
253.	00863.038	Email from DISER to the OAIC (Review Adviser) dated 31 March 2022	[200]	996-998
254.	00863.043	Email from the OAIC (Review Adviser) to the Applicant dated 12 April 2022	[200]	999-1000
255.	00863.046	Email from the Applicant to the OAIC (Review Adviser) dated 18 April 2022	[200]	1001-1003
256.	00863.048	Email from the OAIC (Review Adviser) to DISER dated 20 April 2022	[200]	1004-1008
257.	00863.050	Email from DISER to the OAIC dated 20 April 2022	[200]	1009-1014
258.	00863.051	Email from the OAIC to DISER dated 20 April 2022	[200]	1015-1021

No.	Document ID	Document Description	Paragraph Reference	Pages
259.	00863.052	Email from DISER to the OAIC dated 27 April 2022	[202]	1022-1027
260.	00863.060	Email from DISER to the OAIC dated 27 April 2022	[203]	1028-1037
261.	00863.053	Email from DISER to the OAIC (Review Adviser) dated 18 May 2022	[203]	1038
262.	00863.054	Email from the OAIC (Review Adviser) to DISER dated 20 May 2022	[203]	1039-1040
263.	00863.056	Email chain between the OAIC and a lawyer on behalf of DISER: <ul style="list-style-type: none"> • Emails from a lawyer on behalf of DISER to the OAIC (Review Adviser) dated 6 June 2022 	[204]	1041-1047
264.	00863.065	Email from DISER to the Applicant and to the OAIC dated 8 June 2022	[204]	1048
265.	00863.065.A1	Attachment to the email from DISER to the Applicant and to the OAIC dated 8 June 2022 (revised decision under s 55G of the FOI Act)	[204]	1049-1050
266.	00863.057	Email from the Applicant to the OAIC dated 9 June 2022	[205]	1051-1054
267.	00863.057.A1	Attachment to the email from the Applicant to the OAIC dated 9 June 2022(revised decision under s 55G of the FOI Act)	[205]	1055-1056
268.	00863.059	Email from the OAIC (Review Adviser) to the lawyer acting for DISER dated 22 June 2022	[206]	1057-1065
269.	00922.001	Email from the Applicant to the OAIC dated 24 September 2020	[208]	1066
270.	00922.001.A1	Attachment to the email from the Applicant to the OAIC dated 24 September 2020 (letter from the Applicant dated 24 September 2020)	[208]	1067
271.	00922.002	Email from the OAIC (Intake and Early Resolution Team) to the Applicant dated 28 September 2020	[209]	1068-1069
272.	00922.003	Email from the Applicant to the OAIC dated 1 October 2020	[209]	1070-1071
273.	00922.003.A1	Attachment to the email from the Applicant to the OAIC dated 1 October 2020 (notice of decision by the Department of Health dated	[209]	1072-1080

No.	Document ID	Document Description	Paragraph Reference	Pages
		22 September 2020)		
274.	00922.004	Email from the OAIC (Intake and Early Resolution Team) to the Applicant dated 2 October 2020	[210]	1081-1083
275.	00922.005	Email from the OAIC (Intake and Early Resolution Team) to the Applicant dated 26 October 2020	[212]	1084-1085
276.	00922.006	Email from the OAIC (Intake and Early Resolution Team) to the Department of Health dated 26 October 2020	[212]	1086
277.	00922.006.A1	Attachment to the email from the OAIC (Intake and Early Resolution Team) to the Department of Health dated 26 October 2020 (notice sent under s 54Z of the FOI Act dated 26 October 2020)	[212]	1087-1089
278.	00922.007	Email from the Department of Health to the OAIC dated 5 November 2020 (response to 54Z notice)	[213]	1090
279.	00922.009	Email from the OAIC to the Department of Health dated 4 November 2021	[214]	1091
280.	00922.009.A1	Attachment to the email from the OAIC to the Department of Health dated 4 November 2021 (notification of proceedings dated 4 November 2021)	[214]	1092-1096
281.	01189.001	Email from the Applicant to the OAIC dated 30 November 2020	[216]	1097
282.	01189.001.A1	Attachment to the email from the Applicant to the OAIC dated 30 November 2020 (letter from the Applicant dated 30 November 2020)	[216]	1098
283.	01189.001.A2	Attachment to the email from the Applicant to the OAIC dated 30 November 2020 (notice of decision by the Department of the Prime Minister and Cabinet (DPMC) dated 27 November 2020)	[216]	1099-1105
284.	01189.001.A3	Attachment to the email from the Applicant to the OAIC dated 30 November 2020 (document titled 'Schedule of Documents')	[216]	1106-1107
285.	01189.002	Email from the OAIC (Intake and Early Resolution Team) to the Applicant dated 1 December 2020	[217]	1108-1109
286.	01189.003	Email from the OAIC (Intake and Early Resolution Team) to the Applicant dated 3	[219]	1110-1111

No.	Document ID	Document Description	Paragraph Reference	Pages
		May 2021		
287.	01189.004	Notice sent to DPMC under s 54Z of the FOI Act dated 3 May 2021	[220]	1112-1114
288.	01189.005	Email from the OAIC (Intake and Early Resolution Team) to DPMC dated 3 May 2021	[220]	1115
289.	01189.006	Email from DPMC to the OAIC dated 14 May 2021	[221]	1116-1117
290.	01189.007	Email from the OAIC to DPMC dated 18 May 2021	[221]	1118-1119
291.	01189.008	Email chain between the OAIC and DPMC, including: <ul style="list-style-type: none"> Email from DPMC to the OAIC dated 24 May 2021; Email from DPMC to the OAIC dated 1 June 2021 	[222], [223]	1120-1123
292.	01189.009	Email from the OAIC to DPMC dated 4 November 2021	[225]	1124
293.	01189.009.A1	Attachment to the email from the OAIC to DPMC dated 4 November 2021 (notification of proceedings dated 4 November 2021)	[225]	1125-1130
294.	01189.013	Email from the OAIC (Senior Review Adviser) to DPMC dated 25 July 2022	[227]	1131
295.	01189.013.A1	Attachment to the email from the OAIC (Senior Review Adviser) to DPMC dated 25 July 2022 (notice sent to DPMC under s 55U of the FOI Act dated 25 July 2022)	[227]	1132-1133

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 22/08/2022 4:07:03 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: VID519/2021
File Title: SENATOR REX PATRICK v AUSTRALIAN INFORMATION
COMMISSIONER
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 22/08/2022 4:08:14 PM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59
Rule 29.02(1)

Affidavit

No. VID519 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

SENATOR REX PATRICK

Applicant

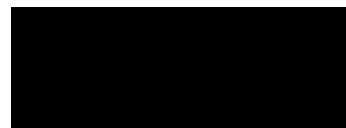
AUSTRALIAN INFORMATION COMMISSIONER

Respondent

Affidavit of: **Rocelle Ann Dowsett**
Address: 175 Pitt Street Sydney NSW 2000
Occupation: Assistant Commissioner (Freedom of Information)
Date: 22 August 2022

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Document number	Details	Paragraph	Page
1	Affidavit of Rocelle Ann Dowsett affirmed on 22 August 2022	1 – 227	1 - 43
2	Exhibit RAD-1 (an exhibit comprising a bundle of documents)		44



Filed on behalf of (name & role of party) Australian Information Commissioner (the Respondent)
 Prepared by (name of person/lawyer) Andrew Morrison Riordan
 Law firm (if applicable) Norton Rose Fulbright Australia
 Tel +61 3 8686 6680 Fax _____
 Email andrew.riordan@nortonrosefulbright.com
Address for service Level 38, Olderfleet, 477 Collins Street, Melbourne, VIC 3000
 (include state and postcode)

I **ROCELLE ANN DOWSETT**, of 175 Pitt Street Sydney NSW 2000, Assistant Commissioner (Freedom of Information), sincerely declare and affirm:

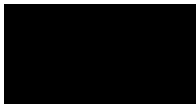
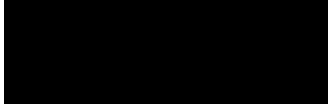
1. I am the Assistant Commissioner (Freedom of Information) at the Office of the Australian Information Commissioner (**OAIC**).
2. I am authorised to make this affidavit on behalf of the respondent, the Australian Information Commissioner (**Information Commissioner**).
3. By making this affidavit, I do not intend and have no authority to waive privilege in any communication, or record of communication, that is the subject of the respondent's legal professional privilege. Nothing in this affidavit ought to be construed as involving a waiver of privilege. To the extent that anything in this affidavit may be construed as involving a waiver of privilege, I withdraw and do not rely on that part of this affidavit.
4. Unless otherwise stated, I make this affidavit from my own knowledge and from my review of records held by the OAIC.
5. This affidavit will address the following:
 - (a) Part A – my background and the OAIC's FOI branch
 - (b) Part B – overview of the IC Review process; and
 - (c) Part C – the procedural history to date of the IC Review applications that are the subject of the separate question ordered by the Court on 8 December 2021.
6. In Part C of this affidavit, I have referred to correspondence and extracts from the OAIC's Resolve database in relation to the eight Information Commissioner reviews that are the subject of the separate question. Now produced and shown to me and marked **RAD-1** is an exhibit comprising a bundle of documents, including documents in relation to the eight Information Commissioner reviews that are addressed in Part C of this affidavit. Each document in exhibit **RAD-1** has been marked with an individual number or code. In this affidavit, where I intend to refer to a particular document within exhibit **RAD-1**, I have referred to the number or code corresponding to the document in square brackets. Some of the documents in **RAD-1** are emails. Unless relevant, attachments to emails have not been included in exhibit **RAD-1**, on the basis that those attachments are generally not relevant to the issues in dispute in the proceeding and often contain confidential or sensitive information. Some of the documents included in exhibit **RAD-1** have been redacted because the information is privileged, confidential or personal, or because the redacted information relates to reviews being undertaken by the Information Commissioner that are not the subject of this proceeding.
- 6A. I affirmed an affidavit in relation to this proceeding on 6 August 2022. After I affirmed that affidavit, I became aware that a number of the pages within exhibit RAD-1 to my [REDACTED]

affidavit affirmed on 6 August contain text that is illegible, but which was not intended to be redacted. I have also become aware that my affidavit of 6 August 2022 contained a number of relatively minor errors, which I would like to correct. This affidavit is the same as my affidavit affirmed on 6 August 2022, except in the following respects. First, exhibit RAD-1 to this affidavit has been corrected to resolve the issue with the redactions so that only text that is intended to be redacted is blacked out. Secondly, the following paragraphs of this affidavit are different to my affidavit affirmed on 6 August 2022:

- (a) In paragraph 23, I have substituted the phrase “are copies” for the phrase “is a copy” in the final sentence.
- (b) In paragraph 41, I have added the word “been” in between the words “have” and “reallocated” in the second sentence.
- (c) In paragraph 59, I have removed the word “was” that was in between the words “it” and “intended” in the second sentence.
- (d) In paragraph 73, the phrase “in relation to the submissions claimed” in the second sentence now reads “in relation to the exemptions claimed”.
- (e) In paragraph 105, I have substituted the following sentence for the second sentence: “Accordingly, the OAIC continues to rely on Safehands delivery for receipt of documents claimed to be exempt under s 34 of the FOI Act.”
- (f) In paragraph 106, I have substituted “MR20/00863” for “MR20/00823” in the second sentence.
- (g) In paragraph 111, I have substituted the phrase “On 12 August 2020” for the phrase “On that day” in the first sentence.
- (h) In paragraph 129, I have substituted the date “1 September 2021” for the date “1 September 2020” in the second sentence.

Part A – Background

A.1 – My background

- 7. My maiden name is Rocelle Ago, and that is how I have been referred to in the course of my career.
 - 8. Since 2006 I have worked in the Australian Public Service in roles with various agencies, including the Department of Health, Attorney-General’s Department, the Administrative Appeals Tribunal (**AAT**), and the OAIC. I hold a Bachelor of International Studies, Bachelor of Laws (Honours Class I) and Master of Laws. I was admitted as a Legal Practitioner in NSW and in the High Court of Australia in 2006.
- 
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9. I was employed in the former Office of the Privacy Commissioner in October 2010, which was integrated into the OAIC from 1 November 2010 following the establishment of the OAIC by the *Australian Information Commissioner Act 2010* (**AIC Act**). From its establishment, the OAIC undertook the privacy functions that had been undertaken by the Office of the Privacy Commissioner, as well as the Freedom of Information (**FOI**) functions under the AIC Act. In my time at the OAIC I have held various positions, as follows:

- (a) From October 2010 to May 2012, I was the Deputy Director (Freedom of Information) in the Policy branch where I led a small team to provide support to the Australian Information Commissioner and the Freedom of Information Commissioner (**FOI Commissioner**) in developing guidance material, including the guidelines issued under s 93A of the *Freedom of Information Act 1982* (**FOI Act**).
- (b) From May 2012 to February 2013, I was the Deputy Director of the Legal Services section. In that role I managed litigation involving the OAIC, provided legal advice regarding the FOI Act and the *Privacy Act 1988* (Cth) (**Privacy Act**) and coordinated FOI requests received by the OAIC.
- (c) After returning from a period of leave, from October 2013 to July 2015, I was an Assistant Director of the Freedom of Information section, which at that time was part of the Dispute Resolution branch. I led a small team to assist with the finalisation of reviews under Part VII of the FOI Act (**IC Reviews**), and processing and deciding FOI requests received by the OAIC for access to documents under Part III of the FOI Act.
- (d) From August 2015 to March 2018, I served as Director of the Freedom of Information section of the Dispute Resolution branch. In that role, I had oversight of the various FOI functions that were performed by the Freedom of Information section, including issuing guidelines under s 93A of the FOI Act, conducting IC Reviews under Part VII of the FOI Act, undertaking investigations under Part VIIB of the FOI Act (from 1 July 2016), collecting information and statistics from agencies and Ministers, determining applications for extensions of time under the FOI Act and considering vexatious applicant declaration applications under the FOI Act.
- (e) From March 2018 to January 2019, I was Acting Assistant Commissioner Dispute Resolution with responsibility for the Freedom of Information aspects of the Dispute Resolution branch's functions. In that role, I continued to manage the Freedom of Information sections, including being the direct supervisor of the Significant and Systemic Review (**SSR**) team, which managed IC Review applications and FOI



complaints which were considered to have particular complexity or raise systemic issues.

