



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID482/2020

KATHLEEN O'DONNELL

Applicant

COMMONWEALTH OF AUSTRALIA and others named in the schedule

Respondent

ORDER

JUDGE: JUSTICE MURPHY

DATE OF ORDER: 01 July 2022

WHERE MADE: Melbourne

THE COURT ORDERS BY CONSENT THAT:

1. The categories for discovery to be provided by the parties are set out in the Schedule to these orders.
2. By 4.00 pm on 5 August 2022, the Respondent to:
 - (a) make discovery, in electronic format, of all documents identified in the categories for discovery in the Schedule to these orders which have not already been discovered by the Respondent (Tranche 3); and
 - (b) serve a List of Documents pursuant to Rule 20.17 of the *Federal Court Rules 2011* (Cth) with respect to the Tranche 3 documents.
3. By 4.00 pm on 8 July 2022, the Applicant to:
 - (a) make discovery, in electronic format, of any documents identified in the categories for discovery in the Schedule to these orders which have not already been discovered by the Applicant (Tranche 2); and
 - (b) serve a List of Documents pursuant to Rule 20.17 of the *Federal Court Rules 2011* (Cth) with respect to the documents which the Applicant has made available for inspection.



4. The costs of the application for discovery incurred after 7 April 2022 be costs in the cause.
5. Costs otherwise be reserved.
6. The matter is listed for a further case management hearing on 16 August 2022 at 9.00 am.

Date that entry is stamped: 1 July 2022

Sia Lagos
Registrar



SCHEDULE

Categories for discovery by the Respondent	
No.	
1.	All documents provided to the respondent in response to the respondent's application sent to the ASX dated 24 November 2008.
2.	All modelling, forecasts and reports and any discussion or briefing papers or internal memoranda (not including email communications) that consider those primary documents, created on or after 1 January 2019, on the revenue received, revenue to be received or revenue not received by the Commonwealth for some or all of the period 1 July 2020 to 21 February 2050, directly and indirectly, from the Affected Industries, Companies and Communities.
3.	All modelling, forecasts or reports (including advanced drafts) and any discussion or briefing papers or internal memoranda (not including email communications) that consider those primary documents, created on or after 9 November 2016, on the impact (for some or all of the period 7 July 2020 to 21 February 2050) of climate change on the revenue expected to be received directly and indirectly, from the Affected Industries, Companies and Communities.
4.	All modelling, forecasts or reports (including advanced drafts) and any discussion or briefing papers or internal memoranda (not including email communications) that consider those primary documents, created on or after 9 November 2016, on future expenditure required or potentially required (for some or all of the period 7 July 2020 to 21 February 2050) by the respondent in order to: <ul style="list-style-type: none"> (a) address the impacts of climate change; and/or (b) meet Australia's Paris Commitment.
5.	All modelling or research (including covering correspondence and advanced drafts) and any discussion or briefing papers or internal memoranda that consider those primary documents relied upon to prepare the sections of the Intergenerational Report 2021 beginning with the heading "Climate change" on page 58 and concluding on page 64, limited to such documents which go to the likelihood of: <ul style="list-style-type: none"> a) any <i>significant</i> additional expenditure by the Respondent in the future (as alleged in paragraph [63] of the 3FASOC); and/or b) any <i>substantial</i> reduction in revenue received by the Respondent in the future (as alleged in paragraph [64B] of the 3FASOC); and/or c) any <i>material</i> adverse impact on the matters alleged in paragraph [76.1]-[76.4] of the 3FASOC.
6.	All modelling, forecasts or reports (including advanced drafts) and any discussion or briefing papers or internal memoranda (not including email communications) that consider those primary documents, created on or after 9 November 2016, on the impact of climate change or climate change risks (for some or all of the period 7 July 2020 to 21 February 2050) on: <ul style="list-style-type: none"> (a) the respondent's status and reputation as a reliable and safe issuer of sovereign debt securities; (b) the respondent's capacity to maintain its AAA status as an issuer of sovereign debt securities; (c) the respondent's capacity to respond to "medium" to "large scale" economic impacts; and (d) the respondent's capacity to discharge its interest and principal obligations under the eAGBs held by the applicant and by the other persons holding eAGBs at the material times.
7.	All briefings to Treasurer Josh Frydenberg in preparation for the speech on 24 September 2021 headed " <i>Capital markets and the transition to a low emissions future</i> ".



8.	All modelling and forecasts (including advanced drafts), and any discussion or briefing papers or internal memoranda (not including email communications) that consider those primary documents, used to prepare the speech by Treasurer Josh Frydenberg on 24 September 2021 headed “ <i>Capital markets and the transition to a low emissions future</i> ”.
9.	<p>Documents, created on or after 7 July 2020, that are:</p> <ul style="list-style-type: none"> (i) electronic communications; or (ii) minutes of meetings (and any briefing materials provided to participants for the purpose of those meetings): <ul style="list-style-type: none"> (a) within the AOFM (the electronic communications discoverable in this category are limited to electronic communications sent or received by Rob Nicholl, CEO of the AOFM); or (b) between the AOFM and Moody’s, Standard & Poors (S&P) Global Ratings and Fitch Group; or (c) between the AOFM and institutional investors; (d) between the AOFM and central banks or their equivalent, including their investing arms and representatives; <p>regarding the inclusion of climate-related risks into sovereign ratings.</p>
10.	For the period 9 November 2016 to present, all modelling or forecasts (and any discussion or briefing papers or internal memoranda (not including email communications) that consider those primary documents) on how climate change risks may impact the value of AGBs or eAGBs (for some or all of the period 7 July 2020 to 21 February 2050).
11.	For the period 10 February 2014 to present, all minutes of meetings, internal memoranda (not including email communications), discussion papers, briefing papers and reports recording consideration of which risks to identify in the Disclosure Documents as risks which prospective investors should consider when deciding whether to invest in eTBs or eTIBs.
Categories for discovery by the Applicant	
No.	
1.	<p>Documents relating to the Applicant’s purchase and ownership of eTIBs and eTBs, including:</p> <ul style="list-style-type: none"> a. documents evidencing the Applicant’s purchase of eTIBs and eTBs; and b. documents evidencing interest payments received by the Applicant as a result of her ownership of eTIBs and eTBs; <p>but not including:</p> <ul style="list-style-type: none"> c. documents relied upon by Applicant in making a decision to purchase eTIBs and eTBs; and d. documents evidencing communications between the Applicant and Represented Persons or other parties concerning the Applicant’s decision to purchase eTIBs and eTBs.



Schedule

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Second Respondent

SECRETARY, DEPARTMENT OF TREASURY

Third Respondent

CHIEF EXECUTIVE OFFICER, AUSTRALIAN OFFICE OF
FINANCIAL MANAGEMENT