

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

Thank you Leo and Rocelle

**From:** AGO,Rocelle < >  
**Sent:** Wednesday, 22 February 2023 9:22 AM  
**To:** HARDIMAN,Leo < >; FALK,Angelene < >  
**Subject:** RE: Potential legislative amendments [SEC=OFFICIAL]

Good morning

Please see updated table below:

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

Kind regards



**Rocelle Ago** | Assistant Commissioner  
 Freedom of information  
 Office of the Australian Information Commissioner  
 GPO Box 5218 Sydney NSW 2001 | [oaic.gov.au](http://oaic.gov.au)

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

Angelene,

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

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

Leo

**From:** AGO,Rocelle < >  
**Sent:** Monday, 20 February 2023 12:45 PM  
**To:** HARDIMAN,Leo < >  
**Subject:** Potential legislative amendments [SEC=OFFICIAL]

Hi Leo

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

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

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





				to give evidence if the exempt documents are subject to ss 33(1)(c) and 33(b), and to consult IGIS as she sees fit
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On the issue of matters finalised under s 54W(b), it may also be worth suggesting removal of the application fee for applicants whose IC review application for IC review has been declined under s 54W(b)

Kind regards



**Rocelle Ago** | Assistant Commissioner  
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