- (f) From February 2019 to November 2021, I was Principal Director (Freedom of Information). In that role I continued to manage the Freedom of Information Regulatory group, including being the direct supervisor of the SSR team. I reported to Elizabeth Hampton, who was the Deputy Commissioner of the OAIC until August 2021, and Acting FOI Commissioner from August 2021 to April 2022.
- (g) From November 2019 to February 2020, in addition to my role as Principal Director (Freedom of Information), I also held the role of Acting Assistant Commissioner (Dispute Resolution) which involved managing various sections in the Dispute Resolution branch to fulfil the branch's FOI and privacy regulatory functions.
- (h) Since November 2021, I have been the Assistant Commissioner (Freedom of Information). I have the responsibilities that I had when I was Principal Director (Freedom of Information). However, as part of this role, I am also a member of the Executive branch of the OAIC.

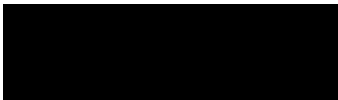
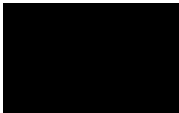
A2. FOI branch

- 10. The AIC Act establishes three information officer positions: Information Commissioner, Privacy Commissioner and FOI Commissioner. The AIC Act confers the "information commissioner functions" (defined in s 7), the FOI functions (defined in s 8) and the privacy functions (defined in s 9) on the Information Commissioner. Angelene Falk was appointed acting Information Commissioner and Privacy Commissioner pursuant to the AIC Act in March 2018 and then appointed Information Commissioner and Privacy Commissioner in August 2018. From 1 January 2015 until August 2021, the office of FOI Commissioner was vacant, and the FOI functions were exercised by the Information Commissioner.
- 11. In August 2021, Elizabeth Hampton was appointed as the acting FOI Commissioner. In April 2022, Leo Hardiman PSM QC was appointed FOI Commissioner and Ms Hampton resumed her role as Deputy Commissioner.
- 12. The FOI branch assists the Information Commissioner and the FOI Commissioner to perform the FOI functions, including:
 - (a) conducting IC Reviews under Part VII of the FOI Act and preparing draft decisions for the Information Commissioner or FOI Commissioner for the purpose of s 55K of the FOI Act;



- (b) considering and, if appropriate, investigating complaints under Part VIIB of the FOI Act regarding actions taken by a government agency in the performance of its functions or the exercise of its powers under the FOI Act;
 - (c) addressing applications from government agencies and Ministers for extensions of time to process requests for access to information under Part III of the FOI Act;
 - (d) collecting information and statistics from government agencies and Ministers under s 8(j) of the AIC Act to analyse any trends or issues regarding the nature of FOI Requests; and
 - (e) providing guidance and advice to government agencies to improve their decision-making under the FOI Act, and to members of the public in relation to the OAIC's FOI functions.
13. Since at least November 2019, the FOI branch (or the FOI Regulatory group as it was known at that time) has consisted of four teams: Investigations and Compliance, Intake and Early Resolution, Reviews and the SSR teams.
14. The Investigations and Compliance team primarily manages FOI complaints, including conducting investigations in response to complaints or in a Commissioner-initiated investigation, and determining applications for vexatious applicant declarations and extension of time applications. Over the last three years, the number of people who worked in the Investigations and Compliance team fluctuated from three or four full-time equivalent (**FTE**) employees.
15. The Intake and Early Resolution, Reviews and SSR teams are principally responsible for conducting IC Reviews. Up to December 2020, the Investigations and Compliance team assisted the other teams with managing deemed access refusals (described in paragraph 18 below).
16. The Intake and Early Resolution team generally undertakes the:
- (a) initial triage of IC Review applications to determine that the application is valid;
 - (b) initial assessment of whether the application should proceed for review and whether it should be referred to a particular team for case management; and
 - (c) initial case management steps such as notifying the respondent to the IC Review of the application in accordance with s 54Z of the FOI Act.

Sometimes, I may be required to review the initial assessment described in subparagraph (b) and to confirm that it has been assessed appropriately; this is particularly so for matters that have been assessed as needing to be referred to the SSR team.



17. The notice that is given to the respondent for the purpose of s 54Z of the FOI Act usually requests production of information relevant to the review, which depending on the issues raised in the application, may include the documents that were the subject of the request for access and submissions in relation to the respondent's original decision. Although Division 8 of the FOI Act contains a number of powers to require production of different kinds of information, the OAIC almost always initially requests information without use of its compulsory powers.
18. Under the FOI Act, if an agency does not make a decision in relation to a request for access under Part III within the relevant time period, s 15AC(3) operates to deem the agency or Minister to have refused access to the document. There has been a significant increase in the number of IC Review applications lodged with the OAIC in relation to deemed access refusal decisions, from 210 applications in the financial year (FY) 2018-19 to 1,021 applications in FY2021-22. The Intake and Early Resolution team undertakes initial case management in relation to reviews concerning deemed access refusal decisions, including making preliminary inquiries with the relevant agency to determine whether a decision is going to be made. Over the past three years, the number of staff employed in the Intake and Early Resolution team has fluctuated between four and seven FTE employees.
19. If a decision is made to conduct an IC Review, an initial assessment is made of the material to determine the most appropriate approach for case management and the most appropriate team to case manage the application.
20. The Reviews team manages matters that are initially assessed as not being amenable to prompt resolution by the Intake and Early Resolution team (for example, through conciliation with the parties), or that have not resolved during attempts at early resolution, and which involve issues that have some complexity but which do not involve particular exemptions, in particular the exemption for documents affecting national security, defence or international relations (s 33 of the FOI Act) or Cabinet documents (s 34 of the FOI Act). Over the past three years, the number of staff in the Reviews team has fluctuated between three and five FTE employees, including a director who supervises the team and two to four Review Advisers, who are the case officers that generally have the day-to-day conduct of IC Reviews and prepare draft decisions for the Information Commissioner or FOI Commissioner for the purpose of s 55K of the FOI Act.
21. The SSR team is responsible for case managing IC Reviews that are considered to be particularly complex or significant having regard to the issues raised in the application, including the application of certain exemptions and/or claims that documents are exempt under ss 33 or 34 of the FOI Act. The SSR team also generally manages IC Reviews that concern particular kinds of documents, such as official documents of a Minister,

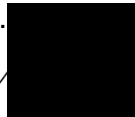

senior officials' or Ministers' diaries, electronic communications or incoming Government briefs, or raise novel or systemic issues. Over the past three years, the number of staff in the SSR team has generally comprised of three or four FTE employees (which would include a director and two or three Review Advisers). Because the SSR team generally handles the IC Reviews that are considered most complex, or raise significant or sensitive issues, the OAIC seeks to ensure that its more experienced Review Advisers are in that team. In addition, the SSR team is principally responsible for undertaking the FOI regulatory guidance and advice functions, including preparing guidance material for publication by the OAIC, preparing material for conferences attended by the Information Commissioner or FOI Commissioner and assisting in the preparation of briefs in relation to FOI issues in advance of Senate Estimates.

Part B - Overview of the IC Review Process

22. Pursuant to s 93A of the FOI Act, the OAIC has published guidelines (**FOI Guidelines**), Part 10 of which sets out the general process that the OAIC follows in conducting IC Reviews. **[GEN.0001]** is a copy of Part 10 of the FOI Guidelines titled "*Review by the Information Commissioner*" (as at the date of making this affidavit, the current version of the FOI Guidelines is version 1.10).
23. The Information Commissioner has also published directions pursuant to s 55(2)(e) of the FOI Act regarding the IC Review process. The 'Direction as to certain procedures to be followed in IC Reviews' (**IC Review Process Directions**) provides, amongst other things, the particular procedures that agencies and ministers are required to follow during IC Reviews in respect of the production of documents, the provision of a statement of reasons where access has been deemed to be refused and the provision of submissions. The 'Direction as to certain procedures to be followed by applicants in Information Commissioner reviews' (**IC Review Applicant Directions**) provides members of the public with information on how to make a valid IC Review application, and what an applicant must do while the process is underway. **[GEN.0002]** and **[GEN.0003]** are copies of the IC Review Process Directions and the IC Review Applicant Directions, respectively.
24. Generally, the IC Review process is intended to be a non-adversarial process that involves the use of alternative dispute resolution methods, in order to provide a timely and cost-efficient process of reviewing the merits of decisions by agencies and ministers in relation to FOI requests.
25. The process that is followed in relation to IC Reviews can vary significantly depending on (amongst other things) whether the application concerns a deemed access refusal



decision under s 15AC(3) of the FOI Act and the particular issues raised by the application.

26. After the initial screening process to determine that an application for IC Review is valid, the first substantive step in most IC Reviews (except those involving review of a deemed access refusal decision, which, as explained in paragraph 18 above, usually involve initial preliminary enquiries) is to give notice of the application to the respondent as required by s 54Z of the FOI Act, and request production of documents relevant to the review (I refer to this initial notice below as a **54Z Notice**). Paragraph 10.100 of the FOI Guidelines outlines the information that may be sought from the respondent at this stage. As noted in paragraph 17 above, the initial request to the respondent for production of relevant material is almost always made without recourse to the Information Commissioner's compulsory powers. The OAIC expects that, consistently with the obligation imposed by s 55DA of the FOI Act, the respondent to an IC Review application will use its best endeavours to assist the Information Commissioner to make a decision in relation to an IC Review.
27. Consideration is also given at the initial stage to whether the IC Review raises the same or similar issues to another IC Review, so that it should be case managed together with the other matter, or whether there are particular circumstances that justify the IC Review being expedited. The considerations that the Information Commissioner may have regard to when deciding whether to expedite an IC Review application are outlined in paragraph 10.24 of the FOI Guidelines. The initial assessment process also involves consideration of whether the Information Commissioner should decline to undertake an IC Review pursuant to s 54W of the FOI Act, which I refer to further below.
28. As part of the initial assessment process, IC Reviews are generally allocated either to the Reviews team or the SSR team. When a matter is allocated to one of those teams, the OAIC's case management database (known as "Resolve") is updated to show which team the matter has been allocated to. Resolve enables us to track the IC Reviews on hand, and ascertain the status of individual matters, including the team that a matter has been allocated to. Because of the volume of IC Review applications received by the OAIC each year, and the relatively small number of Review Advisers in the FOI branch, there is often a significant period of time between allocation of an IC Review to either the Reviews or SSR team, and the allocation of the IC Review to a Review Adviser within that team for further case management.
29. Copies of the Resolve records as at 3 August 2022 of each of the IC Review applications that I describe in **Part C** below are annexed to this affidavit **[RES.00054]; [RES.00424]; [RES.00544]; [RES.00613]; [RES.00760]; [RES.00863]; [RES.00922]; [RES.01189]**.  

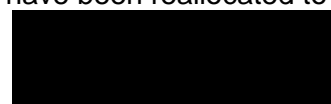
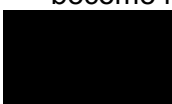
30. The Reviews and SSR teams are led by a Director, who is primarily responsible for allocating IC Reviews to a Review Adviser within their team. The Directors manage the workload of their teams, and when a Review Adviser has capacity to take on a new IC Review, the Director will allocate an IC Review from the matters awaiting allocation having regard to:
- (a) the date of lodgement;
 - (b) whether an application raises circumstances that warrant expedition;
 - (c) whether the application concerns the same materials or raises the same issues as other IC Review applications under consideration at the time;
 - (d) whether there is scope to group them into a cohort to be managed by the same Review Adviser;
 - (e) whether the OAIC is waiting on information in relation to a matter that will prevent it being progressed;
 - (f) the workload of the Review Advisers and the complexity of the application; and
 - (g) whether an IC Review is suitable to be managed by a particular Review Adviser having regard to their experience.
31. Once an IC Review is allocated to a particular Review Adviser, that person reviews the material to determine the next steps. The progress of each IC Review from that point depends on the particular issues raised. For example, sometimes the OAIC will have received the documents from the respondent agency or Minister in response to the initial 54Z Notice, but that will not be the case if the original decision involved refusal of access based on s 33 of the FOI Act (national security documents), s 34 (Cabinet documents) or s 45A (Parliamentary Budget Office documents). When those exemptions are claimed, s 55U(2) provides that the Information Commissioner may only require production of the document if (amongst other things) she is not satisfied by other material that the document is an exempt document. Accordingly, before requiring production of documents that are claimed to be exempt under either ss 33, 34 or 45A of the FOI Act, it is necessary to consider whether the decision to apply the exemption was correct based on the submissions made by the respondent in support of the claimed exemption.
32. Generally, material requested from the IC Review respondent through the 54Z Notice is produced to the OAIC by email. However, certain kinds of information, including documents claimed to be exempt pursuant to ss 33, 34 and 45A of the FOI Act, cannot be provided by email and generally must be delivered in hardcopy to the OAIC's Sydney office by secure courier services, referred to as "Safehands" delivery. Material of this kind must be stored securely in accordance with the Commonwealth's Protective

Security Policy Framework. All members of the FOI branch are required to have the relevant security clearance to review such material.

33. Because of the COVID-19 pandemic, OAIC staff have been required to work remotely at various times since 2020. When stay-at-home restrictions were in place in Sydney, OAIC staff were unable to access protected information that was stored in the OAIC's Sydney office. Even since the lifting of stay-at-home requirements in New South Wales, the OAIC has continued to experience challenges in accessing protected information produced in hard-copy by agencies, because OAIC staff have continued to work remotely in part, and in order for staff to access information stored securely, arrangements must be made for particular staff members with the relevant security clearance to be physically present at the Sydney office to enable members of the FOI branch to review such material.
34. To try to address the challenge of enabling access to protected information when staff are working remotely, the OAIC has implemented a facility for the secure sharing of files online. However, to date only a small number of Departments have approved the facility for use in producing documents to the OAIC. Approval has not been given by the Department of Prime Minister and Cabinet for use of the online platform to share documents claimed to be exempt under s 34 (Cabinet documents), and therefore the OAIC continues to have to rely on Safehands delivery of hardcopies of such documents.
35. Most IC Reviews are determined on the papers, without the need for a hearing.
36. There are a number of different ways that an application for review by the Information Commissioner under Pt VII of the FOI Act can be resolved.
37. The Information Commissioner may decide not to undertake an IC Review, or not to continue an IC Review in the circumstances set out in s 54W of the FOI Act, including because the application is (amongst other things) lacking in substance, the applicant has failed to cooperate in progressing the application without reasonable excuse, or the Information Commissioner is satisfied that the interests of the administration of the FOI Act make it desirable that the original decision be reviewed by the AAT. Consideration is given to whether the Information Commissioner should decide not to undertake an IC Review as part of the initial assessment referred to in paragraph 27 above.
38. Pursuant to s 55F of the FOI Act, an IC Review may be determined by agreement between the parties, if the Information Commissioner is satisfied that a decision in the agreed terms would be within her power. Alternatively, at any time during an IC Review, an agency or Minister may vary a decision to refuse access to documents, provided the revised decision would either result in the applicant having access to a document in accordance with their request, relieve the applicant from liability to pay a charge or

require a requested amendment of a record of personal information (s 55G(1) of the FOI Act). Where an agency or minister no longer contends that material is exempt or has identified further material within the scope of the FOI request, a revised decision under s 55G facilitates the prompt release of further material to the applicant. The revised decision will be the decision under review and the OAIC will generally consult the applicant as to whether they wish to continue the IC review on the basis of the revised decision. An IC Review can be withdrawn by an applicant under s 54R of the FOI Act, including if variation of the decision by the agency resulted in an outcome that was satisfactory to the applicant.

39. If an IC Review is not otherwise resolved, the Information Commissioner or the FOI Commissioner is required to make a decision in writing after undertaking an IC Review (s 55K). The decision-making power under s 55K cannot be delegated. If a decision under s 55K is necessary, the Review Adviser prepares draft reasons for consideration by the Information Commissioner or FOI Commissioner. When planning the workflow of the Reviews and SSR teams, I assume that, on average, it takes a reasonably experienced Review Adviser in the SSR team one week to draft reasons for a s 55K decision, whereas I expect that on average a reasonably experienced Review Adviser in the Reviews team will be able to draft two s 55K decisions in a week. Those estimates assume that the Review Advisers work a 37.5 hour week, and will spend a limited amount of time in the week doing case management for other IC Reviews. However, the time required to prepare draft reasons varies depending on the complexity of the issues and the volume of documents that are required to be considered.
40. Over the past three years, full-time Review Advisers working in the Reviews and SSR teams have generally had approximately 20 to 30 IC Review applications that they were case managing at any point in time. However, Review Advisers in the SSR team also assist with the FOI regulatory advice functions of the OAIC (which include providing guidance material and guidelines to, and conducting workshops for, government agencies on their obligations under the FOI Act, preparing material for external conferences, and preparing guidance documents for the broader public) and from time-to-time Review Advisers in the SSR team have had less IC Reviews to manage when they were required to undertake other regulatory advice work.
41. When a Review Adviser from one of the teams departs the FOI branch, the director of the relevant team must reallocate the departing staff-member's IC Reviews to another member of the team. The departure of a staff member can cause delays in the progress of IC Reviews, because it may take some time before another member of the team has capacity to take on additional matters, and it also takes time for a new Review Adviser to become familiar with the details of IC Review applications that have been reallocated to

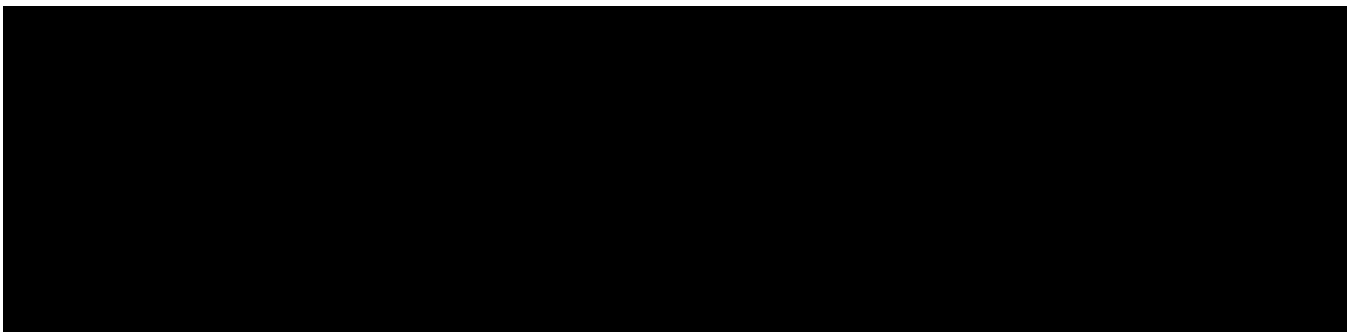


them. When reallocating IC Review applications, the Director of the team considers the nature of the application and who within the team has capacity and appropriate experience to manage the matter.

42. The number of IC Review applications received by the OAIC has increased every year. For example, in the 2018-19 financial year (**FY**), the OAIC received 928 IC Review applications, in FY2019-20 the OAIC received 1,066 IC Reviews, in FY2020-21 the OAIC received 1,224 IC Reviews, and in FY2021-22 the OAIC received approximately 1,955 IC Reviews. Although during that period the number of IC Reviews finalised each year has also increased, nonetheless the number of IC Reviews that have remained open at the end each financial year over the last four years has increased from 851 as at the end of FY2018-19, 1,089 as at the end of FY2019-20, 1,295 as at the end of FY2020-21 and approximately 1,869 as at the end of FY2021-22. To try to address the growing backlog of IC Reviews on foot, the IC Review process has been refined. In particular, for IC Review applications that have been lodged with the OAIC since around November 2021, the Director of either the Reviews or SSR team has worked closely with the Intake and Early Resolution team to progress the case management steps outlined above, so that by the time the IC Review application is allocated to a Review Adviser within either the Reviews or SSR team, initial case management steps have been undertaken and the Review Adviser can more quickly progress to preparing draft reasons for a s 55K decision.

Part C – IC Review Applications the subject of the separate question

MR19/00010



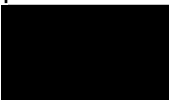

MR20/00054

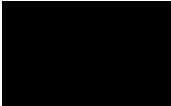
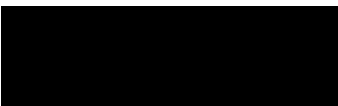
44. On 22 January 2020 the Applicant lodged an application for review of a decision by the Department of Foreign Affairs and Trade (**DFAT**) to refuse access to documents that relate to the oil and gas processing options for the Greater Sunrise oil and gas fields in the Timor Sea (MR20/00054) **[00054.001]**, **[00054.001.A1]**, **[00054.001.A2]**. DFAT identified an unstated number of documents as falling within the scope of the request, and refused access to them all based on ss 22, 33, 47E and 47G of the FOI Act.



45. Initial consideration was given to splitting the IC Review Application into two, because DFAT had dealt with the initial access request in two parts. However, on 29 January 2020, an email was sent to the Applicant's representative informing him that the OAIC had decided to keep the application as one IC Review, and seeking clarification regarding the scope of the IC Review **[00054.002]**, **[00054.003]**.
46. On or about 14 February 2020, the Intake and Early Resolution team conducted an initial assessment of IC Review application MR20/00054, and assessed that: (a) the application should be reviewed; (b) that it should be referred to the SSR team for case management in due course; (c) that it should initially be referred to the Intake and Early Resolution team to issue the initial notices; and (d) that the scope of the IC Review is confirmed with the Applicant as part of the initial notice sent to him. I reviewed and confirmed that initial assessment. The notes of the initial assessment were recorded in the Resolve database for MR20/00054 **[RES.00054]**.
47. On 11 March 2020, an email was sent to the Applicant advising that the Information Commissioner had decided to commence a review and that allocation of the matter to a review officer may take up to 12 months **[00054.004]**. At that time, the standard initial notice sent to IC Review applicants stated that it may take up to 12 months to allocate the matter to a review officer, which was a rough estimate at the time based on the number of IC Review applications that the OAIC was processing.
48. Also on 11 March 2020, a 54Z Notice was sent to DFAT, which requested information be provided to the OAIC by 1 April 2020 **[00054.005]**, **[00054.005.A1]**.
49. DFAT requested two extensions of time to submit its response to the 54Z Notice, which were both granted.
50. The first extension of time was received by the OAIC on 16 April 2020. DFAT advised that it had not been able to respond to the 54Z Notice due to resourcing pressures related to the COVID-19 pandemic, and an administrative error **[00054.006]**. On 20 April 2020, the OAIC advised DFAT that an extension of time to 29 May 2020 had been granted **[00054.007]**.
51. DFAT did not provide its response to the 54Z Notice by the extended date. On 5 June 2020, an Assistant Director of DFAT's legal division emailed the OAIC, stating that she had taken carriage of the matter that week, and was working to progress a response to the notice. The email stated that a further update in relation to the progress of DFAT's response would be provided by 26 June 2020 **[00054.009]**. The request was approved on 11 June 2022 **[00054.010]**.
52. The OAIC received further emails from DFAT regarding the timing of its response to the 54Z Notice on 7 July and 27 August 2020 **[00054.011]**, **[00054.012]**. DFAT advised the

OAIC that there had been further delay in providing its response to the 54Z Notice due to difficulties accessing documents held in a secure onsite location due to remote working requirements in place at the time, resourcing requirements, staff absences and requirements to consult with government agencies to finalise its response. DFAT advised that external lawyers had been engaged to assist with the preparation of the response [00054.011], [00054.012].

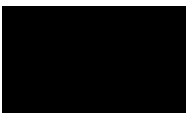
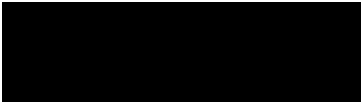
53. On 9 July 2020, I spoke to the Assistant Secretary, Corporate Law branch of DFAT about a number of IC Reviews involving review of decisions by DFAT where DFAT had failed to provide information in a timely way in response to requests from the OAIC. Prior to that discussion, a list of specific IC Review matters to be discussed was provided to DFAT and DFAT had provided notes in relation to the status of each matter, including MR20/00054 [00054.053]. The outcome of my conversation with the Assistant Secretary was that the contact details for the DFAT officer to whom notices should be issued requiring production of material was provided.
54. In August 2020, a Senior Review Adviser within the SSR team reviewed all of the Applicant's IC Review applications, including MR20/00054 to assess the next steps. On 18 August 2020, the Deputy Commissioner and I received an email from the Senior Review Adviser providing an update in relation to the Applicant's various IC Review applications [00054.039], [00054.039.A1]. In relation to MR20/00054, it was noted that a response had been expected from DFAT by the end of July, and the matter was proposed to go to the Information Commissioner after a direction had been issued to compel a response from DFAT by 20 August 2020, and the case officer had considered whether to issue a notice under s 55U of the FOI Act, or take a procedural fairness step.
55. On 28 September 2020, I received an email from the Acting Director providing a further update in relation to the Applicant's IC Review applications, including MR20/00054 [00054.041]. The document "D2020/016125" referred to in the Acting Director's email is a Word table that was maintained by the OAIC to provide updates on the Applicant's IC Review applications from time-to-time. In relation to MR20/00054, the table states (among other things) that the Department had advised that a response may be provided by 14 September 2020, and that the OAIC will need to seek an update from the Department [00054.056].
56. In October 2020, the OAIC corresponded with DFAT regarding the status of various applications, including MR20/00054 [00054.013], [00054.013.A1]. A note in the Resolve record for MR20/00054 indicates that the Director of the SSR team and a Review Adviser met with DFAT representatives on 13 October 2020, and DFAT indicated that it would advise the OAIC by 20 October 2020 regarding how it intended to proceed in relation to MR20/00054 [RES.00054].
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57. On 19 November 2020, DFAT advised the OAIC that it had decided to revise its original decision under s 55G of the FOI Act, and that because of the complexity of the matter and other considerations, it was anticipated that the decision-maker would be able to finalise the revised decision in January 2021 **[00054.014]**. A response was sent the same day to DFAT **[00054.015]**. The Applicant was also advised by email that DFAT had indicated that it intended to revise its original decision **[00054.016]**.
58. On 26 November 2020, a Review Adviser within the Intake and Early Resolution team provided an update to the Director of that team regarding ongoing delays by DFAT with respect to responses to 54Z Notices from DFAT in relation to a number of matters **[00054.042]**. As part of that update, the Review Adviser outlined the status of IC Review MR20/00054 and noted that a next step was to consider issuing a notice under s 55R of the FOI Act to the Department to provide certainty on the due date of its revised decision under s 55G.
59. On 1 December 2020, I instructed staff to issue a notice under s 55U of the FOI Act to DFAT requiring production of the relevant documents and submissions by 15 January 2021. Although DFAT had indicated that it intended to issue a revised decision, I considered it appropriate to progress the matter to issue a notice under s 55U requiring provision of the documents the subject of the decision under review and DFAT's submissions. On 2 December 2020, I sent an email to staff in the SSR team about issuing the s 55U notices **[00054.042]**. Based on my email, I believe that I subsequently spoke to members of the SSR team about the notices. As best as I can recall, it was decided that the Senior Review Adviser in the SSR team at the time would issue the s 55U notices, including in relation to MR20/00054. However, the Senior Review Adviser resigned shortly after returning from leave in January 2021, and it appears that a s 55U notice was not ultimately issued at that time.
60. On 22 December 2020, the Applicant requested an update from the OAIC in relation to all of his IC Review applications current at the time, including MR20/00054, and applications MR20/00424, MR20/00613 and MR20/00760 (which I describe further below) **[00760.003]**. On 22 and 23 December 2020, emails were sent between members of the Intake and Early Resolution team and the SSR team to compile the necessary information to respond to the Applicant's request **[00760.004]**, **[00760.007]**.
61. On 12 January 2021, the Director of the SSR team provided an update to the Applicant in relation to a number of his IC Review applications, including MR20/00054 **[00054.017]**. The update in relation to MR20/00054 stated that DFAT had proposed making a revised decision under s 55G, and that the OAIC would contact the Applicant about the next steps after the revised decision was received **[00054.017.A1]**.
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62. On 19 April 2021, the OAIC received a notice from the Applicant under the *Civil Disputes Resolution Act 2011* (Cth). In response to that notice, on 28 April 2021 the Deputy Commissioner met with the Applicant in Canberra, and I joined the meeting by telephone. As far as I can recall, the meeting was on a without prejudice basis.
63. On 16 August 2021, IC Review MR20/00054 was allocated to a Review Adviser in the SSR team to continue case managing the matter.
64. On 17 August 2021, the Review Adviser sent an email to DFAT noting that the OAIC had not received a revised s 55G decision, which was anticipated to have been finalised in January 2021 **[00054.018]**. The email requested an update from DFAT by 31 August 2021 regarding the status of the proposed revised decision **[00054.018]**.
65. On 2 September 2021, DFAT informed the Review Adviser that a substantive response regarding the progress of the revised decision and timetable for completion would be provided by 6 September **[00054.019]**. In an email dated 6 September 2021, DFAT's Assistant Director, Legal outlined the status of DFAT's work to prepare a revised decision, and stated that DFAT's ability to set firm dates for the completion of the revised decision was complicated by the stay at home orders in place at the time in the ACT, which prevented access to the relevant documents, which could only be accessed in the office due to their security classification. The email stated that a further update would be provided regarding the likely timeframes **[00054.020]**.
66. On 15 September 2021 the Review Adviser emailed DFAT requesting information that could be provided to the Applicant regarding the reason for DFAT's delay between November 2020 and September 2021 in making the revised decision **[00054.021]**. No response was received. On 24 September 2021 the Review Adviser sent an email to DFAT requesting a response by 1 October 2021 **[00054.022]**. Later that day, the Director of DFAT's FOI and Privacy Law Section provided information to be shared with the Applicant **[00054.023]**.
67. On 7 October 2021, the Review Adviser sent an email to the Applicant providing an update regarding MR20/00054 **[00054.024]**.
68. On 20 October 2021, the Director of the SSR team emailed the Director of DFAT's FOI and Privacy Law Section requesting an indication as to when DFAT would finalise the revised decision **[00054.025]**. On 27 October 2021, DFAT sought an extension of time until 3 November 2021 to consult with relevant business areas regarding the timing for the revised decision, which was granted **[00054.025]**.
69. On 3 November 2021, an email was received from DFAT which advised that it expected to finalise the revised decision by 17 December 2021 **[00054.025]**.

70. On 4 November 2021, a letter was sent to DFAT advising it that the IC Review application MR20/00054 is a subject of this proceeding **[00054.026]**, **[00054.026.A1]**.
71. On 3 December 2021, a delegate of the Information Commissioner issued a Direction to DFAT under s 55(2)(e)(ii) of the FOI Act, requesting a response to the 54Z Notice dated 11 March 2020 and a s 55G revised decision to be provided to the OAIC by 17 December 2021 **[00054.028]**, **[00054.028.A1]**. On 17 December 2021, DFAT requested an extension of time until 14 January 2022 to respond **[00054.029]**.
72. Following receipt of the extension of time request, the Director of the SSR team emailed the Acting FOI Commissioner seeking advice as to whether to grant the extension. Due to the significant delay by DFAT in providing the revised decision, a decision was made to issue a notice pursuant to s 55R of the FOI Act **[00054.051]**.
73. On 22 December 2021, I issued a s 55R notice to produce documents and give information to DFAT, requiring a response by 14 January 2022 **[00054.029]**, **[00054.029.A1]**. Amongst other things, the s 55R notice sought production of a marked up and unredacted copy of the documents at issue in the IC Review, with material claimed to be exempt highlighted and reference to the exemptions claimed applied and submissions in relation to the exemptions claimed.
74. On 14 January 2022, DFAT issued a revised decision, identifying 73 documents (321 pages in total) as falling within the scope of the request, and granting access in full to four of those documents. In relation to 69 documents, DFAT refused access in full or in part, relying on ss 22, 33, 34, 47C, 47E(d) and 47G of the FOI Act **[00054.031]**.
75. On 19 January 2022, the Review Adviser that was case managing this IC Review emailed the Applicant seeking an indication as to whether he intended to proceed with the IC Review in light of DFAT's revised decision. On 2 February 2022, the Applicant advised that he intended to proceed with the IC Review and requested additional time to provide a further submission.
76. The Resolve record for MR20/00054 (**[RES.00054]**) indicates that, on 10 February 2022, a Review Adviser in the SSR team spoke to the Applicant's representative about the possibility that the IC Review might be referred to the AAT pursuant to s 54W(b) of the FOI Act.
77. Further submissions were received from the Applicant on 15 February 2022 **[00054.032]**.
78. Following receipt of the Applicant's further submissions, I spoke to the Applicant's representative on 22 February 2022. Shortly after the call, I made a note of the telephone call in the Resolve database. (**[RES.00054]**) Based on the note I made at the

time, I believe that during the telephone call I explained to the Applicant's representative that no decision had been made to refer MR20/00054 to the AAT, however I outlined why consideration was now being given to referring the matter to the AAT under s 54W(b). I explained that DFAT's revised decision indicated that there were about 75 documents responsive to the request, and exemptions were applied under ss 33(a)(iii), 33(b), 34, 47C, 47E(d) and 47G of the FOI Act. The classification of the documents meant that they could not be accommodated by the OAIC's infrastructure, and would have to be viewed at the Department's office. Consideration was being given to referring the matter to the AAT because of the complexity of the matter.

79. On 9 March 2022, I had a telephone conversation with the Applicant. During that call, the Applicant told me that he would consider removing from the scope of this IC Review material that could not be accommodated by OAIC infrastructure based on its classification. Shortly after the call, I made a note about it in the Resolve database **[RES.00054]**.
80. On or around 14 March 2022, IC Review MR20/00054 was allocated to a different Review Adviser in the SSR team, because the Review Adviser to whom it had originally been allocated had resigned from the OAIC.
81. On 15 and 17 March 2022, I had a number of telephone and email exchanges with representatives of the Applicant and DFAT representatives to clarify the scope of the IC Review and the documents at issue, in light of the Applicant's indication that he would exclude certain material from the scope of the IC Review **[00054.034]**, **[00054.035]**.
82. On 21 March 2022, the new Review Adviser emailed DFAT requesting the documents in respect of which access had not been granted by 28 March 2022, and sought permission from DFAT to share with the Applicant DFAT's submissions that had been received on 14 January 2022 **[00054.037]**. Those submissions were shared with the Applicant on 25 March 2022, and the Applicant was invited to provide any further submissions by 18 April 2022 **[00054.048]**.
83. Following further liaison between the Review Adviser and DFAT, on 1 April 2022 DFAT confirmed that the documents that had been requested would be provided on 5 April 2022.
84. On 5 April 2022, the OAIC received the documents in respect of which access had not been granted (with material claimed to be exempt under ss 33 and 34 of the FOI Act redacted) from DFAT by Safehands courier delivery **[00054.045]**
85. On 26 April 2022, further submissions were received from the Applicant in response to DFAT's submissions **[00054.048]**.
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86. On 25 July 2022, a notice was issued to DFAT pursuant to s 55U of the FOI Act requiring production of unredacted versions of the documents provided on 5 April 2022. A response to the notice was sought by 9 August 2022 [00054.052], [00054.052.A1]. Following receipt of the unredacted documents, and assuming that no further case management steps are necessary following review of the unredacted documents, the Review Adviser will proceed to prepare draft reasons for decision, for consideration by the FOI Commissioner.



MR20/00424

87. On 21 April 2020, the Applicant lodged an IC Review application seeking review of a decision by the Department of Industry, Science, Energy and Resources (**DISER**) to refuse access (in part) to documents relating to the selection of the location for a National Radioactive Waste Management Facility (MR20/00424) [00424.001], [00424.001.A1], [00424.001.A2]. DISER identified 3 documents totalling 254 pages as falling within the scope of the request and refused access in part to one document based on ss 22 and 47C of the FOI Act and refused access to 2 documents in full based on s 34(1)(a) of the FOI Act (Cabinet documents). The Applicant lodged a revised application on 24 April 2020 [00424.002], [00424.002.A3].
88. On 28 April 2020 an acknowledgement email was sent to the Applicant [00424.003]. On or around 28 April 2020, I conducted an initial assessment of IC Review application MR20/00424. In that assessment, I considered that: (a) the application should be reviewed; (b) that the application should be referred to the SSR team for case management in due course; (c) that the application be referred to the Intake and Early Resolution team to manage the issuing of the initial notices; and (d) that the scope of the IC Review is confirmed with the Applicant as part of the initial notice sent to him. The notes of my initial assessment are recorded in the Resolve record for MR20/00424 [RES.00424].
89. On 27 May 2020, an email was sent to the Applicant advising, among other things, that the IC Review process will commence and due to the number of matters on hand, that allocation of the matter "*may take up to 12 months*" [00424.004]. On the same date, a 54Z Notice was sent to DISER requesting a response by 17 June 2020 [00424.005], [00424.005.A1].
90. DISER requested three extensions of time to provide the information requested in the 54Z Notice, each of which was granted.
91. The first extension of time was requested by DISER on 15 June 2020, on the basis of organisational changes and staffing difficulties that DISER was experiencing at the time [00424.006]. As this was the first request for an extension of time and due to the

reasoning provided by the DISER (who outlined the difficulties that it was facing as a result of the COVID-19 pandemic), an extension of time to 1 July 2020 was granted by the Director of the Intake and Early Resolution team **[00424.007]**. On 22 June 2020, the OAIC advised DISER that the extension of time had been granted **[00424.008]**.

92. A second extension of time was requested by DISER on 1 July 2020, on the basis that the subject matter expert had conflicting priorities related to a Senate Committee Inquiry **[00424.010]**. An extension of time to 20 July 2020 was considered and granted **[00424.011]**, **[00424.011.A1]**, **[00424.012]**.
93. On 1 July 2020, the OAIC provided an update to the Applicant regarding three of his IC Reviews relating to decisions of DISER, including MR20/00424 **[00424.009]**. The Applicant was advised that the OAIC was awaiting DISER's response to the OAIC's request for processing documentation and the documents at issue **[00424.009]**.
94. A third extension of time was requested by DISER on 17 July 2020 **[00424.013]**. DISER informed the OAIC that consideration was being given to varying its decision under s 55G of the FOI Act, and that DISER was undertaking consultation with the Department of Prime Minister and Cabinet. On 30 July 2020, the OAIC advised DISER that the extension of time had been granted to 3 August 2020 **[00424.014]**.
95. DISER did not provide its response to the 54Z Notice on the due date of 3 August 2020.
96. On 13 August 2020, DISER sent an email to the OAIC which advised the OAIC that it had received the Department of Prime Minister and Cabinet's advice as to whether they would continue to support a Cabinet documents exemption, and would be providing its response to the 54Z Notice to the OAIC "*shortly*" **[00424.015]**. On 20 August 2020, the OAIC requested an update from DISER regarding when the OAIC could expect to receive the response to the 54Z Notice **[00424.016]**.
97. The OAIC received DISER's response to the 54Z Notice on 24 August 2020 **[00424.017]**.
98. I received a further update in relation to the Applicant's IC Review Applications on 28 September 2020 (as outlined in the table **[00054.056]**, including MR20/00424 (as noted in paragraph 55 above). In relation to MR20/00424, the table states (among other things) that the Department's submissions will be shared with the Applicant **[00054.056]**.
99. On 12 January 2021, the Director of the SSR team provided an update to the Applicant regarding various applications, including MR20/00424. In relation to MR20/00424, the Applicant was advised that he would be informed about the next steps following the OAIC's review of the documents and submissions **[00054.017, 00054.017.A1]**.



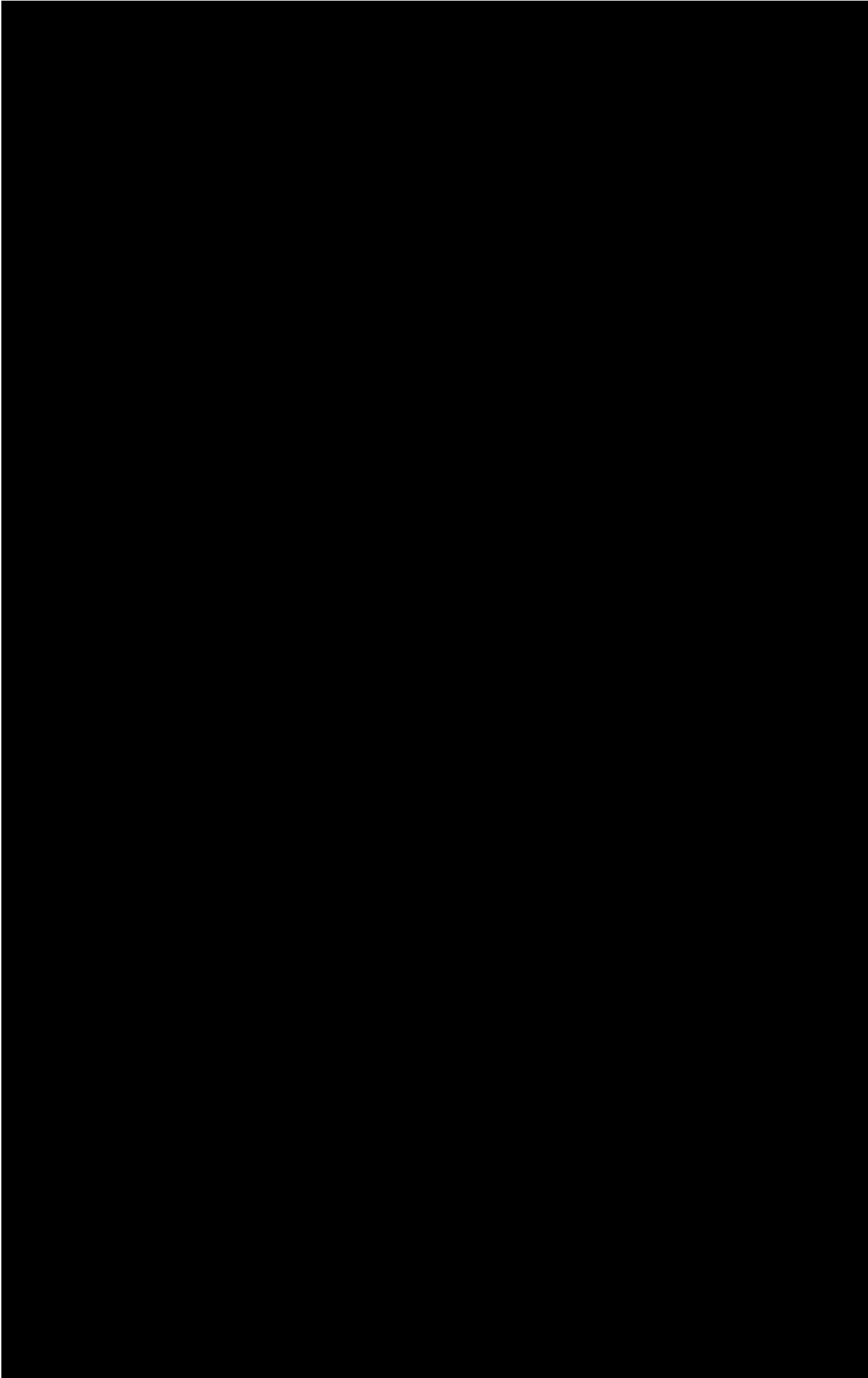
100. On 4 November 2021, a letter was sent to DISER advising it that application MR20/00424 is a subject of this proceeding **[00424.019, 00424.019.A1]**.
101. IC Review application MR20/00424 has not yet been allocated to a particular Review Adviser within the SSR team. Once it is allocated, the Review Adviser will consider DISER's response to the 54Z Notice, and determine what, if any, further case management steps are necessary.
102. As I explained in paragraph 30 above, the Director of the SSR team is responsible for monitoring the workload of the Review Advisers in the SSR team, and determining when someone has capacity to take on a new IC Review. In deciding which IC Review(s) to allocate, the Director considers the matters outlined in paragraph 30 above. The OAIC's case management system (Resolve) does not allow me to work out where MR20/00424 sat amongst the other matters that had been assigned to the SSR team, but not yet allocated to a Review Adviser, in August 2020. However, as at 3 August 2022, there were 42 IC Review applications that have been assigned to the SSR team but not yet allocated to a Review Adviser that were lodged with the OAIC prior to MR20/00424.
103. Although MR20/00424 has not yet been allocated to a Review Adviser, on 21 December 2021 the Director of the SSR team emailed the FOI contact at DISER in relation to two IC Reviews involving decisions by DISER, including MR20/00424. The Director noted that some material had been sent to the OAIC as part of DISER's response to the s 54Z Notice, but that some material was claimed to be exempt under s 34 and may not yet have been provided to the OAIC. The Director also noted that OAIC staff were not able to receive exempt material via Safehands delivery due to remote working arrangements. The Director advised DISER that the OAIC was exploring use of an online platform for sending and receiving protected material for IC reviews, as an alternative to Safehands delivery, and requested DISER's consideration to upload the claimed exempt material using the platform **[00424.029]**.
104. On 13 January 2022, the Director emailed DISER seeking an update regarding DISER's consideration of the proposal for use of the OAIC's online platform for delivery of documents where the Cabinet exemption was claimed **[00424.029]**.
105. The OAIC has subsequently been informed that the use of the OAIC's secure online platform for delivery of Cabinet documents has not been approved by the Department of Prime Minister and Cabinet. Accordingly, the OAIC continues to rely on Safehands delivery for receipt of documents claimed to be exempt under s 34 of the FOI Act.
106. The OAIC was notified by the Applicant's representative on 22 June 2022 that he would be the Applicant's contact person in relation to the Applicant's IC Review applications until 30 June 2022 **[00424.025]**. On 15 July 2022, DISER emailed the Director of the
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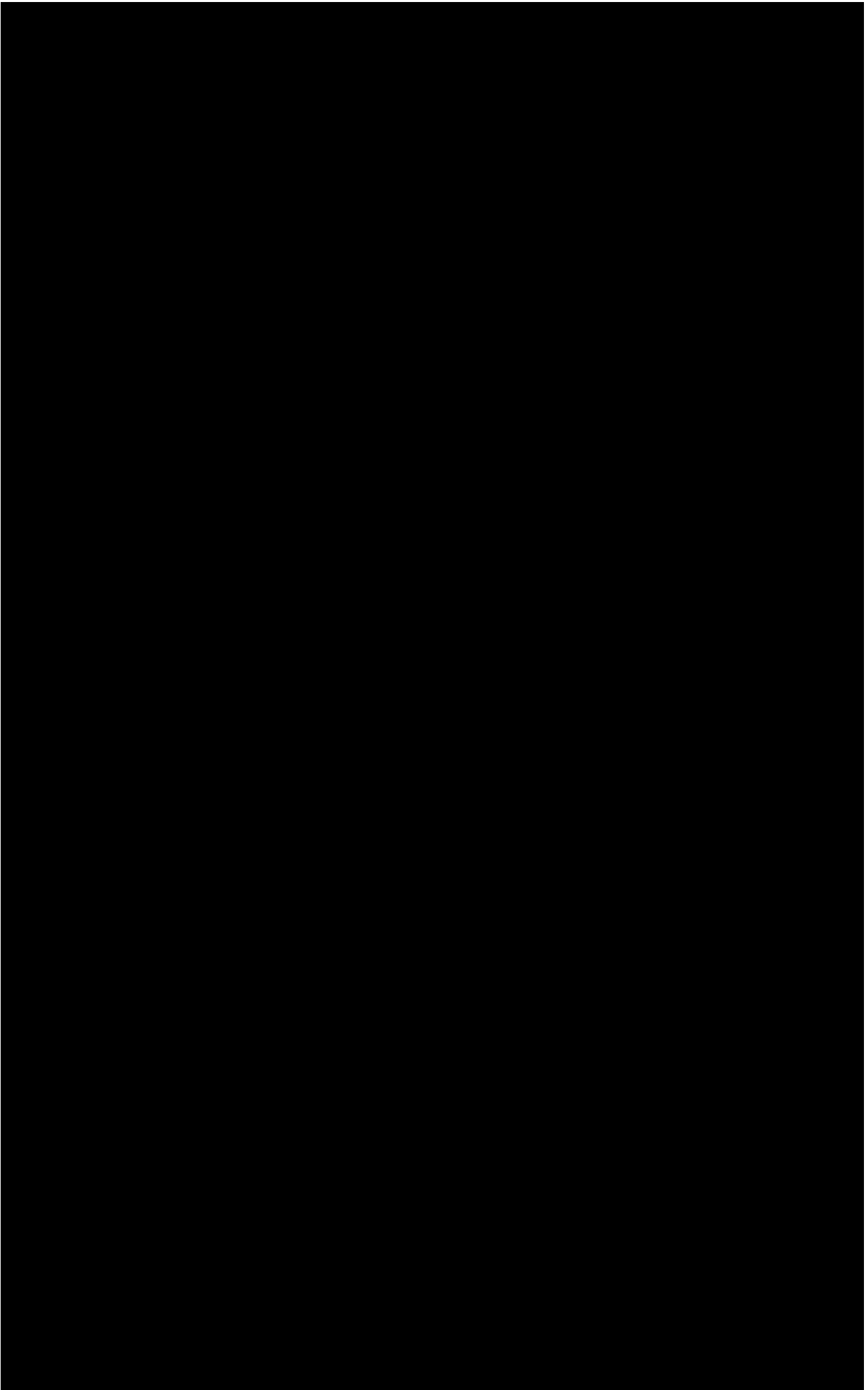
SSR team requesting a status update for particular IC Review applications (including MR20/00424, and applications MR20/00760 and MR20/00863 which I describe further below). On 28 July 2022, the Director of the SSR team responded indicating that the OAIC had received new contact details for the Applicant but that the OAIC had not been advised that the Applicant has withdrawn any of the specific IC Review Applications **[00424.027]**.

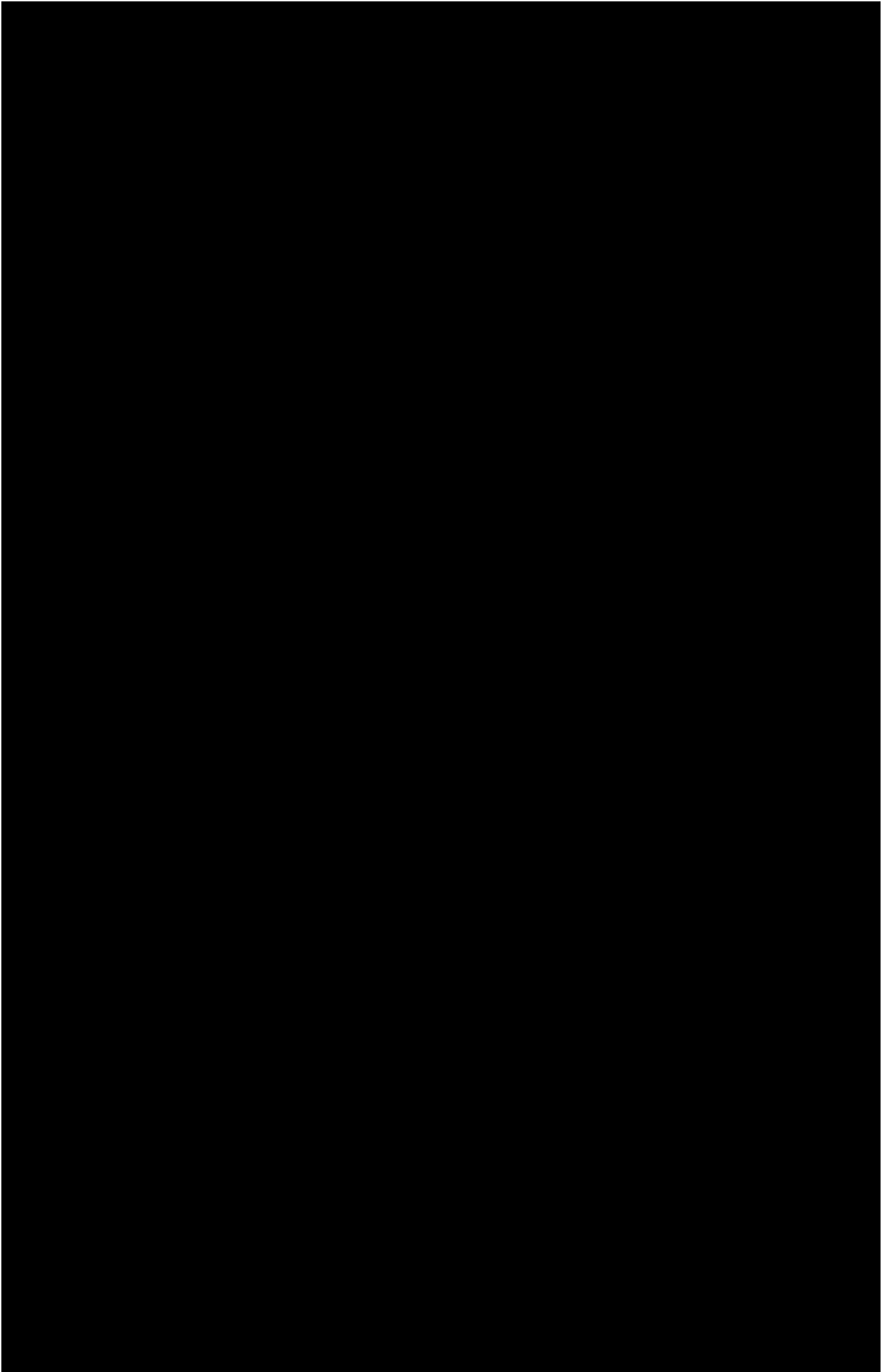
107. On 29 July 2022, the OAIC issued a s 55U notice to DISER, requesting a response by 12 August 2022 **[00424.028]**, **[00424.028.A1]**, **[00424.028.A2]**, **[00424.028.A3]**.

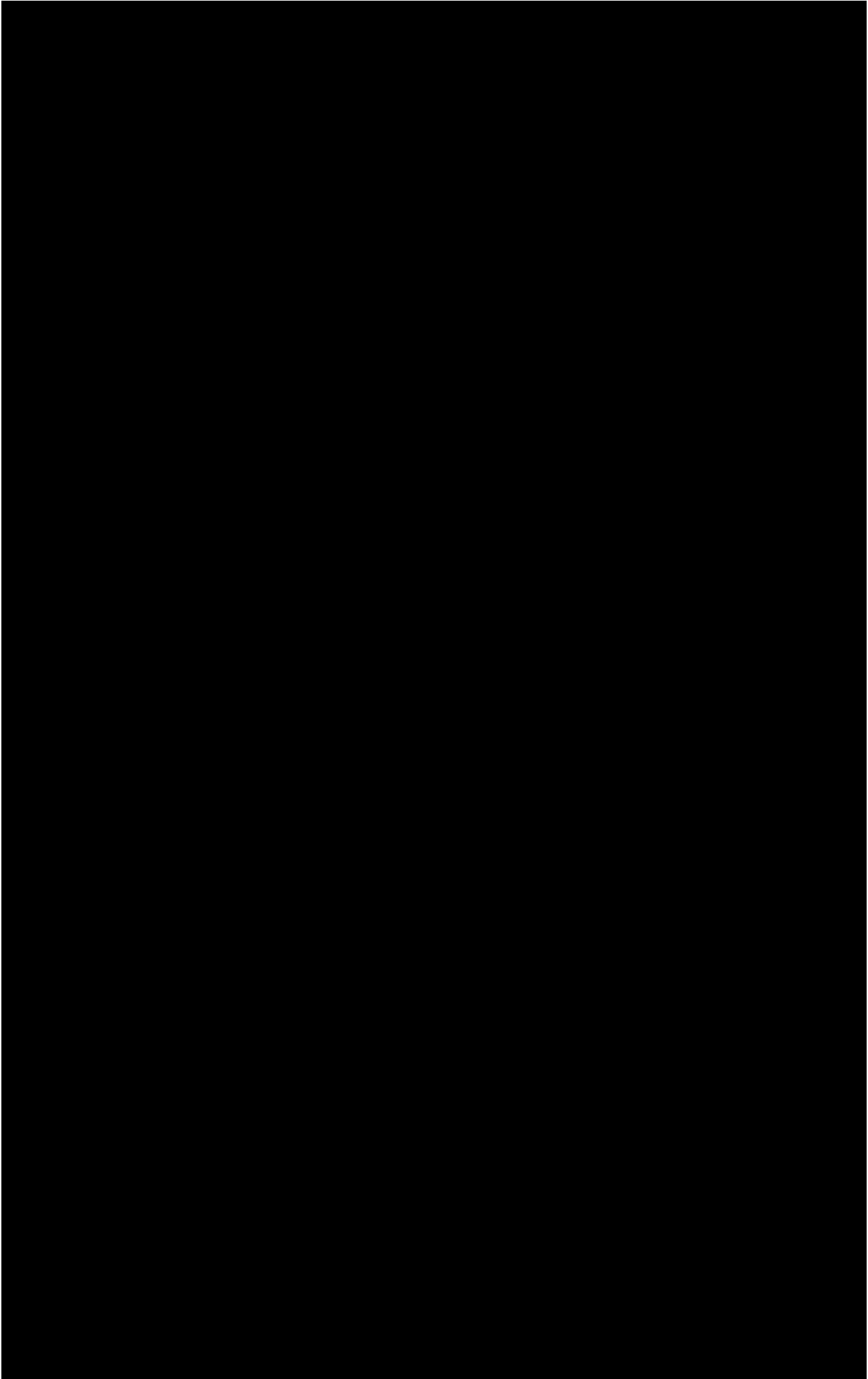
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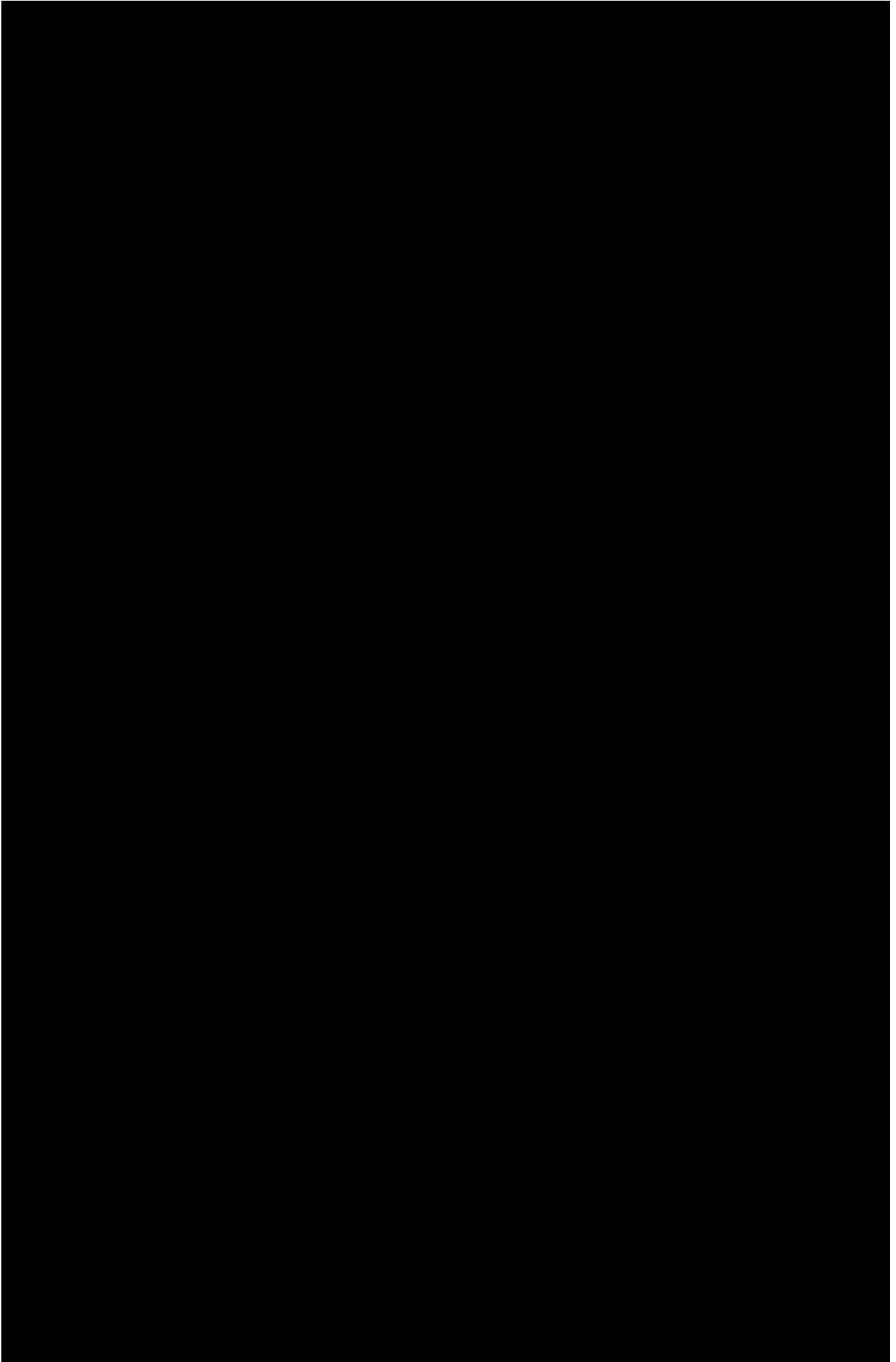


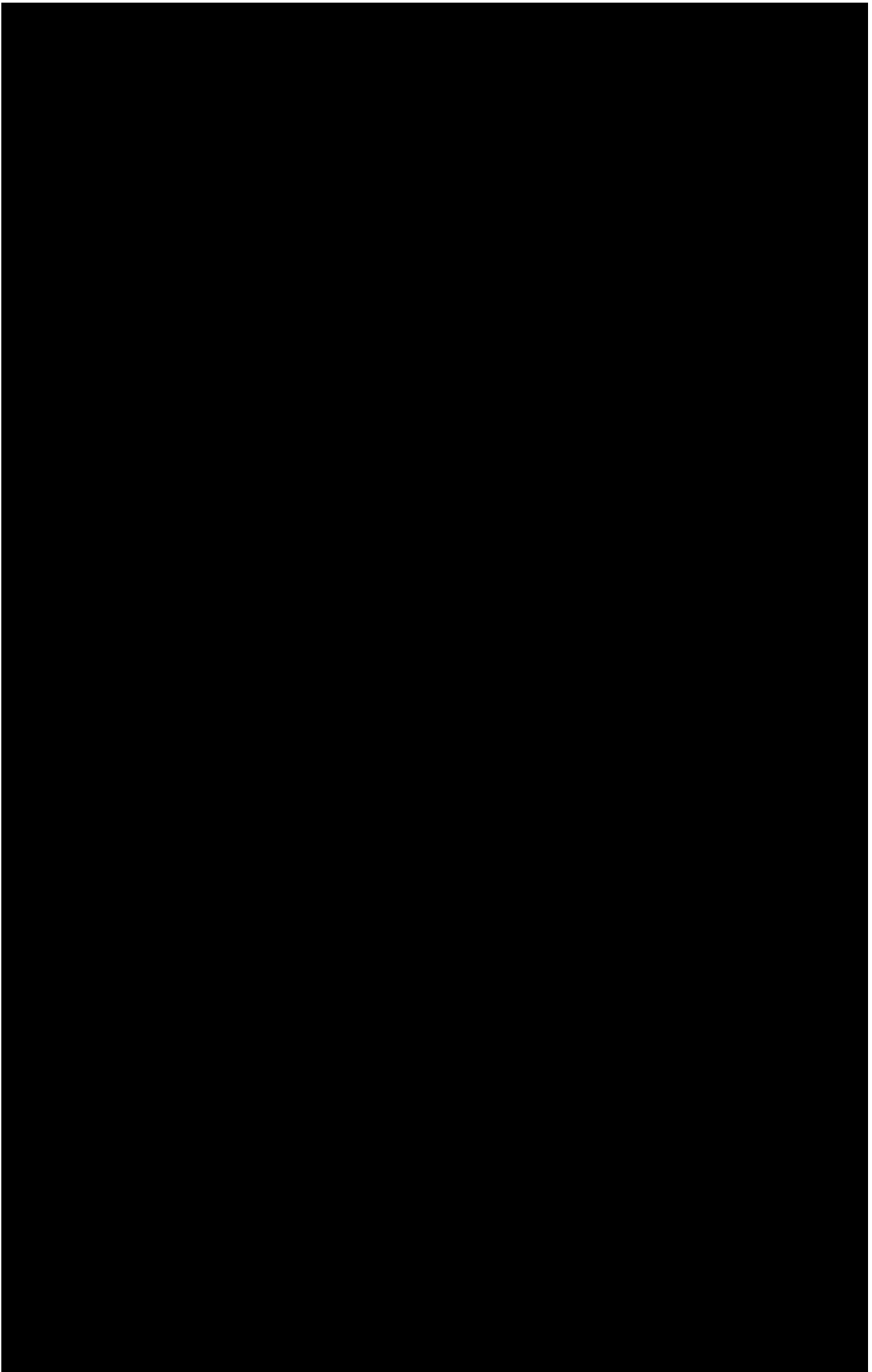




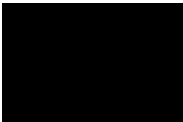
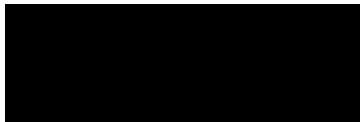


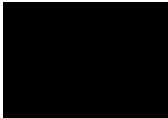
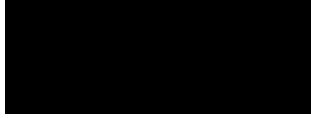






MR20/00613

149. On 26 June 2020, the Applicant lodged an application for IC Review in relation to a decision by the Department of the Treasury to refuse access to documents that relate to the Department's modelling and assessments of the economic impacts of the Novel Coronavirus (COVID-19) outbreak (MR20/00613) **[00613.001]**, **[00613.001.A1]**, **[00613.001.A2]**. The Department identified 11 documents as falling within the scope of the request, and refused access to them in full based on ss 34(1) and 34(3) of the FOI Act (Cabinet documents). An acknowledgement email was sent to the Applicant on the day the application was lodged **[00613.002]**.
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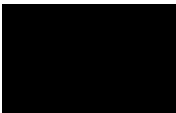
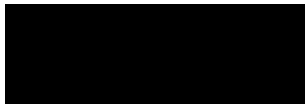
150. On 28 July 2020, an Assistant Director of the SSR team conducted the initial assessment and decided that: (a) the application should be reviewed; (b) that it should be referred to the SSR team for case management in due course; (c) that it should initially be referred to the Intake and Early Resolution team to issue the initial notices; and (d) that the scope of the IC Review is confirmed with the Applicant as part of the initial notice sent to him. I reviewed and confirmed the initial assessment. IC Review Application MR20/00613 has been case managed with two other IC Review Applications lodged by the Applicant (MR20/00612 and MR20/00615), because they have similar subject matter and the same IC Review respondent. MR20/00612 and MR20/00615 are not the subject of the separate question to be determined by the Court. The notes of that initial assessment are contained in the Resolve record for MR20/00613 **[RES.00613]**.
151. On 3 August 2020, an email was sent to the Applicant advising, among other things, that the Information Commissioner had decided to commence a review of the Department's decision and that allocation of the matter to a review officer may take up to 12 months **[00613.004]**. The email requested the Applicant provide submissions by 24 August 2020. Also on 3 August 2020, notice was given to the Department of Treasury of application MR20/00613, pursuant to s 54Z of the FOI Act. The notice requested the Department provide certain information, including submissions in relation to the exemptions claimed under ss 34(1)(c) and 34(3) **[00613.003]**, **[00613.003.A2]**.
152. The Applicant's submissions were received on 31 August 2020 **[00613.009]**.
153. The Department of Treasury requested two extensions of time to submit its response to the 54Z Notice, which were granted.
154. The first extension of time was requested by the Department of Treasury on 21 August 2020, on the basis of difficulties experienced by the Department due to altered work arrangements arising due to COVID-19 **[00613.006]**. I was consulted in relation to this request, and I agreed that an extension of time should be granted to 8 September 2020. In my email to the Director of the Intake and Early Resolution team dated 27 August 2020, I asked that consideration be given to whether MR20/00613 and the other two matters being case-managed with that matter, should progress to a s 54W(b) decision **[00613.007]**, **[00613.007.A1]**, **[00613.008]**. On 31 August 2020, the Assistant Director of the Intake and Early Resolution team informed the Department that the extension of time had been granted **[00613.010]**. An equivalent extension of time was granted for MR20/00612 and MR20/00615, for the same reasons.
155. A second extension of time was requested by the Department of Treasury on 3 September 2020, on the basis that additional time was required to consult with relevant individuals and government departments **[00613.011]**. The Department also requested
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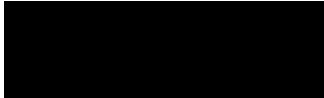
agreement from the OAIC, as required by paragraph 3.7 of the IC Review Procedure Direction, to submit a confidential submission **[00613.011]**. An extension of time until 28 September 2020 was considered **[00613.012]**, **[00613.012.A1]** and, on 17 September 2020, the Assistant Director of the Intake and Early Resolution team advised the Department that the extension of time and the request to provide confidential submissions had been approved **[00613.013]**.

156. The Department's response to the 54Z Notice was received on 29 September 2020, together with 4 attachments, 3 of which were subject to a claim of confidentiality **[00613.014]**. IC Review MR20/00613 was subsequently referred to the SSR team, because the Department had raised a claim under s 34 of the FOI Act ("Cabinet documents").
157. On 12 January 2021, an update regarding a number of the Applicant's IC Reviews, including MR20/00613, was provided to the Applicant by email. In relation to MR20/00613, the document said that the OAIC would contact the Applicant in relation to next steps following review of the documents and submissions **[00054.017]**, **[00054.017.A1]**.
158. On 4 November 2021, a letter was sent to the Department giving notice that IC Review application MR20/00613 is a subject of this proceeding **[00613.017]**, **[00613.017.A1]**.
159. In late 2021, the OAIC sought approval from various Departments for the use of a secure online platform for the transfer of material classified to "Protected" level, including Cabinet documents. At the time, OAIC staff were continuing to work remotely at least in part, which made arranging delivery of "Protected" information in hardcopy format by Safehands delivery logistically difficult, as explained in paragraph 33 above.
160. On 21 December 2021, the Director of the SSR team emailed the Department of Treasury about providing claimed exempt material in relation to 3 IC Reviews (including MR20/00613) using the OAIC's secure online platform. On 22 December 2021, the Department indicated that its IT Security team would complete a risk assessment of the secure platform by 28 January 2022 **[00613.018]**.
161. On 6 April 2022, after the OAIC received confirmation that the Department could use the online file transfer platform, a Review Adviser emailed the Department indicating that the OAIC would issue a notice pursuant to s 55U of the FOI Act for production of the documents relevant to MR20/00613, and requested the details of an appropriate contact to issue the notice to. On 7 April 2022, the Department provided a contact for the proposed s 55U notice, and requested that the OAIC accompany the 55U notice with materials relating to the use of the online file transfer platform. On 20 April 2022, the OAIC provided the materials requested to the Department. **[00613.019]**

162. On 31 May 2022, a notice pursuant to s 55U of the FOI Act was issued to the Department of Treasury, requesting the claimed exempt material by 22 June 2022 **[00613.023], [00613.023.A6]**.
163. However, on 3 June 2022, the Deputy General Counsel for the Department of Treasury sent an email to the Review Adviser within the SSR team which stated that the Department of Prime Minister and Cabinet had advised that Cabinet documents could not be provided through the online file transfer platform. Accordingly, the Department indicated that it would provide the documents through Safehands delivery **[00613.024.A1]**.
164. On 24 June 2022, the OAIC accepted Safehands delivery of the documents in response to the s 55U notice.
165. The next step is for MR20/00613 to be allocated to a Review Adviser in the SSR team to commence reviewing the documents. I am not able to say when MR20/00613 will be allocated to a Review Adviser. As at 3 August 2022, there were approximately 143 IC Review applications that have been assigned to the SSR team but not yet allocated to a Review Adviser that were lodged with the OAIC prior to MR20/00613.

MR20/00760

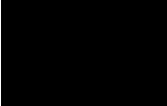
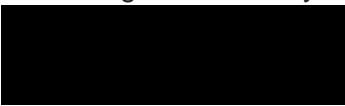
166. On 6 August 2020, the Applicant lodged an application for review of a decision by DISER to refuse access to documents relating to the Snowy 2.0 Project (the Snowy Hydro Australian Industry Capability Plans) (MR20/00760) **[00760.001], [00760.001.A1], [00760.001.A2], [00760.001.A3]**. In its original decision, DISER identified four documents as falling within the scope of the request (comprising approximately 50 pages in total), and gave access to one document in full. DISER refused access to one document in part and two documents in full based on ss 22, 45 and 47(1)(b) of the FOI Act.
167. On 10 August 2020 an acknowledgement email was sent by the OAIC to the Applicant **[00760.002]**.
168. On 18 November 2020, the Director of the Intake and Early Resolution team conducted the initial assessment of MR20/00760 and decided that: (a) the application should be reviewed; (b) that it should be referred to the SSR team for case management in due course; (c) that it should initially be referred to the Intake and Early Resolution team to issue the initial notices; and (d) that the scope of the IC Review is confirmed with the Applicant as part of the initial notice sent to him. I reviewed and confirmed that assessment. The notes of that initial assessment are contained in the Resolve record for MR20/00760 **[RES.00760]**.
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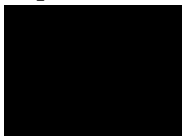

169. On 23 December 2020, an email was sent to the Applicant advising, among other things, that the Information Commissioner had decided to commence review of the Department's decision, outlining the OAIc's understanding of the scope of the IC Review and stating that due to the number of IC Review applicants on hand, allocation to review officer may take up to 12 months [00760.005]. Also on 23 December 2020, a letter was sent to DISER giving notice of the IC Review under s 54Z, outlining the issues raised by the IC Review and requesting, among other things, a marked-up and unredacted copy of the documents at issue and submissions in relation to the exemptions claimed under ss 22, 45 and 47(1)(b). The information was requested by 15 January 2021 [00760.006], [00760.006.A2].
170. On 8 January 2021, a response was received from the Applicant's representative to the OAIc's email of 23 December 2020, stating that the Applicant also sought review of the s 47(1)(b) exemption claimed by the Department [00760.008].
171. On 12 January 2021, the Director of the SSR team provided an update to the Applicant regarding his IC Review applications. In relation to MR20/00760, the Director advised that the OAIc would contact the Applicant in relation to next steps following the review of the documents and submissions [00054.017], [00054.017.A1].
172. On 7 April 2021, DISER requested extensions of time to provide its material to the OAIc for multiple IC Review applications, including MR20/00760 [00760.010]. With respect to MR20/00760, DISER requested an extension until 16 June 2021 to provide the material.
173. Due to the significant period of the extension that had been sought, on 15 April 2021, the Assistant Director of the Intake and Early Resolution Team sent an email to DISER requesting further submissions by 29 April 2021 in relation to the request for an extension of time, in particular addressing the work that had been completed to date in progressing the response and the expected timeline for completing it [00760.011]. The email from the Assistant Director of the Intake and Early Resolution Team also requested, in the alternative, that DISER prioritise its response, noting the length of time that had passed since the s 54Z notice was issued [00760.011].
174. On 16 April 2021, DISER notified the OAIc that it would provide further submissions in support of the extension of time request, by 29 April 2021 [00760.012]. In a separate email on 16 April 2021, DISER provided a copy of the email that had been sent to Snowy Hydro giving notice pursuant to s 54P of the FOI Act of the IC Review application [00760.013], [00760.013.A1], [00760.013.A2].
175. On 20 April 2021, DISER sent an email to the Director of the Intake and Early Resolution Team that set out the reasons for the extensions of time sought in relation to MR20/00760 and other IC Review applications. The email stated that, in December
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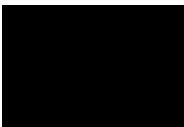
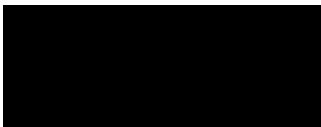
2020 and January 2021, DISER's FOI team "were dealing with unexpected periods of leave, changes in staff and managing competing priorities with very limited resourcing" and consequently a backlog of IC Review Applications had developed [00760.014]. The email outlined the various steps that had been undertaken, and the timeline that DISER had determined for preparation of the outstanding response to the s 54Z notice. The email confirmed that DISER sought an extension of time to 16 June 2021 to provide its response. I have reviewed the Resolve case management database and it appears that DISER was not subsequently advised whether or not the extension was granted.

176. On 16 June 2021, DISER requested a further extension of time. In an email to the FOI branch mailbox, DISER outlined the further steps that had been taken in relation to preparing the response to the s 54Z notice and stated that an additional two weeks would enable DISER to consult with necessary parties and finalise its response [00760.018], [00760.020]. On 24 June 2021, a Review Adviser from the Intake and Early Resolution team sent an email to DISER stating that the request for an extension of time to 2 July 2021 had been approved, but noting that if the response was not provided by that date, a formal notice for production of information would be issued [00760.020].
177. DISER's response to the s 54Z notice was received on 2 July 2021. On 23 July 2021, a member of the Intake and Early Resolution team emailed DISER to say that it had not been possible to open any of the attachments sent on 2 July 2021, and requesting that DISER send the material again in smaller files [00760.023]; the request was reiterated on 29 July 2021 after DISER sent material relating to a separate IC Review application [00760.024]. DISER subsequently provided the material again to the OAIC on 29 July 2021 [00760.025].
178. On 4 November 2021, a letter was sent to the DISER advising it that the IC Review application MR20/00760 is a subject of this proceeding [00760.027], [00760.027.A1].
179. Since 29 July 2021, the matter has been awaiting allocation to a Review Adviser within the SSR team for further case management. I am not able to say when MR20/00760 will be allocated to a Review Adviser. As at 3 August 2022, there were approximately 155 IC Review applications that have been assigned to the SSR team but not yet allocated to a Review Adviser that were lodged with the OAIC prior to MR20/00760.

MR20/00863

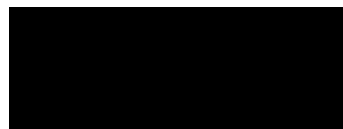
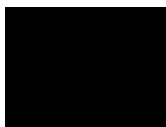
180. On 14 September 2020, the Applicant lodged an application for review of a deemed access refusal decision by DISER pursuant to s 15AC of the FOI Act in relation to the Applicant's request for access to briefings and correspondence sent to or from the General Manager of the Department's National Radioactive Waste Management Facility
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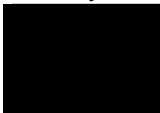
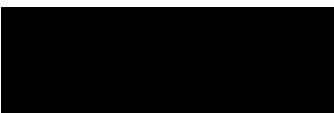
- Taskforce that contained certain phrases within particular timeframes. **[00863.001]**, **[00863.001.A1]**. On 15 September 2020 an acknowledgement email was sent by the OAIC to the Applicant **[00863.002]**.
181. On 16 September 2020, the OAIC sent an email to DISER making inquiries pursuant to s 54V of the FOI Act. The email requested an explanation as to the status of the Applicant's request, and if it was not yet finalised, an estimated date for its completion. The email requested a response by 23 September 2020 **[00863.003]**
182. A response was received from DISER on 17 September 2020 which stated that due to limited resources within the FOI team and a very large increase in requests over the last few months, the Applicant's request had been delayed multiple times. The response also stated that there had been issues trying to retrieve and review documents from the archived email system. The response stated that it was anticipated that the decision and documents in relation to the Applicant's request would be released on or before 28 September 2020 **[00863.004]**. A response was sent to DISER the next day requesting a copy of the decision by 28 September 2020 **[00863.005]**.
183. On 28 September 2020, DISER provided a copy of its Notice of Decision to the OAIC which indicated that DISER would provide the Applicant access in part to the documents requested by the Applicant **[00863.006]**, **[00863.006.A1]**.
184. On 30 September 2020, an email was sent to the Applicant requesting notification as to whether, in light of DISER's decision, he wished to pursue the IC Review application **[00863.007]**. In an email dated 1 October 2020, the Applicant confirmed that he wished to proceed with the IC Review. The Applicant's email outlined what he regarded as an "unusual defect" in the decision and suggested that the OAIC seek information as to why the decision dealt with only 11 documents when DISER had previously advised the Applicant that 130 documents had been identified as falling within the request **[00863.008]**, **[00863.008.A1]**. On 2 October 2020, the OAIC emailed DISER to notify it of the Applicant's decision to pursue the IC Review application **[00863.009]**.
185. On or around 17 November 2020, the initial assessment was undertaken by the Director of the Intake and Early Resolution team, who decided that: (a) the application should be reviewed; (b) that it should be referred to the SSR team for case management in due course; (c) that it should initially be referred to the Intake and Early Resolution team to issue the initial notices; and (d) that the scope of the IC Review is confirmed with the Applicant as part of the initial notice. I reviewed and confirmed that assessment. The notes of the initial assessment were recorded in the Resolve database for MR20/00863 **[RES.00863]**.
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186. On 7 January 2021, an email was sent to the Applicant's representative which stated that the Information Commissioner had decided to commence review of DISER's decision, and that the OAIC understood that the Applicant wished to seek review of whether DISER had taken all steps to locate documents within the scope of the request. **[00863.011]**. The email stated that the matter was awaiting allocation to a Review Adviser, which may take up to 12 months due to the number of IC Review applications on hand.
187. On 7 January 2021, notice was given to DISER pursuant to s 54Z of the FOI Act that the Information Commissioner would review the decision, and that a key issue in the review was whether DISER had taken all reasonable steps to identify the documents relevant to the scope of the Applicant's request. DISER was requested to provide, amongst other things, a copy of any document that recorded the searches conducted by DISER and submissions in support of the decision by 21 January 2021 **[00863.012]**, **[00863.012.A3]**.
188. On 7 April 2021, DISER requested an extension of time to submit its response to the s 54Z notice, on the basis that changes in personnel, unexpected periods of leave, limited resources and competing priorities had resulted in a backlog of IC Reviews **[00863.013]**. DISER was subsequently notified on 15 April 2021 that the extension of time to 31 May 2021 was granted **[00863.014]**.
189. On 1 June 2021, DISER provided its response to the s 54Z notice **[00863.016]**. Following further correspondence between the OAIC and DISER, the IC Review respondent provided a corrected version of the submissions on 11 June 2021 **[00863.069]**.
190. On 26 August 2021, the IC Review application was allocated to a Review Adviser within the SSR team **[RES.00863]**. On 27 August 2021, the Review Adviser provided DISER's submissions to the Applicant and requested the Applicant advise whether he intended to proceed with the IC Review and if so, to provide submissions by 10 September 2021 **[00863.070]**. On 30 August 2021, the Applicant advised that he intended to proceed with the IC Review and, on 10 September 2021, provided his submissions to the OAIC **[00863.071]**.
191. On 13 September 2021, I met with the Review Adviser who was case managing MR20/00863 and the Director of the SSR team to review his files. The Review Adviser sent an email attaching a note of matters to be discussed in the meeting (**[00544.075]**, **[00544.075.A1]**). Although I cannot recall the specific discussion, I believe that at this meeting we discussed reallocating MR20/00863 to a different Review Adviser, having
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regard to the workload of different members of the SSR team, and considered the next steps in relation to MR20/00863 before it could be re-allocated.

192. On 14 September 2021, the Review Adviser provided the Applicant's submissions to DISER and invited it to consider whether it would be appropriate to issue a revised decision under s 55G of the FOI Act **[00863.026]**. The email from the Review Adviser requested a response from the Department by 28 September 2021. On 28 September 2021, DISER provided the OAIC with submissions in response to the Applicant's 10 September 2021 submissions **[00863.072]**.
193. On or around 3 November 2021, the IC Review application was re-allocated to an Assistant Review Adviser in the SSR team, because the Review Adviser who had originally been allocated MR20/00863 already had a relatively large workload and other competing priorities at the time **[RES.00863]**.
194. On 4 November 2021, a letter was sent to DISER advising it that the IC Review application MR20/00863 is a subject of this proceeding **[00863.028]**, **[00863.028.A1]**.
195. On 5 November 2021, the Assistant Review Adviser emailed DISER requesting a marked up and unredacted copy of the documents at issue, in electronic form, and any further submissions in support of any exemptions claimed over the material, to be provided by 19 November 2021 **[00863.029]**.
196. On 16 November 2021, DISER emailed the Assistant Review Adviser seeking clarification regarding the Applicant's submissions **[00863.030]**. The Assistant Review Adviser emailed DISER on 23 November 2021 again requesting marked up and unredacted copies of the documents and any final submissions **[00863.031]**. Later that day, an officer from the Department replied requesting an extension of time until 3 December 2021 to provide the further material **[00863.032]**. The request for an extension of time was granted **[00863.032]**. On 2 December 2021, DISER provided the further material to the OAIC **[00863.033]**.
197. After considering the material provided by DISER on 2 December 2021, the Assistant Review Adviser sent an email to DISER on 7 December 2021 requesting further information be provided by 14 December 2021 **[00863.033]**. In particular, the email noted that DISER had edited some of the documents that were responsive to the request to remove irrelevant pages, and requested a full copy of one of the documents so that the OAIC could consider whether it was appropriate to have edited the document pursuant to s 22 of the FOI Act, and also requested information regarding the nature of edits to other documents made by DISER.

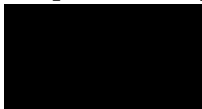
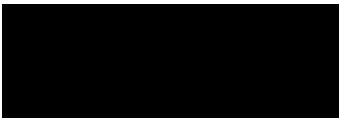


198. On 9 December 2021, DISER requested an extension of time to 22 December 2021 to provide the further material, which was granted **[00863.034]**. On 22 December 2021, the further material was provided by the Department **[00863.036]**.
199. On 22 February 2022, the Assistant Review Adviser sent an email to DISER which requested further submissions as to the basis on which it had deleted various parts of three of the documents responsive to the FOI request pursuant to s 22 of the FOI Act. DISER was asked to provide its further submissions in support of the deletions by 8 March 2022 **[00863.035]**. On 7 March 2022, DISER requested an extension of time, to 31 March 2022, to provide the further material **[00863.035]**. An extension of time was granted, but only to 24 March 2022 **[00863.035]**. On 22 March 2022, DISER requested a further extension of time to 31 March 2022, which was granted **[00863.035]**.
200. On 31 March 2022, DISER sent an email to the Assistant Review Adviser which stated words to the effect that it proposed to make a revised decision under s 55G of the FOI Act, to release in full two documents the subject of the review with only redactions of a nature that had been agreed by the Applicant. The email also made submissions in relation to one other document the subject of the review **[00863.038]**. The Assistant Review Adviser sent an email to the Applicant on 12 April 2022, setting out DISER's proposal **[00863.043]**. In his response dated 18 April 2022, the Applicant made a counter-proposal **[00863.046]**. On 20 April 2022, the Assistant Review Adviser emailed DISER setting out the Applicant's counter-proposal, and requested an update from the Department by 4 May 2022 **[00863.048]**. On 20 April 2022, the Department requested an extension of time until 11 May 2022, which was approved. **[00863.050], [00863.051]**.
201. On 21 April 2022, the matter was reallocated to a new Review Adviser because the Assistant Review Adviser who had been managing MR20/00863 had resigned and would finish up at the OAIC later that month.
202. Subsequent correspondence from DISER on 27 April 2022 sought to clarify with the OAIC that it had an extension of time to provide an update, as opposed to providing a revised decision under s 55G **[00863.052]**.
203. On 27 April 2022, DISER requested a further extension of time until 3 June 2022 **[00863.060]**. On 18 May 2022, the Department sent an email to the Review Adviser following up on its request for a further extension until 3 June 2022. **[00863.053]** On 20 May 2022, the Review Adviser sent an email to the Department which stated that the extension was approved, and requested that the Department provide a copy of its revised decision and submissions to the Applicant by that date **[00863.054]**.
204. On 6 June 2022, a lawyer on behalf of the Department emailed the OAIC advising that they were "assisting the Department with this matter" and requested an "extension until 8
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May 2022 to provide the revised decision”, which was subsequently corrected to be a reference to “8 June” [00863.056]. The revised decision was received by the OAIC on 8 June 2022 [00863.065], [00863.065.A1].

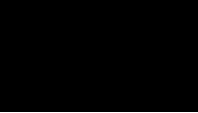
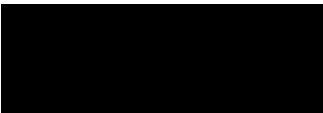
205. In an email from the Applicant’s representative dated 9 June 2022, the OAIC was informed that the Applicant was satisfied with the decision with respect to one document and that the Applicant wished to remove that document from the scope of the IC Review. The Applicant relied on his previous submissions in relation to the remaining documents the subject of the review. [00863.057], [00863.057.A1]
206. On 22 June 2022, the Review Adviser sent an email to the lawyer who was acting for DISER to the effect that the Applicant had advised that he wished to proceed with his IC Review application in relation to the remaining documents. The email stated that the Review Adviser would review the matter and be in contact if further information was required from DISER [00863.059].
207. The next step in this application is that the Review Adviser will review the material that has been provided to date, consider whether further information is required, and otherwise proceed to draft reasons for a decision pursuant to s 55K, for consideration by the FOI Commissioner.

MR20/00922


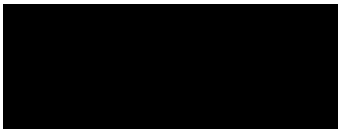
208. On 24 September 2020, the Applicant lodged an application for IC Review of a decision by the Department of Health to refuse access to documents that relate to the Australian Health Protection Principal Committee since 29 May 2020 that go to the topic of State border closures (MR20/00922) [00922.001], [00922.001.A1]. On 22 September 2020, the Department of Health identified 10 documents (comprising approximately 40 pages in total) as falling within the scope of the request and refused access to them in full based on s 47B of the FOI Act. Section 47B establishes a conditional public interest exemption in relation to documents if (amongst other things) disclosure of the document would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State.
209. On 28 September 2020, a member of the Intake and Early Resolution Team requested the Applicant provide a copy of the Department of Health’s decision, required pursuant to s 54N of the FOI Act for a valid application for IC Review to be made [00922.002]. Subsequently on 1 October 2020, the Applicant provided a copy of the Department’s decision to the OAIC [00922.003], [00922.003.A1].
210. On 2 October 2020 an acknowledgement email was sent by the OAIC to the Applicant [00922.004].
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211. On 1 October 2020, the Director of the Intake and Early Resolution team conducted the initial assessment of MR20/00922 and decided that: (a) the application should be reviewed; (b) that it should be referred to the SSR team for case management in due course; (c) that it should initially be referred to the Intake and Early Resolution team to issue the initial notices; and (d) that the scope of the IC Review is confirmed with the Applicant as part of the initial notice sent to him. On or around 19 October 2020, I reviewed and confirmed that assessment. The notes of that initial assessment are contained in the Resolve record for MR20/00922 [RES.00922].
212. On 26 October 2020, an email was sent to the Applicant advising, among other things, that the Information Commissioner had decided to conduct a review of the Department's decision and that due to the number of matters on hand, and allocation to a review officer may take up to 12 months [00922.005]. Also on 26 October 2020 a notice under s 54Z of the FOI Act was issued to the Department of Health, which requested information be provided by 16 November 2020 [00922.006],[00922.006.A1].
213. The Department's response to the 54Z Notice was received on 5 November 2020 [00922.007].
214. On 4 November 2021, a letter was sent to the Department of Health advising it that the IC Review application MR20/00922 is a subject of this proceeding [00922.009], [00922.009.A1].
215. MR20/00922 is still awaiting allocation to a Review Adviser within the SSR team for further case management. I am not able to say when MR20/00922 will be allocated to a Review Adviser. As at 3 August 2022, there were approximately 165 IC Reviews that have been assigned to the SSR team but not yet allocated to a Review Adviser that were lodged with the OAIC prior to MR20/00922.

MR20/01189

216. On 30 November 2020, the Applicant lodged an application for IC Review in relation to a decision by the Department of Prime Minister and Cabinet (**DPMC**), to refuse access in part to a request for access to directions, guidelines, advice or templates for drafting submissions, memoranda and other papers for Cabinet (MR20/01189) [01189.001], [01189.001.A1], [01189.001.A2], [01189.001.A3]. The DPMC identified 23 documents as falling within the scope of the request and gave access to two documents in full. The DPMC refused access to the remaining 21 documents in full or in part based on ss 34(3) and 47E(d) (of the FOI Act. Section 34(3) provides that a document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has
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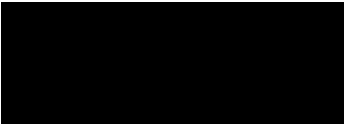
been officially disclosed. Section 47E(d) of the FOI Act provides that a document is an exempt document to the extent that its disclosure under the FOI Act would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

217. On 1 December 2020, an acknowledgement email was sent to the Applicant **[01189.002]**.
218. On 5 March 2021, the Director of the Intake and Early Resolution team conducted the initial assessment of MR20/01189 and decided that: (a) the application should be reviewed; (b) that it should be referred to the SSR team for case management in due course; (c) that it should initially be referred to the Intake and Early Resolution team to issue the initial notices; (d) that the scope of the IC Review is confirmed with the Applicant as part of the initial notice sent to him the IC Review should proceed; and (e) an initial letter sent to DPMC requesting documentation, including evidence supporting the exemption claimed. The notes of that initial assessment are contained in the Resolve record for MR20/01189 **[RES.01189]**.
219. On 3 May 2021, an email was sent to the Applicant advising, among other things, that the Information Commissioner had decided to commence review of the Department's decision and that allocation of the matter to a review adviser may take up to 12 months **[01189.003]**.
220. A notice under s 54Z of the FOI Act was sent to the DPMC on 3 May 2021, which noted that a key issue in the IC Review was whether the Department had correctly determined that the documents the subject of the FOI request were exempt under ss 34(3) and 47E(d) of the FOI Act and requested certain information, including marked-up and unredacted copies of certain documents and submissions in relation to the exemptions claimed be provided to the OAIC by 24 May 2021 **[01189.004]**, **[01189.005]**.
221. On 14 May 2021, the DPMC contacted the OAIC to seek clarification as to whether the Applicant had made submissions **[01189.006]**. A Review Adviser replied on 18 May 2021 stating that the Applicant had not yet made submissions to the OAIC **[01189.007]**.
222. On 24 May 2021, an email was received from the DPMC which sought a one-week extension of time to respond to the 54Z Notice, on the basis that additional time was required to consult with various divisions within the DPMC regarding material to be provided, and availability difficulties of relevant individuals to be consulted **[01189.008]**.
223. The DPMC's response to the request for information in the 54Z Notice was received on 1 June 2021 **[01189.008]**. The application was allocated to a Review Adviser on 26 August 2021.
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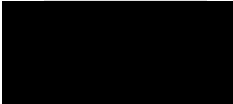
- 224. I attended a meeting on 26 August 2021 with the Acting FOI Commissioner, the Director of the SSR team and a Review Adviser from that team at which the next steps in relation to this IC Review were discussed. At the meeting, it was decided that a s 55U notice would be issued to DPMC requesting production of the material claimed to be exempt pursuant to s 34 of the FOI Act (Cabinet documents). It was agreed that before the notice was issued, arrangements should be made with DPMC in relation to the method for delivery of the documents to the OAIC.
- 225. On 4 November 2021, a letter was sent to DPMC advising it that the IC Review application MR20/01189 is a subject of this proceeding **[01189.009], [01189.009.A1]**.
- 226. In late 2021, the OAIC sought approval from DPMC to use a secure online platform for sharing of protected documents (in particular, documents claimed to be exempt under s 34 of the FOI Act) with the OAIC. In January and February 2022, the OAIC engaged with the DPMC about the use of the secure online platform for Cabinet documents. In March 2022, the OAIC was informed that the online platform could not be used for Cabinet documents and, accordingly, it remains necessary for material subject to a claim that it is exempt under s 34 of the FOI Act to be delivered to the OAIC in hardcopy via Safehands delivery.
- 227. On 25 July 2022, the OAIC sent a notice to the Department under s 55U of the FOI Act requiring production of a marked up and unredacted copy of the documents that are claimed to be exempt under s 34 of the FOI Act. The notice requires production of the documents via Safehands delivery by 8 August 2022. **[01189.013], [01189.013.A1]**

Affirmed by the deponent
 at Sydney NSW
 on 22 August 2022
 Before me: KA WING KELVIN NG

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Signature of deponent



Signature of witness

Witness's qualification: An Australian legal practitioner within the meaning of the Legal Profession Uniform Law (Victoria)

Witness's address: Level 38, 477 Collins Street, Melbourne VIC 3000

Making the affirmation and the signing of this affidavit by the deponent, were witnessed by means of audio-visual link, in accordance with s14G of the *Electronic Transactions Act 2000* (NSW).

This affidavit is being signed electronically in accordance with paragraph 4.1 of Federal Court Practice Note SMIN-1 due to a lack of available scanning technology.

Exhibit Certificate

No. VID519 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

SENATOR REX PATRICK

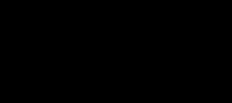
Applicant

AUSTRALIAN INFORMATION COMMISSIONER

Respondent

EXHIBIT "RAD-1"

Before me:

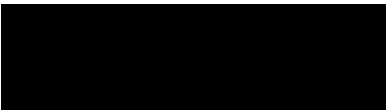


Signature of witness

Witness's name: KA WING KELVIN NG

Witness's qualification: An Australian legal practitioner within the meaning of the Legal Profession Uniform Law (Victoria)

Witness's address: Level 38, 477 Collins Street, Melbourne VIC 3000



Signature of person taking affidavit

Dated: 22 August 2022

Making the affirmation and the signing of this affidavit by the deponent, were witnessed by means of audio-visual link, in accordance with s14G of the *Electronic Transactions Act 2000* (NSW).

This affidavit is being signed electronically in accordance with paragraph 4.1 of Federal Court Practice Note SMIN-1 due to a lack of available scanning technology.